

SIXTY-FIRST DAY

Monday, April 26, 1982

The Senate of the Eleventh Legislature of the State of Hawaii, Regular Session of 1982, convened at 10:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Stanley E. Kain, Executive Director of the Hawaii Council of Churches, after which the Roll was called showing all Senators present with the exception of Senator Campbell who was excused.

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

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

Senator Saiki introduced as follows:

"Mr. President, it is with great pleasure that I present to you and my colleagues here in the Senate, the now official candidate for the governorship of this state, Senator Andy Anderson."

Senator Anderson rose to be recognized and was acknowledged with a round of applause.

Senator Anderson then introduced as follows:

"Mr. President, I would also like to, at this time, introduce my running mate, Senator Pat Saiki."

Senator Saiki was also recognized and acknowledged with a round of applause.

Senator Anderson then requested that the Clerk read their letter of resignations addressed to the Senate President and also requested that it be entered into the Journal, and the Chair so ordered.

The letter of resignations reads as follows:

"April 26, 1982

Honorable Richard S.H. Wong
President of the Senate
Eleventh State Legislature
Regular Session of 1982
State of Hawaii

Dear Senator Wong:

It has been both an honor and a memorable experience to have been part of the Senate Coalition under your

leadership during the Tenth and Eleventh Legislatures. We believe historians of the future will look back on our bipartisan effort and note that it came at a time when our State was crying out for fresh and imaginative leadership.

The Coalition has served Hawaii well. It has provided citizens with fuller representation, it has set new standards for the careful deliberation of legislation, and it has increased accessibility to unprecedented levels. In addition, the Coalition has steadfastly faced the new challenges that are emerging from our increasingly complex economy and society. Finally, it has contributed immensely toward healing the factional divisions which have become such a concern in recent years. Indeed, this may be its most important contribution.

For these reasons, it is our fervent hope that the Coalition will be preserved -- in spirit if not in actual form -- well into the future. Therefore, to protect what we have accomplished and to avoid any appearance of conflict that might follow in the wake of our recent announcements concerning the Governorship and Lieutenant Governorship, we herewith tender our resignations as Vice Chairman of your Committee on Ways and Means and Chairman of your Committee on Higher Education.

With warm personal regards,

D.G. 'Andy' Anderson
Senator
3rd District

Patricia Saiki
Senator
7th District."

Senator Anderson then added: "Mr. President, for the record, I would like to note that Senator Saiki and I have obtained permission from Senator Yee to use the caucus room, privately, 15 to 20 minutes a day for the remainder of the session. We have put together our own research staff and have worked out all the details of being a minority within the minority. Thank you very much."

At 10:56 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:23 o'clock p.m.

Senator Abercrombie then introduced

Mrs. Dante Carpenter and stated: "Mr. President, it is my particular pleasure today to introduce someone, a beautiful lady from a family of beautiful ladies, the most beautiful lady in that family, Olan Carpenter."

Senator Kawasaki then made the following introduction:

"Mr. President, it gives me great pleasure, in behalf of the Senate, to make an introduction of two very loyal employees who have worked like Trojans for a good 24 years as managers of the Senate printshop, Mrs. Nora Ogawa and Mrs. Mary Gregory. They have managed the printshop for many sessions when bills came pouring in to be poured out and have done their Trojan work without complaint, without any hint of a request for pay increase, unlike many others, and I think it is very fitting that on this closing day of the session that we present them with certificates of merit as evidence of the Senate's appreciation of their fine work.

"We really appreciate the dedicated services of Mrs. Ogawa and Mrs. Gregory. Mr. President, may I present, Mrs. Nora Ogawa. Mrs. Mary Gregory could not be here this morning."

Mrs. Ogawa was presented with the Senate Certificate by Senator Kawasaki and Senators Cayetano and Soares presented her with leis.

At 12: 25 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12: 27 o'clock p.m.

FINAL READING

Conference Committee Report No. 90-82 (H.B. No. 2070-82, H.D. 1, S.D. 1, C.D. 1):

At 12: 28 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12: 31 o'clock p.m.

Senator Cobb moved that Conf. Com. Rep. No. 90-82 be adopted and H.B. No. 2070-82, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Yee.

Senator O'Connor, although in favor of the measure, remarked as follows:

"Mr. President, I am going to vote in favor of the budget but I rise to raise

certain procedural questions which have created problems for some concerning the handling of the budget and I will state the facts and the law which pertain to that situation.

"The budget was agreed to and printed last Friday. It was printed in the House printshop. It was put on deck in the House, as I understand it, somewhere around 11:30 - 11:40. At the same time, the budget had not been placed upon the desks of the Senators. Several individuals, including myself, stayed in these chambers until midnight to see if any other bills would be placed on deck, and no bills were placed on deck. One of these individuals who was standing in the chambers was the Governor; another was the Attorney General. There were several other Senators and quite a group of people. The budget was not placed upon the desks of the Senators prior to midnight on Friday.

"The Senate rule says that the 48-hour period for a bill upon which it must be available to the members shall commence with the placement of a printed copy of the bill in the form to be passed upon the desk of each member to which the Senate is entitled upon the convening of, or during each day's session. The budget bill was not so handled. It was not placed upon the desks of the Senators during that day's session.

"About 12:10 of that evening, I asked the Clerk of the Senate if the bill had been printed, and he acknowledged that it had and got a copy for me. I think I was the first Senator to get a copy of the bill.

"There are questions that are now being raised concerning the legality of that bill. On one hand, there is a certain argument raised that there has been precedent established in this body that the bill, simply by being somewhere in this building, conforms to the Senate rule, if a Senate member wants a copy and asks for it then it's available.

"But, unfortunately, Mr. President, that's not what our rule says. Our rules have the force and effect of law. It's plain under the Constitution that they do have the force and effect of law. I don't think there's been another time when a bill had such a public lack of conforming to the law, although I'm sure there were other times when bills had been handled in a variety of fashion. In prudence and caution, Mr. President, I would suggest that this may be a situation which would cause invalidity in the law of that bill.

"If we have the budget of the state rendered invalid by legal decision, it would be a shame. Therefore, I would suggest, Mr. President, with prudence and with caution that measures be taken to insure that this bill be handled so that there's no question about its validity down the line if a taxpayer's suit or other legal action is brought concerning that measure. But, I will say, Mr. President, that I am in favor of most of the provisions in the budget. There are certain things about it that I don't like and I'm sure that that's true of all of my colleagues.

"I will be voting in favor of it, although I am aware of many of its deficiencies. Thank you."

Senator Kawasaki also spoke in favor of the measure and stated:

"Mr. President, I'm rising in favor of passage of this bill and I'd like to respond to some of the comments made by the good Senator from the Seventh District.

"First of all, if it was a Senate rule that requires the 48-hour layover, I think it's very simple for us here to, by two-thirds vote, change, suspend the Senate rule.

"Secondly, if the matter is ever up for court decision, litigation of sorts, because of people questioning the legality of the bill, then I am confident that the courts will look at the bottom line reason for this so-called 48-hour layover...that reason being that the Senators here had sufficient time before voting on final approval. Whether they had sufficient time to look over the contents of the bill as to whether they want to agree or disagree. And, inasmuch as we've had sufficient time, so far as time goes, I think the courts will then determine and ascertain that there was sufficient time...the Senators had every opportunity to examine the bill, and this is really the bottom line for the reason of this 48-hour layover. That in consideration, I think, the passage...the approval on the part of the courts of what is done here is no question. I think there's never been a question that I was concerned about the legality of the bill.

"For that reason, although I too have concerns about some provisions in the budget bill but, in essence, the overall bill, I think, is a good one. I think it reasonably tries to protect the interests of the majority of the citizens of this state. I urge passage of this bill."

The Chair then made the following observation:

"Before proceeding any further, I want to make it clear to the members that I am very comfortable about the arguments against the process of how the budget arrived here on the floor. I think it is common knowledge to all of us Senators that the Constitution makes no reference in terms of the Senate rules for operational purposes, but rather that copies of the bill to be passed in its final form are made available to Senators. I take that availability to mean, first, placement on the desk for 48 hours, or second, a request to the Clerk to take a look at the bill.

"As I understand, in particular, the Clerk has informed me that the budget bill was printed, was available before 12:00 midnight on Friday, and that a Senator approached him for a copy of the bill around 12:07. That Senator was given a copy of the bill at 12:10, completely finished.

"It would be illogical of me to think that the budget which entails somewhere in the neighborhood of 250 pages could be printed up in three minutes and made available to that particular Senator just like that.

"Secondly, I would like to call the attention of the body to the rule of the 48 hours. We have in our possession an Attorney General's ruling which indicates that if we deck a bill on a Friday, the 48 hours can begin then and Saturday and Sunday would count towards the waiting period. I think the reason for this requirement is that in the past there were measures that were passed with less than 24 hours notice, and this was an insurance that things like this, in the future, would not happen.

"With reference to the 48-hour provision, the bills you see before you on your desk, every copy that you have before you, have been here in the Senate for over 48 hours. If you want to tie it down, it is in the vicinity of 58 hours on each of the bills.

"As in the past, there have been requests in motions to adjourn that we leave the Journal open. This is what was done and it was mainly for clocking purposes that the Clerk received all committee reports, all conference drafts, all bills and resolutions by the 12:00 o'clock midnight deadline.

"As I interpret the rule, I feel very secure about the passage of the budget and I am prepared to commit the Senate

to any challenge in the courts with reference to the operating budget. I have no qualms about it.

"I have informed the Governor about our decision and that I feel that the budget is in its proper form and we are prepared to vote on the budget and all the auxiliary bills which help to implement the budget today.

"I hope that someone will not challenge it because I feel very safe about it, but there will be a difference of opinion and the Chair recognizes that. I too would like to be cautious about how the process works."

Senator Cobb, in support of the measure, remarked:

"Mr. President, speaking in favor of the budget and in support of the remarks you just articulated, it is my understanding also that the House of Representatives has already passed the budget under a similar, if not identical, interpretation, and they feel perfectly confident about the matter also."

Senator O'Connor then added: "Mr. President, just so the facts are crystal clear, the House budget or the budget in the House was decked before midnight on Friday. Ours was not.

"I believe that prudence, since we are already into an extension of the session, should encourage the suggestion that there be another extension to make sure that this isn't an invalid bill.

"As the Chair just pointed out, there is a difference of opinion. As the Chair pointed out, the law and the rules can be read one way or they can be interpreted another way. Our rules are very plain on their face, and on their face our rules make the handling of that budget today improper. Whether or not past practice might change those rules, I cannot for myself encourage that sort of action.

"It is a shame, from an administrative standpoint, we face this situation but it's there and I would urge prudence and caution and I would urge that we insure that this measure, which is a terribly important measure, be legal and proper when we vote on it."

The Chair, in response, stated:

"Senator O'Connor, just to remind you that if by some quirk the courts decide otherwise, I am prepared to come back into special session to take care

of this particular problem. I don't feel it is a problem, so I think what we have before us today is a measure to be voted on, and to be sent to the Governor. It is up to the Governor to decide whether this, in fact, is legal or illegal. I really do believe that the Constitution will in the end govern what was done and that the bill was available to every member of this Senate if he wanted to ask for a copy of that measure."

Senator George then spoke in support of the measure and remarked:

"Mr. President, speaking in favor of the budget, given the gravity of the whole question we have in front of us to bring up one point, but I think that I have to do it with the indulgence of my colleagues.

"I'm talking about Dillingham as the solution to our problem of a general aviation airport. I've refrained from making this same little dissertation the other evening when it was brought up on the floor but I feel so strongly about it. I'm reminded of a famous fairy-tale by Hans Christian Andersen called 'The Emperor's New Clothes.'

"It seems to me that this budget makes the assumption that we have achieved a solution by passing the budget with this description of Dillingham general aviation airport, we are clothing ourselves in an imaginary solution. I think most will realize that it isn't a solution and that it wouldn't come into being.

"Another adage that I am reminded of is: 'the one who pays the piper calls the tune' and, unfortunately, we dance to the Federal Government's tune when it pays for the Honolulu International Airport. We are, therefore, stuck with the provisions laid down by the FAA at that time.

"I hope this is the last time I have to say this. I don't think Dillingham will ever be declared our general aviation reliever airport. I devoutly hope not. The only thing that gives me some measure of confidence that things will proceed along a sensible and logical basis is that the Department of Transportation has the money and the capability to proceed along the lines of continuing with the environmental assessment process for other airports on this island. I devoutly hope they do so.

"Thank you, Mr. President."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 90-

82 was adopted and H.B. No. 2070-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR THE FISCAL BIENNIIUM JULY 1, 1981 TO JUNE 30, 1983," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 643 to 652) were read by the Clerk and were disposed of as follows:

A communication from the House (Hse. Com. No. 643), informing the Senate that the amendments proposed by the Senate to House Bill No. 473, H.D. 1, were agreed to by the House; and H.B. No. 473, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 644), informing the Senate that the amendments proposed by the Senate to House Bill No. 2154-82, H.D. 1, were agreed to by the House; and H.B. No. 2154-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 645), informing the Senate that the amendments proposed by the Senate to House Bill No. 2598-82, H.D. 1, were agreed to by the House; and H.B. No. 2598-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 646), informing the Senate that the amendments proposed by the Senate to House Bill No. 2682-82 were agreed to by the House; and H.B. No. 2682-82, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 647), informing the Senate that the amendments proposed by the Senate to House Bill No. 2733-82, H.D. 1, were agreed to by the House; and H.B. No. 2733-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House

(Hse. Com. No. 648), informing the Senate that the amendments proposed by the Senate to House Bill No. 2751-82, H.D. 1, were agreed to by the House; and H.B. No. 2751-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 649), informing the Senate that the amendments proposed by the Senate to House Bill No. 2750-82, H.D. 1, were agreed to by the House; and H.B. No. 2750-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 650), informing the Senate that the amendments proposed by the Senate to House Bill No. 2869-82, H.D. 1, were agreed to by the House; and H.B. No. 2869-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 651), informing the Senate that the amendments proposed by the Senate to House Bill No. 2975-82, H.D. 1, were agreed to by the House; and H.B. No. 2975-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

A communication from the House (Hse. Com. No. 652), informing the Senate that the amendments proposed by the Senate to House Bill No. 3016-82, H.D. 1, were agreed to by the House; and H.B. No. 3016-82, H.D. 1, S.D. 1, passed Final Reading in the House of Representatives on April 20, 1982, was placed on file.

STANDING COMMITTEE REPORTS

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 1049-82) informing the Senate that Stand. Com. Rep. Nos. 1040-82 to 1052-82 and Conference Committee Report Nos. 78-82 to 91-82 have been printed and distributed to all members of the Senate.

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

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 1050-82) recommending that House Concurrent Resolution No. 103, H.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1050-82 and H.C.R. No. 103, H.D. 1, was deferred to the end of the calendar.

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 1051-82) recommending that Senate Resolution No. 67, S.D. 1, be adopted.

On motion by Senator Young, seconded by Senator George and carried, the report of the Committee was adopted and S.R. No. 67, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO CONDUCT A MANAGEMENT AUDIT OF THE LEGAL AID SOCIETY OF HAWAII," was adopted.

Senator Young, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. 1052-82) recommending that Senate Resolution No. 124 be adopted.

On motion by Senator Young, seconded by Senator George and carried, the report of the Committee was adopted and S.R. No. 124, entitled: "SENATE RESOLUTION REQUESTING A STUDY ON THE CONCEPT OF CREATING A DEPARTMENT OF CORRECTIONS," was adopted.

MATTERS DEFERRED FROM APRIL 23, 1982

SPECIAL COMMITTEE REPORT

Spec. Com. Rep. No. 2-82:

By unanimous consent, Spec. Com. Rep. No. 2-82 from the Committee to investigate the problem of the pesticide heptachlor in milk, transmitting a copy of the "Rules of the Senate Committee Investigating Heptachlor Contamination in Milk" was placed on file.

FINAL READING

Conference Committee Report No. 13-82 (H.B. No. 2838-82, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 13-82 was adopted and H.B. No. 2838-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HOUSING AUTHORITY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 37-82 (H.B. No. 2359-82, H.D. 1, S.D.

2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 37-82 was adopted and H.B. No. 2359-82, H.D. 1, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WITNESS SECURITY AND PROTECTION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 38-82 (H.B. No. 2559-82, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 38-82 was adopted and H.B. No. 2559-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR PAYMENT OF SETTLEMENT BETWEEN THE STATE OF HAWAII AND DILLINGHAM CORPORATION DBA HAWAIIAN DREDGING AND CONSTRUCTION COMPANY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 3 (Abercrombie, Cayetano and O'Connor). Excused, 1 (Campbell).

Conference Committee Report No. 39-82 (H.B. No. 2679-82, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 39-82 was adopted and H.B. No. 2679-82, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COUNSEL AND OTHER SERVICES FOR INDIGENT DEFENDANTS IN CRIMINAL AND RELATED CASES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 43-82 (H.B. No. 2947-82, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 43-82 was adopted and H.B. No. 2947-82, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR AN AQUACULTURE AND LIVE-STOCK FEEDS PRODUCTION PROGRAM," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 65-82 (H.B. No. 3136-82, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 65-82 was adopted and H.B. No. 3136-82, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ALOHA TOWER DEVELOPMENT CORPORATION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Abercrombie, Anderson, Cayetano, Kawasaki and Wong). Excused, 1 (Campbell).

Conference Committee Report No. 68-82 (H.B. No. 2230-82, H.D. 1, S.D. 1, C.D. 1):

Senator Cobb moved that Conf. Com. Rep. No. 68-82 be adopted and H.B. No. 2230-82, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Yee.

Senator O'Connor, although in support of the measure, stated:

"Mr. President, I'm going to vote in favor of this bill but I would just like to inform the members that this bill started out as a humble little measure offered by one of our friends in Laupahoehoe who owns a windmill in his backyard and his windmill provides electricity for his house and he wanted to use the excess to put into Hilo Gas and Electric lines and have them pay for it.

"What we finally go into in this bill is a regulatory measure that doesn't have anything to do at all with windmills any more, much to the dismay of our friend from Laupahoehoe. It has to do with the rate for firm energy which is established by certain rules of the PUC.

"I am unhappy to find in the drafting of this measure that we are, instead of setting our own standard in statute, instead of writing statutory law so that it makes sense and is concise, crisp and clear, we refer to four PUC sections; therefore, putting ourselves at the mercy, so to speak, of the drafting of the PUC section.

"I watched this bill with some interest because my friend from Laupahoehoe called me up every morning and wanted to find out mostly how his windmill was doing and I finally had to tell

him it just blew off the wall."

Senator Soares, in support of the measure and in response to the previous speaker, stated:

"Mr. President, being one of the conferees on this bill for his friend from Laupahoehoe, a former member of the House named Stanley (Roehrig) Rodrigues, I have to make a response.

"His friend has enough power there from the Laupahoehoe windmill to supply the whole Hamakua Coast. But, nevertheless, I think the committee wrestled with this bill to make sure that we were being fair to the members of the windmill society as well as the HPOWER society and as well as the plantation society. We tried to cut across all three lines. It was very difficult to do that, so we actually are going to let the rules that now allow for these people to go before the PUC to try to get themselves into the ball game. We'd like to do it next year to help the HPOWER people as well so your conferees are very much aware of the need to encourage these members of the windmill society to keep on working on it."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 68-82 was adopted and H.B. No. 2230-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ELECTRICITY GENERATED FROM NON-FOSSIL FUELS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 69-82 (H.B. No. 2092-82, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 69-82 was adopted and H.B. No. 2092-82, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE SAFETY RESPONSIBILITY ACT," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 70-82 (S.B. No. 544, S.D. 2, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 70-82 was adopted and S.B. No. 544, 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, none. Excused, 1 (Campbell).

Conference Committee Report No. 71-82 (S.B. No. 1287, S.D. 1, H.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 71-82 was adopted and S.B. No. 1287, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 3 (Abercrombie, Cayetano and O'Connor). Excused, 1 (Campbell).

Conference Committee Report No. 72-82 (S.B. No. 2269-82, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 72-82 was adopted and S.B. No. 2269-82, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ESTABLISHMENT OF A CRIMINAL JUSTICE TRAINING FUND," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 73-82 (S.B. No. 2926-82, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 73-82 was adopted and S.B. No. 2926-82, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RELEASE OF MATCHING STATE FUNDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 75-82 (H.B. No. 3092-82, H.D. 1, S.D. 1, C.D. 2):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 75-82 was adopted and

H.B. No. 3092-82, H.D. 1, S.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO ELECTIONS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 76-82 (S.B. No. 2904-82, S.D. 1, H.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 76-82 was adopted and S.B. No. 2904-82, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO A WATER COMMISSION AND FORMULATION OF A STATE WATER CODE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 77-82 (S.B. No. 2760-82, S.D. 2, H.D. 1, C.D. 1):

Senator Cobb moved that Conf. Rep. No. 77-82 be adopted and S.B. No. 2760-82, S.D. 2, H.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Yee.

At this time, Senator Kawasaki spoke against the measure and stated:

"Mr. President, several years ago when the utility companies came to us for the purpose of having us approve special purpose revenue bonds in which the rate of interest would be lower and there'd be some savings effectuated thereby, I voted against and spoke against that measure.

"The following year the hospitals came with the same kind of request for special purpose revenue bonds to take care of hospital expansion needs. I predicted at that time that very soon some of the people in the private entrepreneurial world would come with this kind of request, and sure enough, here is a bill in which we're asked to provide special purpose revenue bonds, interestingly enough, for one particular private entrepreneur, Ritz Department Store, so that they can build stores.

"I'm just afraid that if we set this precedent, I can predict very assuredly in the next year there will be a number of private enterprises asking for the same kind of special purpose revenue bonds. I think we're setting a very

bad precedent.

"The bill provides for a \$2.5 million funding and I suppose that if this bill passes and the revenue bonds are floated the Ritz Department Store will make use of perhaps a good portion of the \$2.5 million.

"Section 3 of the bill also provides that we're directed to provide special purpose revenue bonds in addition to other organizations if they so desire it. I don't think we're going to have very much money left out of the \$2.5 million fund, but I'm most concerned about the bad precedent we're setting in allowing the use of the state's name for the floating of special purpose revenue bonds for a private organization. I think by doing this we're going to open the door to a whole flood of requests of similar nature. I think we're perhaps not quite aware of what the end results may be. This is bad. I am against passage of this bill."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 77-82 was adopted and S.B. No. 2760-82, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Kawasaki). Excused, 1 (Campbell).

Conference Committee Report No. 78-82 (S.B. No. 2955-82, S.D. 2, H.D. 2, C.D. 2):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 78-82 was adopted and S.B. No. 2955-82, S.D. 2, H.D. 2, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL SERVICES," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 79-82 (S.B. No. 2434-82, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 79-82 was adopted and S.B. No. 2434-82, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURAL LANDS," having been read throughout, passed Final Reading on the following showing

of Ayes and Noes:

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

Conference Committee Report No. 80-82 (S.B. No. 2816-82, S.D. 2, H.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 80-82 and S.B. No. 2816-82, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 81-82 (S.B. No. 2978-82, S.D. 1, H.D. 2, C.D. 1):

Senator Cobb moved that Conf. Com. Rep. No. 81-82 be adopted and S.B. No. 2978-82, S.D. 1, H.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Yee.

Senator Kawasaki rose to speak for the measure and stated:

"Mr. President, of all the bills that emanated from the Senate, I'm most happy about the final passage of this bill.

"This bill again proves to the nation that Hawaii is very progressive insofar as its concern for human services programs is concerned. The bill provides for the first time in any state of the union a funding to the tune of a half a million dollars for the acquisition, the dissemination and research connected with this new compound called interferon, which according to statistics of research so far conducted seems very promising in the way of offering relief or certainly hope to those categories of cancer victims (about one thousand of whom die annually in this state alone). It gives at least a glimmer of hope to these people who have tried every compound or cure known to the medical profession in the way of doing something about the horrible disease of cancer.

"This bill sets up the mechanism for a cancer commission which is now in existence in the Hawaii Medical Association organization. It provides for three lay persons to be appointed by the Governor to augment the cancer commission now in existence. They will do all they can to set up the mechanism

so at least some cancer victims in Hawaii can now have available to them the research results, and certainly at least try the compound interferon. This gives people a measure of hope--many people who have been diagnosed as terminal cancer patients with no hope. I think only the family with a person in the family who has cancer knows the agony and the utter feeling of futility that people experience when they find out that a dear one in the family is adjudged to be a terminal cancer patient.

"We hope that this bill will be rapidly implemented; that the Governor will do his best to find three very interested lay persons to serve on this board and, hopefully, this funding which will last about three years will be put to good use and, at least, as I said, give cancer victims of Hawaii a glimmer of hope.

"I urge the passage of this bill."

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 81-82 was adopted and S.B. No. 2978-82, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII CANCER COMMISSION," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 82-82 (H.B. No. 3143-82, H.D. 2, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 82-82 was adopted and H.B. No. 3143-82, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Anderson, Cayetano, George and Wong). Excused, 1 (Campbell).

Conference Committee Report No. 83-82 (H.B. No. 2312-82, H.D. 1, S.D. 1, C.D. 1):

On motion by Senator Kuroda, seconded by Senator Yee and carried, Conf. Com. Rep. No. 83-82 was adopted and H.B. No. 2312-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY BUDGET," having been read throughout, passed Final

Reading on the following showing of Ayes and Noes:

Ayes, 23. Noes, 1 (Cobb). Excused, 1 (Campbell).

Conference Committee Report No. 84-82 (H.B. No. 2907-82, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 84-82 was adopted and H.B. No. 2907-82, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ASSISTANCE," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 85-82 (H.B. No. 2113-82, H.D. 2, S.D. 2, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 85-82 was adopted and H.B. No. 2113-82, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOUSING," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 86-82 (H.B. No. 3078-82, H.D. 1, S.D. 1, C.D. 2):

Senator Cobb moved that Conf. Com. Rep. No. 86-82 be adopted and H.B. No. 3078-82, H.D. 1, S.D. 1, C.D. 2, having been read throughout, pass Final Reading, seconded by Senator Yee.

Senator Abercrombie rose to speak against the measure and stated:

"Mr. President, if you will and the members will examine the bill, you will find that it is slightly less longer than the budget but not much. You will find page, after page, after page of statute language which ordinarily one would expect to find in the hearings that would be held with respect to a law in terms of rules and regulations.

"Time-sharing is, as I've indicated previously on this floor, such a pernicious practice, such an evil economic practice as it is conducted for the most part in this state, most especially in Waikiki, that we are now at the stage where previous regulations that had been issued through

statutes, as recently as a year ago, are now found to be so inadequate that the time-share industry has had to come in to this Legislature and promote dozens of pages of statute language which presumably are now going to regulate the industry. At the same time, the bill calls for more hearings to determine even more rules and regulations based on these pages and pages of statute language.

"The bill indicates that there will be a protection, not for any of our citizens of course and there won't be any protection for the visitor industry in terms of the kind of harassment that will take place. It's just to take place under a little bit different circumstances.

"We now have a situation where you will have rules and regulations adopted on top of all the pages of statute language with respect to what constitutes sales agents and acquisition agents who shall be allowed to solicit or encourage others to attend the time-share sales presentation or to contact a time-share sales agent or developer. No wonder that we have some six points to be developed in terms of rules and regulations...amazing, it's six points already, and there'll be rules and regulations adopted on top of it, ostensibly to limit the activities governing sales agents and acquisition agents...you know, now we have a difference as to what an acquisition agent is.

"The acquisition agent is, of course, the same hustler that we see in operation right now with respect to time-sharing. And we're going to have this phony business of so-called licensed agents, real estate brokers, for example, under number 4, subsection (4) on page 4: 'Shall provide that a real estate broker who employs, either directly or as an independent contractor, an acquisition agent who is not licensed under chapter 467 shall be responsible for the acts of such acquisition agent;'

"Now, there's a sterling phrase. That's really going to shake these people up, no question about that. It will shake them up, right up till the point that they go into court to overthrow all these regulations.

"The same people who come into the hearings talking about how they're only too happy to be regulated in order to get rid of the bad actors in time-sharing are the same people who are in court right now. I happen to have it in my hand from the 17th of April 1982, a story in which Judge Wakatsuki has disqualified himself...that's a separate issue, of course...the judge has disqualified

himself from a hearing for a motion on a preliminary injunction to prohibit enforcement of time-share solicitation regulations. The reason being that the judge knows one of the principals in the action being brought before the court.

"So, what is the action being brought before the court? The action is to overturn all the rules and regulations. And, why? Because they say that they will be unable to make all the money that they want to make. It's rather an incredible situation.

"Attorney Hiroshi Sakai, representing six persons involved in the time-sharing business, claims that the rules could cause them to lose their jobs and lose money. Well, as you know, Mr. President, when a plague is visited upon a city and the plague is finally routed the grave diggers lose their jobs as well, at least they are unable to dig as many graves as they could before. Presumably, that is not an argument to continue a plague...the same with time-sharing. The fact that they may lose their jobs is also when members of organized crime are brought to trial and put in jail, on occasion. Many of them lose their jobs...strong-arm men or shakedown artists of various kinds, they lose their jobs too. So, it's not an argument as to whether somebody is going to lose jobs or lose money.

"And speaking of losing money, of course, it is the taxpayers here who are losing money because these time-sharing units are undervalued. I can assure you, when I say for purposes of record, that now that the counties have full taxing power available to them that this Senator for one is going to be watching like a proverbial hawk as to what kind of assessed valuation takes place with respect to these time-share units in the City and County of Honolulu and also throughout the state. Other counties will be watching just as close and will be making appropriate assessment.

"I might say in conclusion that if anybody can stand up and tell me that they have read through these regulations and think for a moment that these things are going to counter the bad practices and deception that are going to take place in time-sharing, I would like to hear it. I would like to also hear what is going to occur aside from all the escrow arguments and all the rest of it what happens when these outfits actually go belly-up, as they will in terms of their management.

"After all, as was indicated in a recent article in the Los Angeles Times on

time-sharing that it is a little disconcerting when you live next door to somebody and then find that people are there 52 times a year for party time. I think that under those consequences you're going to find that management capability of these time-sharing outfits should be of two varieties, flim and flam.

"The whole idea of time-sharing is to get the money up front and get out. The escrow arguments don't mean anything to me because there's enough money to be made in this kind of deal that the time-shares will be more than willing to take care of that little impediment to their scheme because the profits will be there for them in any event.

"I'd like to say in conclusion that I think it should be defeated because all we're doing is postponing the time when the Attorney General will have to go into court with his latest set of statutes and statutory language and regulation against the time-shares who will be in court saying that this is unconstitutional too.

"I'd like to say that for my part, regardless of whether this passes or doesn't pass, if I am fortunate enough to be back in this body next year I am going to prepare a tax measure with respect to time-sharing which will at least see to it that if the people of the City and County of Honolulu, in Waikiki most particularly, and the people of the state in general are to be subjected to these free-booters in time-sharing that they shall be taxed to the max for the privilege of trying to destroy this particular aspect of our economic stability in this state."

Senator Cobb then rose to speak for the measure and stated:

"Mr. President, very briefly, last year the Department of Regulatory Agencies attempted to promulgate rules and regulations on the subject of escrow, but they did so without clear legislative authority.

"As we reviewed the bill last year, there was no provision for escrow simply because the matter had not been raised at hearings or in discussions in conference by either house of the Legislature.

"This year, the Department as well as the House came forward with very comprehensive proposals on escrow requirements which are contained in this bill.

"I would add that approximately 15 to 20 and some figures hold it even as high as 25 percent of the buyers

in time-share projects are local people, so there is an element of protection being added. This will provide very clear legislative authority and regulations and if they're challenged in court, I think, they will withstand the challenge because now we are providing that very clear authority and there have been indications from a number of members of the industry that they're not happy with the heavy regulatory impact of these rules and regs. But, I think it will provide some safeguards regardless of whether or not we have been successful in banning the subject, we would still have to address the existing units and that's exactly what this bill does.

"This instrument will stop the practice of having the money up front being taken out of town because it now must be placed in an escrow account and that will prevent the recurrence of what happened in the Paradise Palms case.

"I would urge the members to vote 'aye.'"

The motion was put by the Chair and carried, and Conf. Com. Rep. No. 86-82 was adopted and H.B. No. 3078-82, H.D. 1, S.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TIME SHARING," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 21. Noes, 3 (Abercrombie, Cayetano and Kawasaki). Excused, 1 (Campbell).

At 1:14 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:05 o'clock p.m.

At this time, the Chair, in explanation to the members, stated:

"The Chair would like to explain the situation here in the Senate which occurred early this morning. We had informed the Governor that the Senate was prepared to adjourn sine die at 6:00 p.m. this evening. Since then, we have received a communication from the Governor extending the Legislative Session of 1982 for a period of 54 hours.

"I want to make it very clear at the outset that as presiding officer of this Senate I disagree with the interpretation made by the Governor relative to the 'cloud' over the passage of the budget. But, since he has exercised his constitutional right to extend the session for another 54 hours, I am requesting that this

body reconsider its actions taken on the budget and its related bills.

"We will be here till Wednesday and it is hoped that any doubts or 'cloud' that may appear over the budget will be formally cleared up by this body.

"If there be no objection by the members of the Senate, I would like the Clerk to read the proclamation extending the session."

MESSAGE FROM THE GOVERNOR

A message from the Governor (Gov. Msg. No. 325), transmitting an Executive Order providing for a further extension of the 1982 Session of the Eleventh Legislature, as follows:

"EXECUTIVE ORDER

"WHEREAS, Section 10, Article III of the Constitution of the State of Hawaii, provides that an extension of not more than fifteen days of any session may 'be granted by the presiding officers of both houses at the written request of two-thirds of the members to which each house is entitled or may be granted by the governor'; and

"WHEREAS, the President of the Senate and the Speaker of the House of Representatives at the written request of two-thirds of the members to which each house is entitled by proclamation granted an extension of eighteen hours beyond the sixtieth day of the regular session of 1982 of the Eleventh Legislature of the State of Hawaii; and

"WHEREAS, the governor has been requested to grant a further extension and it appears that such an extension is necessary;

"NOW, THEREFORE, I, GEORGE R. ARIYOSHI, Governor of Hawaii, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawaii, do hereby extend the 1982 regular session of the Eleventh Legislature of the State of Hawaii for a period of fifty-four (54) hours, following 6:00 P.M., April 26, 1982, pursuant to Section 10, Article III of the Constitution of the State of Hawaii.

DONE at the State Capitol, Honolulu, State of Hawaii, this 26th day of April, 1982.

/s/ George R. Ariyoshi

GEORGE R. ARIYOSHI
Governor of Hawaii

APPROVED AS TO FORM:

/s/ Tany S. Hong

TANY S. HONG
Attorney General"

was read by the Clerk and was placed on file.

RECONSIDERATION OF ACTIONS TAKEN

Senator Cobb moved that the Senate reconsider its actions taken, earlier in the day, on the following bills:

H.B. No. 2070-82, H.D. 1, S.D. 1, C.D. 1;

H.B. No. 2838-82, H.D. 1, S.D. 1, C.D. 1;

H.B. No. 2359-82, H.D. 1, S.D. 2, C.D. 1;

H.B. No. 2559-82, H.D. 1, S.D. 1, C.D. 1;

H.B. No. 2679-82, S.D. 1, C.D. 1;

H.B. No. 2947-82, H.D. 2, S.D. 1, C.D. 1;

H.B. No. 3136-82, H.D. 2, S.D. 1, C.D. 1;

S.B. No. 2269-82, S.D. 2, H.D. 2, C.D. 1;

S.B. No. 2926-82, S.D. 1, H.D. 2, C.D. 1;

S.B. No. 2904-82, S.D. 1, H.D. 2, C.D. 1;

S.B. No. 2760-82, S.D. 2, H.D. 1, C.D. 1;

S.B. No. 2434-82, S.D. 2, H.D. 2, C.D. 1;

S.B. No. 2978-82, S.D. 1, H.D. 2, C.D. 1;

H.B. No. 2312-82, H.D. 1, S.D. 1, C.D. 1;

H.B. No. 2907-82, H.D. 2, S.D. 2, C.D. 1; and

H.B. No. 2113-82, H.D. 2, S.D. 2, C.D. 1,

seconded by Senator Soares.

Senator Anderson then rose to speak against the motion to reconsider and stated:

"Mr. President, every session gets more interesting than the first. I

can't imagine, in my wildest imagination, the Governor extending this session on the basis on which he did. I listened just now to the message. It is not clear why he's extending this session. 'Cloud' over the budget, you mentioned in the caucus room. I can't imagine how the man can stand up there on closing night, the upper part of the gallery, and know whether or not the Clerk has in fact in the office and available to the Senate, as the Constitution provides, the bills under which he's talking about. How anybody in the gallery can see the bills on the Clerk's desk at 12:00 o'clock midnight, when half of the time the Governor was in darkness up there, I can't imagine.

"If the Governor, in fact, were to come before us and say he wants his pay bill and the pay bill in fact was decked at 12:15 or 12:30 or quarter of one...I've heard three conflicting times but each one, in fact, beyond 12:00 o'clock, then I could understand it.

"I might even consider supporting any extension for the pay bill, if in fact he were honest about it. The people that he is looking for a pay raise for, in fact, haven't had a pay raise for quite a few years. It's hard for the public, with people like the Aloha Airlines, the automobile industry throughout the whole country who are not just going five days or being held in a current position, but actually taking cuts. It's a bad time to consider any pay raise, 10 percent or 18 percent it's bad politically. It's bad business and it's a bad way to handle it. Still,

if he had been honest, if he had sat down with the Senate and House and said, 'Gentlemen, I would like this bill for my people, would you please consider it.' I would probably go along with it. But this subterfuge of hiding behind the budget and clocking...Mr. President, I have been here 20 years...listening to Senator O'Connor this morning, if you will research the Journal, I have made that speech some hundred to hundred and fifty times when I was in the minority challenging the very procedure, the very steps that you took here this morning. But the shoe was on the other foot, of course. And every time I made that challenge the Clerk of the Senate wove, or waded in the air, the attorney general's opinion in my face.

"This morning when I asked my Senate counsel to find this opinion, I told him to go into Shadow's drawer with David and find the one that was most worn, it would be the one that

I wanted.

"Let me read this attorney general's opinion. This wasn't drawn up this afternoon for this Governor's convenience, it might have been done another time for another governor. It says, 'When a bill is in the final form has been printed and made available to legislators for more than 24 hours, regardless of when such print and availability first occurred,'...and it goes on and on and on. And this one: 'Accordingly, we are of the opinion' and this is the attorney general, 'that the 24-hour period' which is now 48 hours, 'required by Section 16 of Article 3 of the Hawaii Constitution begins to run from the time that the bill is first printed and made available to the members of the house in the form in which it is passed in such house in third reading irrespective of when such a bill or form was attained.'

"Mr. President, if the Attorney General's Opinion stands, that ruling, the current one this afternoon that was conveniently typed and sent down stands, there are many pieces of legislation now on the books which will have a 'cloud' passed over 'em.

"I have, as I said, been keeping track of some bills going on to the House, as a matter of conversation, that I understand that a Democrat House committee chairman complained about sometime ago, that House Standing Committee Reports 621 to 653 were not on the members' desks when they should have been according to their House rules.

"Is the Governor going to say then that all of those bills are also technically flawed? I don't think so.

"The truth of the matter, Mr. President, is he wants the pay bill and I guess he's hoping that the functional plans, with another two days to go, come out of conference.

"I have no objections to either of those coming out if in fact they should before those conference committees.

"Last week I took to this floor and I criticized quite severely and Senator Yamasaki got very upset and I apologized to the good Senator because I think he's one heck of a chairman, but I criticized the delay that the House Finance Committee in its open conference was causing us. Well, of course, Representative Kunimura got very upset with Senator Anderson and made some remarks.

"When it came to some comments and quotes, when talking about the pay bill the other day, I don't have the article before me but when questioned about the delay and the time and the procedure in which conferees have to work under, the good Representative said, and I quote: 'The only way to solve this is to let the fuse burn down close, and then you act.' Well, I think this is questionable logic. I think the fuse burned down too close, and the budget almost got caught up in this blowing up firecrackers as well as the pay bill. That letting it burn down on a deliberate basis, on a very deliberate basis, delaying and drawing up, it's wearing today and because of it. I wonder, really, if the department heads in the administration agreed to this logic of letting the fuse burn down.

"Mr. President, you're in for a lot of trouble next year if you conduct this house the way you have with the so-called self-imposed guidelines that you work out with the Speaker. It's going to be a circus. You cannot consider a billion and a half dollar budget with this self-imposed timetable, allowing every major chairman to send down 165 bills like we have experienced this year. It's not going to work. You're not going to be conforming to the Sunshine Law, as we should as the court so dictated. You're not going to have the in-depth responsible review that Senator Abercrombie has espoused on in the past and still get out of here in 60 days. You're going to be here for six months or eight months if we allow ourselves to conduct ourselves in this kind of nonsense way of doing business.

"I do not think this extension is necessary. I think it's a mishandling, a mismanagement, and I think the Governor should have been more honest, more open and stated his reasons in fact for why he wanted the extension.

"I have never seen a governor of this state question the conduct of the House or the Senate rule. Why he is even having his Attorney General rule legally on Rules of the Senate. God knows why.

"The question is, Mr. President, he wants his pay bill...his pay bill, not ours. And he wants his functional plans. He ought to openly and honestly say so and not behind, hiding behind this nonsense that in fact the budget was not on the Clerk's desk at five minutes to 12:00 midnight. I don't think it's a way to run a ship."

Senator Cayetano then rose to speak in support of the motion and stated:

"Mr. President, I rise to support the motion and I wish to respond to Senator Anderson's comments.

"First of all, let me say I'm glad to see the campaign has begun, Andy.

"Just so we understand the situation here, the Governor's position is premised on the fact that from visual observation the budget bill was not on our desks before midnight last Friday.

"Now, Senator Anderson read in part some attorney general's opinion and this is the opinion that's dated April 1970. I think that opinion was written on rules and, incidentally, it's addressed to Speaker Beppu, so I assume that the attorney general was commenting on the House rules. What those rules were at that time, we don't know; however, we do know that the situation was different because it speaks of a 24-hour period.

"The Senate rules are quite explicit. Let me read it to you because I believe this is what the Attorney General's Opinion is based on. Senate Rule 46, (1) reads as follows:

'(1) No bill shall pass third or final reading in the Senate unless printed copies of the bill in the form to be passed have been made available to the members of the Senate for at least 48 hours. Form to be passed means the form in which a bill is to be (a) passed on third reading in the Senate, (b) concurred to by the Senate after amendments have been made by the House, or (c) passed by the Senate after a Conference Committee has agreed upon it.'

Now, this is the key phrase which I think the Governor's position is based on:

'The 48-hour period for a bill shall commence with the placement of a printed copy of the bill in the form to be passed upon the desk of each member to which the Senate is entitled upon the convening of or during each day's session.'

"If one takes a literal reading of that rule, Mr. President, it does say that the Senate budget did not comply with that rule. The legislative rules, as a general proposition, are interpreted and enforced by the body itself.

"We have an opinion. We have taken the opinion that what we did was correct, that the copy of the bill was in fact available even though it may have been in the Clerk's office.

"The fact of the matter is that the

Governor has taken the opposite position, which is in light of our rules a reasonable interpretation of our rules. So, what we are doing here today is really an accommodation. There's no sense in this Senate getting into a sparring contest with the Governor over what these rules mean or may not mean. The Governor has the power to veto the budget. If he stands by his Attorney General's Opinion that the Senate passed the budget in violation of its rules, then he will do so after giving us ten days' notice. That will mean further that he will be calling us back into special session. I do not think that the Senate should be put in a position of confronting the executive on a situation which can be worked out. This is why I think the Senate leadership has decided to accommodate the Governor and this why I urge all members to support the motion for reconsideration."

Senator Cobb also spoke in favor of the motion and stated:

"Mr. President, I would agree in part with the two previous speakers even though they were at variance in their comments.

"First, I think the action the Senate took was proper, but since the Governor has declared an unchallenged authority to extend our session or to call us back into special session, and he has done so ostensibly for the purpose of the budget and the 'cloud' over the budget, the cleanest thing to do and the most responsible thing to do is to remove any such cloud that may hang. So, even though I think the Senate was correct in its initial action, if we can take this step responsibly to remove that cloud, I think it should be done.

"Secondly, though as it relates to the pay bill, that and several other measures would then become available for consideration on Wednesday. But, I think that's a separate issue and we should vote the pay bill up or down on Wednesday, if it is on our desks and before us for formal action. I do have somewhat of a suspicion in that nature, but again that's up to the motive of the Governor and the motives of the House, as well as the consideration on its merits by the members of the Senate, when and if it comes up to a vote on Wednesday."

Senator Anderson then asked if the Majority Floor Leader would yield to a question and Senator Cobb answered in the affirmative.

Senator Anderson asked: "How many times would you say that you have made the closing motion to adjourn leaving

the Journal open in this body, this year?"

Senator Cobb answered: "At least 12 to 15 times."

Senator Anderson further asked: "What does that mean, if I may ask?"

Senator Cobb answered: "That means the Journal shall remain open to receive any communications or committee reports by the close of that particular legislative day, normally 12:00 midnight, or if an earlier time is set in the motion, then it would be good up until that time."

Senator Anderson further asked: "Would I be unfair to say that with the 12 or 15 times that you made that motion, usually it was toward the heavy schedule part, that at any one time in that 12 or 15 times sitting on the Clerk's desk at five minutes till 12:00 or two minutes to 12:00 or 12:00 o'clock there might have been anywhere from one to a hundred bills there but not on here that we acted on the very next day?"

Senator Cobb answered: "Yes, I would agree with that."

Senator Anderson then said: "Mr. President, I wonder why the Governor wasn't in the gallery watching all of those actions?"

Senator O'Connor then spoke in favor of the motion and remarked:

"Mr. President, obviously, from the point of view that I stated this morning, it is a prudent, logical step.

"I'm somewhat appalled at this attitude that seems to prevail that rules are made to be broken.

"I think that if we look back over the years, rules have been followed much more often than they've been broken. And the rule that's set out in the third reading section of the Senate rules is plain.

"Now, I would quibble with the attorney general's opinion, earlier referred to by Senator Anderson, in that it was rendered at a time when the Constitution stated 24 hours. It was rendered in 1970 and was rendered concerning the House rules. Even to this day, the House rules are substantially different from the Senate rules in this area. The Senate rules are explicit and plain.

"If Senator Anderson had taken the time to compare that attorney general's opinion with the House rules and the Senate rules as they then existed and as they today exist, he would find that the Senate rule has been changed

and it is substantially different from the House rule as it existed in 1970.

"You simply can't get away from the rule; it says that 'the bill in the form to be passed' be 'upon the desk of each member to which the Senate is entitled upon the convening of or during each day's session.'... 'on the member's desk.' And he keeps pointing over his shoulder when he talks about the Clerk's desk. The Clerk's desk is right in front of him, not somewhere outside and beyond the pale of this body. When something's on the Clerk's desk it would be sitting right there in public view or if it were on the member's desk it will be on the member's desk.

"Mr. President, I commend the Governor for being a courageous individual to straighten out a technical, legal problem, leaving the doubt lingering that maybe it was motivated by the pay bill. But, in fact, the Governor has been plain. He has pointed out his honest opinion. I happen to share that honest opinion, pay bill or no, and I think that most of the attorneys that I know, reading Rule 46 of our rules would also share that opinion.

"You can't skin a cat and then call the skin a polecat skin. Thank you."

Senator Yee, although in favor of the motion, stated:

"Mr. President, I rise to speak in favor of the motion but I'd like to add some comments against the previous speaker.

"It is funny, and I've served 20 years in the Legislature as a member of the minority, this is the first time I've had a chance to sit as a member of a ruling coalition body. And I want the Journal to be very clear as to what Senator O'Connor said because we keep getting this same thing thrown in our faces whenever we try to raise the question of 48 hours.

"If we go back in the Journals of the past to what has happened day after day, and even during this session, we have openly, flagrantly violated this particular Senate rule that we have to govern this body. But, I think, what is obviously being missed is what the Constitution states.

"The Constitution states being available during that business session or during that session day, and that's all it requires. Our responsibility is to comply with the Constitution. The rules we adopt on the floor is to conduct our day to

day business here. It is not of substantive value; it doesn't make any laws. All it does is give us an order of discipline in an organization. But what is most important is what the Constitution states, and the Constitution, none of you can deny, all it says is that that bill in the final form that it is going to pass is made available for that legislative day, and that's all it states.

"Whether the Clerk's office is here or the Clerk's office is just a step away, I don't think the Constitution matters, as long as it is available. And let's face it, if you really wanted it, you could have gone to the Clerk's office, if not here you could go back there. This is really the crux of the thing and that's how I feel.

"However, because the cloud is raised, because we have this extra 54 hours before us, then we might as well clean it up. And that's the only reason I'm voting in favor of it. But the reasons that some of you give, I really don't think is feasible and I think it's not proper."

The motion to reconsider the actions taken was put by the Chair and carried.

At 4:28 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 4:54 o'clock p.m.

Senator Cobb, on a point of parliamentary privilege, stated:

"Mr. President, just to clarify a point of parliamentary privilege the motion to reconsider which was adopted by the Senate also includes to recall the bills from the Governor's office."

On motion by Senator Cobb, seconded by Senator Soares and carried, the following bills were placed on the calendar for Final Reading on Wednesday, April 28, 1982:

H.B. No. 2070-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR THE FISCAL BIENNIIUM JULY 1, 1981 TO JUNE 30, 1983";

H.B. No. 2838-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII HOUSING AUTHORITY";

H.B. No. 2359-82, H.D. 1, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO WITNESS SECURITY AND PROTECTION";

H.B. No. 2559-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR PAYMENT OF SETTLEMENT BETWEEN THE STATE OF HAWAII AND DILLINGHAM CORPORATION DBA HAWAIIAN DREDGING AND CONSTRUCTION COMPANY";

H.B. No. 2679-82, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COUNSEL AND OTHER SERVICES FOR INDIGENT DEFENDANTS IN CRIMINAL AND RELATED CASES";

H.B. No. 2947-82, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR AN AQUACULTURE AND LIVE-STOCK FEEDS PRODUCTION PROGRAM";

H.B. No. 3136-82, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ALOHA TOWER DEVELOPMENT CORPORATION";

S.B. No. 2269-82, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ESTABLISHMENT OF A CRIMINAL JUSTICE TRAINING FUND";

S.B. No. 2926-82, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RELEASE OF MATCHING STATE FUNDS";

S.B. No. 2904-82, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO A WATER COMMISSION AND FORMULATION OF A STATE WATER CODE";

S.B. No. 2760-82, S.D. 2, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS";

S.B. No. 2434-82, S.D. 2, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURAL LANDS";

S.B. No. 2978-82, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII CANCER COMMISSION";

H.B. No. 2312-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY BUDGET";

H.B. No. 2907-82, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC ASSISTANCE"; and

H.B. No. 2113-82, H.D. 2, S.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HOUSING."

RECONSIDERATION OF ACTION TAKEN

Senator Ajifu moved that the Senate reconsider its action taken on April 23, 1982 on H.B. No. 2331-82, H.D. 1, S.D. 1, C.D. 1, seconded by Senator Soares.

Senator O'Connor then rose on a point of parliamentary inquiry and asked:

"Mr. President, is the movant one who voted in favor of the measure or against the measure?"

The Chair replied: "In favor of the measure."

Senator O'Connor continued: "And the measure was defeated. I believe the movant then would not be an appropriate person to make the motion."

The Chair answered: "The majority in our rules indicate and from a parliamentary inquiry the majority vote for that day was 12 to 11 and therefore the majority prevailed for that particular day."

Senator Cobb added: "Mr. President, Cushings' is even more explicit. Even though the matter may have failed passage, a motion to reconsider must be made by a member who voted with the majority. In this particular case, neither side achieved 13 votes therefore the Senator from the Third District and chairman of the Agriculture Committee was a member of the majority part of the 12 as opposed to the 11."

The motion to reconsider the action was put by the Chair and carried.

Senator Ajifu then moved that H.B. No. 2331-82, H.D. 1, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Soares.

Senator Ajifu then spoke in support of the measure and stated:

"Mr. President, I feel it very unfortunate that this bill failed to receive Senate approval on Friday and I'd like to speak now in support of the bill as we reconsider our decision.

"As we are all aware, the State of Hawaii is the largest landowner in the islands. The state currently practices a policy of generally not alienating its land, but rather leasing its land when

such leases are in the public interest.

"Many of these leases encompass land which is usable for ranching or farming purposes. Indeed, under Section 171-10 of the Hawaii Revised Statutes, the state's lands are divided into 13 categories, of which the top four are for agriculture or pasture purposes. These are technically known as sub-sections (1) through (4) of that section, namely, lands for 'intensive agricultural use,' 'special livestock use,' 'pasture use,' and 'commercial and timber use.'

"Traditionally, agricultural and pasture leases of public lands have been disposed of through competitive bid. I'm sure all the members of the Senate share my concern that the competitive bid process has in some cases in recent years been abused so that bidders with no intention to actually farm have been awarded public leases to these lands. While in the short term this might gain the state higher lease rent revenue, in the long run it injures the public interest to have such potentially productive public land unused or misused.

"The Legislature addressed this problem in recent years through Act 48 of the 1980 session as well as other measures. Act 48 allows the state to negotiate with potential lessees rather than go through a bid procedure. The intent was to allow the state, thereby, to screen lessee applicants. The measure has not removed the problem as it was not mandatory on the State Administration and the procedure has proven difficult to implement.

"A better alternative was proposed this year by the House bill under reconsideration now. This bill allows for open bidding, but also provides for pre-qualification of bidders so as to screen out those individuals and companies which could not seriously be considered to be interested in agricultural or pasture use of the lands in question.

"The screening system, as originally proposed by the House, was slanted towards farmer individuals. A farmer or rancher could qualify for bidding for a state agricultural or pasture lease by having a college degree in agriculture or being a Future Farmer of America program graduate with two years of training with farming projects, or a number of other possible criteria. Under this original House version of the bill, there was no need to define an 'individual' or a 'company' as the bill was slanted towards individuals only by means of the allowable qualification criteria.

"In a public hearing on March 24, 1982, your Committee on Agriculture heard testimony from the State Administration on the House version of this bill.

"They pointed out that the criteria was essentially taken verbatim from Section 171-68 which applies to agricultural and pasture leases being awarded in certain instances by drawing. As such, they didn't have that much trouble with the language.

"However, they pointed out that Section 171-68 was specifically designed for individual farmers and not for companies, and so to have used the language in a verbatim manner was in error as it would prohibit bona fide agricultural and ranching companies from being allowed to lease any public lands for their uses.

"The administration further testified that--let me quote here--that they 'were in accord with the basic purpose of the bill'--(which was) 'to insure that persons bidding bona fide agricultural and pasture leases are qualified to carry out the intended purposes for which the land is made available.'

"The administration was concerned, however, that sugar, pineapple, ranching, and other companies would be prohibited from leasing public agricultural and pasture lands under the original House draft.

"As the bill essentially followed some existing statutory language, and as the administration was generally in accord with how the bill was written, your committee did not see the need to radically alter the way the bill was drafted. However, as the administration strongly suggested an amendment to include sugar, pineapple, and ranching companies within the allowable qualification criteria, your committee did amend the bill to make it more understandable and to include both individuals as well as companies. This was done by including both individuals and non-individual concerns as allowable bidders under the criteria. A non-individual concern is defined as a partnership, corporation, or joint-venture properly formed under law and which is a potential bidder under this bill.

"At no time were the existing definitions of Chapter 171 amended.

"Generally speaking, the House conferees on this bill agreed with the Senate's position, and so the Conference draft before you reflects the statutory language I have just reviewed.

"Since Friday afternoon's session I have studied Section 171-1, regarding definitions, as was raised by the Senator from the Seventh District. I personally find no part of that section which would be impaired by this bill. Even if I am missing something, I do specifically note that Section 171-1 allows its definitions to be used only if they are 'not inconsistent with the context' of the chapter.

"This bill would establish a new section to Chapter 171. It would provide for definitions for 'individuals' and 'non-individual concerns,' but these would be used only for the proposed section itself and would not affect the rest of the chapter or conflict with the definitions in Section 171-1 in any way.

"So, Mr. President, in summarizing, I'd like to say that there is a very real need to safeguard the public lease disposition system so as to ensure that public agricultural and pasture leases go to persons who will indeed put them into productive use;

"That a viable way to do this is through staying with a bid system, but also instituting a pre-qualification screening system of potential bidders;

"That the original House version of this bill attempted to do this, but inadvertently had a flaw that excluded sugar, pineapple, and ranching companies from bidding;

"That the Senate amendments were to correct this flaw;

"That the final bill follows the comments and testimony of various private and public interested parties; and

"That the bill would not confuse or be confused with the definitional section or any other part of Chapter 171, as alleged on this floor last Friday.

"In conclusion, Mr. President, I would like to ask all of the members to support this measure and vote in favor of this bill. Thank you."

Senator O'Connor then rose to speak against the measure and stated:

"Mr. President, without beating a dead horse, the drafting of this bill and my objections the other day and today are purely technical. There is much to be desired.

"Where a chapter has a definition section, then the definition section should be amended if additional definitions are to be added in a measure. This bill

places new definitions into a new section of the bill, and the definitions conflict. There's simply no way around it. The definitions go like a dog chasing its own tail.

"The definition of 'person' which is already in the chapter includes the word 'individual' and the definition of 'individual' added by this bill includes the word 'person' and they go round and round.

"Over and above that I think it is just a shame that a measure that embodies a principle such as this, whether you agree with the principle or not, is brought to this floor in a condition that this bill is in, namely, completely sloppy draftsmanship with definitions that are unusable and with reference to sections of Chapter 171 which have to do with agricultural leases which you cannot understand because the word 'agricultural' is not used in Chapter 171 nor is it defined. The language in Chapter 171 is much more specific. It talks in terms of intensive agricultural land and other things of that nature.

"Anyway, to make a long story short, I'm going to vote against the measure. I think it also violates certain sections of our Constitution; for example, on farm ownership which says that 'public lands shall be used for the development of farm ownership on as large a spread of basis as possible.'"

The motion was put by the Chair and carried, and H.B. No. 2331-82, H.D. 1, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 9 (Anderson, George, Holt, Kawasaki, Machida, Mizuguchi, O'Connor, Saiki and Ushijima). Excused, 1 (Campbell).

RECONSIDERATION OF ACTION TAKEN

Senator Henderson moved that the Senate reconsider its action taken on April 23, 1982 on House Bill No. 2176-82, H.D. 2, S.D. 1, C.D. 1, seconded by Senator Soares.

Senator Henderson then stated as follows:

"Mr. President, this bill relates to public land and it is probably more clearly understood as the 'tree house bill' that the Senator from the Seventh District objected to. This bill was taken

up on Friday and vote on it was 12 ayes and 11 noes. It failed for lack of 13 aye votes. I am asking for reconsideration at this time."

Senator O'Connor spoke against the motion and stated:

"Mr. President, I had earlier awarded to the 'pig swill bill' the title of being the strongest criminal piece of legislation that we have enacted this year. Now, I think the 'tree house bill' has that unmistakable situation because for every kid that owns a tree house on state land, the good Senator is going to fine him \$500 a day for life."

The motion to reconsider the action was put by the Chair and carried.

Senator Henderson then moved that H.B. No. 2176-82, H.D. 2, S.D. 1, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Soares.

Senator Kawasaki then spoke against the measure and stated:

"Mr. President, since the good Senator from the Seventh District is not beating a half-dead horse to death, perhaps I should take up the cudgel and continue. We voted against this bill primarily because we thought the penalties provided for in the bill of allowing the Board of Land and Natural Resources to impose a fine of up to \$500 a day on any encroachment, deliberate or otherwise, as being too stiff.

"The bill that emerged from the Senate and went over to the House provided language that the Land and Natural Resources Board 'may' and not specify the term 'shall' as is provided in this bill. We thought having the language changed back to a permissive one to say that the Land and Natural Resources Board 'may' impose a fine of up to \$500 a day on any land encroachment is perhaps a more liberal one.

"I still take that point of view consonant with that of the Senator from the Seventh District that this is too punitive, and in view of the fact that, as he says, there may have been cases of land encroachment on state lands that run into years that this language would impose a tremendous financial hardship on people who may not have deliberately encroached on state land.

"For that reason, I speak against this bill and I urge defeat."

Senator Henderson then spoke in support of the measure and stated:

"Mr. President, I think this gives the Department of Land and Natural Resources another necessary tool for their use in addressing problems of encroachment on state land, and I ask everybody to support the measure."

Senator Kuroda also spoke in support of the measure and stated:

"Mr. President, I speak in favor of the bill, however, I want to know whether I was listening to the same Senator whom I supported all these years on the capital punishment bill argue against the very stiff punishment. Did I hear correctly, Mr. Vice-President? You're against this bill because of stiffness, but you are still pursuing the capital punishment bill?"

Senator Kawasaki answered: "Mr. President, of course, the good Senator knows very well that the category of offenders we're talking about is quite different."

The motion was put by the Chair and carried, and H.B. No. 2176-82, H.D. 2, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC LANDS," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 16. Noes, 8 (Cayetano, Holt, Kawasaki, Machida, Mizuguchi, O'Connor, Toyofuku and Ushijima). Excused, 1 (Campbell).

At 5:14 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:21 o'clock p.m.

FINAL READING

Conference Committee Report No. 87-82 (S.B. No. 2829-82, H.D. 1, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 87-82 and S.B. No. 2829-82, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CAPITAL IMPROVEMENT PROJECTS," was deferred until Wednesday, April 28, 1982.

Conference Committee Report No. 88-82 (S.B. No. 732, S.D. 1, H.D. 1, C.D. 1);

On motion by Senator Yamasaki, seconded by Senator Kawasaki and carried, Conf. Com. Rep. No. 88-82 and S.B. No. 732, S.D. 1, H.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," was recommitted to the Committee

on Ways and Means.

Conference Committee Report No. 89-82 (H.B. No. 2400-82, S.D. 1, C.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Conf. Com. Rep. No. 89-82 was adopted and H.B. No. 2400-82, S.D. 1, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE INHERITANCE TAX," having been read throughout, passed Final Reading on the following showing of Ayes and Noes:

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

Conference Committee Report No. 91-82 (S.B. No. 2759-82, S.D. 1, H.D. 2, C.D. 1):

By unanimous consent, action on Conf. Com. Rep. No. 91-82 and S.B. No. 2759-82, S.D. 1, H.D. 2, C.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE COMPENSATION OF PUBLIC OFFICERS AND EMPLOYEES AND MAKING AN APPROPRIATION THEREFOR," was deferred until Wednesday, April 28, 1982.

At 5:22 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 5:24 o'clock p.m.

MATTERS DEFERRED FROM APRIL 23, 1982

Standing Committee Report No. 1022-82 (S.R. No. 139, S.D. 1):

By unanimous consent, action on Stand. Com. Rep. No. 1022-82 and S.R. No. 139, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING AN INVESTIGATION OF THE ALLEGATIONS OF BRUTALITY AGAINST INMATES OF THE OAHU COMMUNITY CORRECTIONAL CENTER ARISING FROM AND OF THE PROCEDURES UTILIZED IN THE PRISON SHAKEDOWN," was deferred until Tuesday, April 27, 1982.

Standing Committee Report No. 1043-82 (H.C.R. No. 103, H.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Stand. Com. Rep. No. 1043-82 was adopted and H.C.R. No. 103, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO REVIEW THE ADMINISTRATION AND ADEQUACY OF THE UNEMPLOYMENT COMPENSATION FUND, INCLUDING

THE UNEMPLOYMENT TRUST FUND ACCOUNT AND THE RELATED STATUTORY PROVISIONS," was referred to the Committee on Legislative Management.

Standing Committee Report No. 1045-82 (H.C.R. No. 102, H.D. 1):

On motion by Senator Cobb, seconded by Senator Yee and carried, Stand. Com. Rep. No. 1045-82 was adopted and H.C.R. No. 102, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO MAKE A STUDY OF THE RATIONALE FOR THE IMPACT OF IMPOSING TAXES AND FEES UPON PRIVATELY-OWNED PUBLIC UTILITY COMPANIES," was referred to the Committee on Legislative Management.

ADVISE AND CONSENT

Standing Committee Report No. 877-82 (Gov. Msg. No. 283):

Senator Cobb moved that Stand. Com. Rep. No. 877-82 be received and placed on file, seconded by Senator Soares and carried.

Senator Cobb then moved that the Senate advise and consent on the nomination of Charles G. Clark as Director of Health, term to expire December 6, 1982, seconded by Senator Soares.

Senator Cayetano, in support of the nomination, stated:

"Mr. President, I rise to speak in support of the nomination of Charles Clark as Director of the Department of Health.

"In order for Mr. Clark to avoid the fate of his predecessor and for him to successfully resolve the heptachlor-milk crisis, he will have to act with great courage and resolve.

"Accordingly, I offer the words of a song as sound advice. The song is about the heptachlor-milk crisis. The first stanza was written by Zoulou, one of Hawaii's great entertainers. The second stanza was written by members of Senator Dante Carpenter's staff, in particular, George Jenkins, and by Senator Neil Abercrombie.

"The song, which is sung to the tune 'Over There,' was recently sung by Senators Neil Abercrombie, Dante Carpenter and Duke Kawasaki, in a great performance on April 20, 1982, at the Honolulu International Country Club. The words go like this:

Heptachlor, Heptachlor

All that good, healthy milk, out da door
While the State's debating
To give its rating
To cows made fat with heptachlor

Time to stop, all that chop
In their chow, do it now, or we're pau
Hear the people booin'
Ole George Yuen
As dairies close their doors

First the milk, then the skim
Two percent, homogenize, then ice cream
Who can love those ladies
Who breast feed babies
Who now have haptachlor in them

Chairman Ben, surely can
Get the goods, on the hoods, like he should
Cause this big commotion
Was put in motion
By someone sitting on his brains

You'll be hurt, with yogurt
We'll import, to be sure, that it's pure
We'll check the samples
Of the pineapples

And/we/won't/drink/milk
Till/heptachlor's/no/more.

Good luck! Mr. Clark!"

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

Ayes, 23. Noes, none. Excused,
2 (Campbell and Yee).

Standing Committee Report No. 878-
82 (Gov. Msg. No. 286):

Senator Cobb moved that Stand.
Com. Rep. No. 878-82 be received
and placed on file, seconded by Senator
Soares and carried.

Senator Cobb then moved that the
Senate advise and consent to the nomination
of Charles G. Clark to the Statewide
Health Coordinating Council, term to
expire December 31, 1983, seconded
by Senator Soares.

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

Ayes, 23. Noes, none. Excused,
2 (Campbell and Yee).

Standing Committee Report No. 892-
82 (Gov. Msg. No. 159):

Senator Cobb moved that Stand.
Com. Rep. No. 892-82 be received
and placed on file, seconded by Senator
Soares and carried.

Senator Cobb then moved that the
Senate advise and consent to the nomination
of Robert M. Fujimoto to the Board
of Regents, University of Hawaii, term
to expire December 31, 1985, seconded
by Senator Soares.

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

Ayes, 23. Noes, none. Excused,
2 (Campbell and Yee).

Standing Committee Report No. 894-
82 (Gov. Msg. No. 290):

Senator Cobb moved that Stand. Com.
Rep. No. 894-82 be received and placed
on file, seconded by Senator Soares
and carried.

Senator Cobb then moved that the
Senate advise and consent to the nomination
of Walter R. Steiger to the Board of
Regents, University of Hawaii, term
to expire December 31, 1982, seconded
by Senator Soares.

Senator Kawasaki then rose to speak
against the nomination and stated:

"Mr. President, I rise to speak against
confirmation of this nominee, primarily
because I don't think confirmation and
appointment of this gentleman to the
Board of Regents is much of an improve-
ment over what the quality of the Board
of Regents has been in the past.

"You will remember, Mr. President,
that two years ago, emanating from the
Legislative Auditor's report was an audit
of the University of Hawaii and that
report was very critical of the operations
of the campus there, very critical
of the direction provided by the top
leadership in the administration there
and by the Board of Regents.

"Consonant with the Senate view
that perhaps there's much credence
to the criticisms contained in that report,
the Senate last year in a public hearing
of the Higher Education Committee
examined the qualifications of the Board
of Regents, then proposed by the
Governor. We rejected four of the
nominees on the grounds that these
people were not the quality of people
that we wanted on the Board.

"The confirmation of this gentleman,
I think, really is no improvement over
the group of names submitted last year.
This gentleman, from what I understand,
had been a member of the faculty there,
was a representative of the employees'
group in their collective bargaining

negotiations with the state and I am told, hopefully from a very reliable source, that this gentleman was one of those not very enthused about the Board of Regents and the University administration's attempt to bring about some reforms consonant with the recommendations of the Legislative Auditor; that he in his own way was, in a way, an impediment toward adoption of some changes that would have been good for the University of Hawaii.

"I asked this gentleman, in trying to ascertain his attitude about some of the changes needed, as I asked all the other members last week about their attitude...I asked him, 'What is your attitude regarding post-tenure review?' To the credit of the other nominees, all of whom answered that they were for it and said it was needed, this gentleman 'fudged,' so to speak, and I wasn't quite satisfied that he could completely divorce his former role as a representative of the employees and now to serve on the Board of Regents. I was not convinced that this gentleman would have the objectivity in that position as a Board of Regent. I feel that he should be one that we reject and ask the Governor to send down some better name.

"For that reason, I vote against this nominee."

Senator Saiki spoke in support of Dr. Steiger and stated:

"Mr. President, I would encourage all members of this body to vote in support of the confirmation of Dr. Walter R. Steiger.

"I disagree with the previous speaker. I feel that Dr. Steiger is an open-minded, fair individual who will provide a very needed link to the faculty at the University of Hawaii, and for the entire system.

"Just briefly, he was a participant in the Institute of Dynamical Astronomy at Yale University, professor of physics at the University of Hawaii, a Fulbright scholar, a provost of Kauai Community College, chairman of the Department of Physics and Astronomy, named Professor-Emeritus in 1980, and is now the manager at the Science Center at the Bishop Museum...a man with an admirable background, one who will do an excellent job on the Board of Regents.

"I certainly endorse him and would like to have confirmation of Dr. Steiger to the Board of Regents."

Senator Abercrombie then rose for a conflict ruling as he has been instrumental in getting an appropriation for the Bishop Museum which involves Dr. Steiger in his present position, and the Chair ruled that he was not in conflict.

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

Ayes, 20. Noes, 3 (Cayetano, Kawasaki and Toyofuku). Excused, 2 (Campbell and Carpenter).

Standing Committee Report No. 895-82 (Gov. Msg. No. 290):

Senator Cobb moved that Stand. Com. Rep. No. 895-82 be received and placed on file, seconded by Senator Soares and carried.

Senator Cobb then moved that the Senate advise and consent to the nomination of James F. Gary to the Board of Regents, University of Hawaii, term to expire December 31, 1984, seconded by Senator Soares.

Senator Saiki spoke in favor of the nomination and stated:

"Mr. President, I rise to speak in support of Mr. James F. Gary's nomination to the University of Hawaii Board of Regents.

"We have a rare opportunity, Mr. President, to add to the Board of Regents one of Hawaii's outstanding citizens.

"James Gary's leadership of Pacific Resources, Inc. is a success story we can all admire. In fifteen years, Pacific Resources, Inc. has been transformed into one of the largest industrial companies in the country and Mr. Gary has earned an international reputation as a recognized energy expert.

"But Jim Gary has not spent all of his fifteen years in Hawaii in corporate board rooms, Mr. President, he has found time to serve his community in a variety of important ways.

"Many of us know of his dedication to our young people. He was president of the Aloha Council of the Boy Scouts and received the Silver Beaver Award. He serves on the Board of Trustees of St. Andrew's Priory and Hawaii Loa College. So, he is very much in tune with our young people and their needs.

"Many of us have also worked with

him when he was director of the Aloha United Way, the Friends of East-West Center, and the Honolulu Symphony Society...and I can go on and on. The list of community service organizations in which he has served fills three pages of his resume.

"Some of my colleagues have questioned Mr. Gary's past financial involvements, citing a stock advisory newsletter dated seven years ago. These allegations were addressed fully by Mr. Gary at the public hearing of the Senate Higher Education Committee held last week. He testified that the analysis contained in the outdated newsletter is full of inaccuracies, half-truths and innuendos. At the time it was written, he said, the author never verified any of the details with management personnel of Pacific Resources, Inc. A record of Mr. Gary's rebuttal of each of the points raised, not only in this questionable newsletter but questions posed to him concerning his activities as a corporate leader within his corporation, is available in my office on tape, if anyone would like to hear it.

"Mr. Gary's corporate activities at Pacific Resources, Inc. have been made public through the company's annual report and proxy statements and monitored by the Internal Revenue Service and the Securities and Exchange Commission through Form 10-K. If these federal agencies, Mr. President, and the shareholders of Pacific Resources, Inc. are satisfied with Mr. Gary's financial activities within the company, then I have no reason to question Mr. Gary's integrity.

"Therefore, Mr. President, it is with full confidence that I urge the members of the Senate to confirm Mr. Gary's nomination to the Board of Regents. He will offer outstanding and effective leadership to the benefit of the University of Hawaii and our people."

Senator Cobb then requested a conflict ruling from the Chair as he is an employee of Pacific Resources, Inc., and the Chair ruled that he was not in conflict.

Senator O'Connor also requested a conflict ruling from the Chair because the law firm that he is a partner of does legal work for Pacific Resources, Inc., and the Chair ruled that Senator O'Connor was not in conflict.

Senator Cayetano then rose to speak against the nomination and stated:

"Mr. President, I am going to vote against this nomination.

"I will leave it to others, specifically Senator Kawasaki, to go into detail on the matters referred to by Senator Saiki.

"What bothers me about Mr. Gary's background is not that he is brilliant, intelligent and all of that. He certainly seems to be a very bright person. He also seems to be a very ambitious person, and I think this is probably how he became or he rose to become president of a firm like Pacific Resources, Inc. (PRI).

"What bothers me, Mr. President, is that I came across some information in dealing with Mr. Gary's nomination about his actions involving a certain corporate takeover. The case I am referring to involves one, David Chalmers, who is head of Coral Petroleum.

"Now, members of this body may remember the case. The dispute was between Mr. Chalmers and Mr. Gary and the others who were in control of PRI.

In the end there was a settlement in which Mr. Chalmers was paid the sum of \$20 per share even though the going market price at that time was only \$13 a share.

"Now, the members of this Senate may say, 'What's the big deal?' Well, unfortunately, the Employees' Retirement System is a minority shareholder in PRI and it is my feeling that the Employees' Retirement System, as a minority shareholder, had its shares of interest in PRI devalued by reason of this settlement, which in my view was geared primarily to save the jobs or the positions of Mr. Gary and those who were supporting him.

"I have been in this body for eight years now, and I think I can count votes, but what I'd like to do is put Mr. Gary on notice, on the record, that there is at least one Senator who feels that the Employees' Retirement System was short-changed primarily because of his doing; that what he did may be totally appropriate in the corporate world, but I don't think such actions would be appropriate in a body like the Board of Regents. And, for that reason, I'm going to vote against this nomination."

Senator Kawasaki also spoke against the nominee and stated:

"Mr. President, I feel very strongly, particularly about this appointee to the Board of Regents, perhaps more than any other name that has come before us in my sixteen years in this Senate.

"I did not know Mr. Gary, Mr. President, and I fully intended to vote for him except that when his name came out in the media as a possible nominee to the Board of Regents several people, I must say, interested and very courageous people, who are very familiar with his corporation... what I'd like to term, manipulations on the part of this gentleman... came to talk to me and I listened to them very carefully.

"I tried to ascertain whether I could give credence to some of the complaints these people had and I read very carefully the information that was supplied to me. On the basis of our discussion with complainants, as a matter of fact several Senators took part in this discussion, I was quite appalled at what we have here in the way of a request for confirmation.

"In fairness to Mr. Gary, I must say that he did not seek this position. I spoke to the Governor about this particular position and the Governor confirmed the fact that he on his own volition asked Mr. Gary to serve on the Board of Regents.

"Of course, one of the points made by the proponents of this confirmation was that this gentleman serves on a number of boards, nonprofit boards and entities... I agree. Considering the number of boards that he serves on and considering the number of organizations he serves as director, I just wonder, first of all, whether he has the time that is required to serve vigorously on the Board of Regents and provide adequate time so he can do a good job and knowing this gentleman's energies and his drive I would predict that in a few years he'll possibly be chairman of the Board of Regents. He has this kind of qualities so far as drive, ambition and single-mindedness is concerned. His qualities in this regard, are, I think, very impressive.

"What I am concerned about is what I consider his posture as a chief executive of Pacific Resources, Inc. (PRI) and Hawaiian Independent Refinery, Inc., and I think his posture, whether it was legal or not, whether it was sophisticated enough to have passed the judgment of the boards of both of these organizations, I think which he controls, I think is up for question because much was said by the proponents of Mr. Gary about his corporate activities is true.

"Incidentally, I am in total disagreement with the chairman of the Higher Education Committee that he answered questions I posed to him satisfactorily. I think some of these charges that are made

against him in this Wedbush, Nobel, Cooke, Inc. leaflet put out by one of the security analysts analyzing PRI as a stock to purchase or not to purchase... I don't think he answered these questions. He kind of dismissed it and said, 'Oh, that's scurrilous material, false information.'

"I asked this gentleman the question, 'If this information provided to clients of Wedbush, Noble is scurrilous and false, why did you not sue this very big and wealthy organization?' He did not quite answer this to my satisfaction. And I asked him this question particularly because these people who came to see me about Mr. Gary and the opposition to him had pointed out to me that this is the gentleman, if he knew that he had a legal position in any argument he would not hesitate to sue with no compunction whatsoever. So that's the reason I posed this question.

"But, because this matter of his corporate activities have been made an issue here, let me read what this Wedbush, Noble, Cooke leaflet contains. This is dated April 22, 1975 and this is in regard to PRI, and I quote:

'Pacific Resources has been streaking through the imagination of shareholders ever since the 1967 advent of President and Chief Executive Officer James F. Gary, propelled by his promise to transform sleepy little Honolulu Gas Company into a major energy resource supplier. In conjunction with outside investors, PRI in 1968 first announced plans to venture into petroleum processing with construction of a large refinery in Honolulu's Foreign-Trade Zone. There was, after all, an imminent dearth of the refining capacity necessary to satisfy climbing free-world petroleum consumption.

'Next came reorganization into a holding company and adoption of the present corporate name. There was, after all, no advantage to public utility regulation of a refining operation, thereupon named Hawaiian Independent Refinery, Inc., which would soon dwarf sleepy little Honolulu Gas. That was followed by successive three-for-two and two-for-one splits of the company's common shares, and by an acceleration in the rate of debt financing. Presumably the assets debt financed would leverage shareholder return and earnings would really streak.

'Then came the chartering of oil tankers for the purpose of capitalizing on red hot petroleum demand, and announcement of plans to construct the company's own U.S. flag tankers

in order to capitalize on a red hot charter hire market as well as to capitalize on the prospective requirement that thirty percent of U.S. petroleum imports be carried in U.S. flag ships.

'By 1973 the new Hawaiian refinery, HIRI, looked to be a success and so came announcement of plans to construct two additional refineries, one in California and one in Oregon. That year, you may remember, the petroleum industry, the process plant construction industry and the investment community were all trumpeting the need for more refineries. But crude oil was then available for only seven cents a gallon.

'When asked whatever happened to Honolulu Gas, PRI could this year say: "It has grown --grown in size, grown in scope, grown in its outlook toward our changing world."

'And what has all this growth done for shareholders (of PRI)? It hasn't done anything for the price of PRI common shares which is presently less than that obtained by Honolulu Gas in 1968 and only two-thirds that which shareholders themselves anted up during a 1971 rights offering. Neither has it done anything for the earnings supporting those common shares...

'Nor has all this growth done anything for the company's accounting credibility. Haskins & Sells in its report concerning the company's 1974 accounts saw fit to qualify its opinion on fully three counts, including as it relates to costs deferred in the since terminated construction of those aforementioned oil tankers. With charter hire markets now ice cold and with the requirement that thirty percent of imported petroleum be carried in U.S. flag ships killed by Presidential veto, against what are those costs eventually to be expensed? Haskins & Sells also points out that HIRI is accruing investment credits which the IRS has indicated it will disallow, and that no provision has been made for any liability which may result from a \$180 million breach of contract lawsuit brought by Union Oil Company, charging, among other things, that HIRI failed to deliver agreed upon quantities of petroleum product, that the product delivered did not meet specifications, and that the price charged was in excess of contract terms.

'Not addressed by Haskins & Sells is the specter into which all that 1967

promise has turned. First of all, HIRI's refinery is caught between a cartel mandated cost for its raw material and a recession and conservation attenuated demand for its product not likely to result in a respectable return on investment. In fact, most U.S. refineries are losing money today and were it not for the artificial device of "entitlement" tickets received gratis from the Federal government, so too might be this one.

'Second, conservation has only just begun. The nation's energy program has yet to take shape. The squeeze may get tighter, and entitlements, which are being challenged in court, may end. Third, proposed oil import tariffs on the company's non-privileged foreign merchandise produced in that Foreign-Trade Zone could price HIRI out of the market.

'In short, all of the growth experienced to date has produced a lot of shareholder headache and very little hope for the future. Unless, of course, you are a minority HIRI shareholder, one of those outside investors who helped to finance refinery construction, like James F. Gary.

'PRI has completed and recently announced (and bear in mind that this report is issued in April 1975) an agreement with principal HIRI minority shareholders to exchange three PRI common shares, worth about thirty dollars, for each of the HIRI shares not now owned, subscription cost ten dollars. Capital gain, twenty dollars. So if you are one of the privileged few (like Mr. Gary), all of that growth will yield the 1967 promise.

'Now, James F. Gary, in his capacity as Chief Executive Officer and during the refinery capital subscription period in 1970 and 1971, borrowed \$400,000 from PRI at a net annual interest cost of four percent for the purpose of subscribing to 40,000 HIRI shares at ten dollars each. PRI, it should be noted, was concurrently borrowing from its bank lenders for the same purpose amounts which reached \$5.15 million at an annual interest cost of one and one-half percent in excess of the bank's prime lending rate, or an estimated (interest charge of) thirteen and one-half percent... The difference, it might also be noted, has been at the expense of PRI shareholders, Mr. Gary excepted. The \$16,000 annual interest cost to that gentleman, meanwhile, has been more than covered by a \$59,000 increase in annual compensation over the past two years alone. In fact, Mr. Gary's

direct remuneration last year (again, talking about 1974) of \$159 thousand exceeded that of Honolulu based Chief Executives at both Alexander & Baldwin and C. Brewer where corporate net income was, respectively, fifty-two and twenty-six times that of Pacific Resources.

'James F. Gary is the Chief Executive Officer of HIRI as well as of PRI. In this second capacity he has been fortunate enough to be awarded stock purchase options covering 20,000 additional HIRI shares with an exercise price also at ten dollars each. These give Mr. Gary effective ownership of 60,000 HIRI shares at a nominal cost of \$600,000 to be exchanged for 180,000 PRI common shares having a current value of about \$1.8 million, yielding a James F. Gary gain of \$1.2 million on absolutely no out-of-pocket investment.

'As for the old Honolulu Gas shareholders, they end up on a losing streak. With one hundred percent ownership of a good will inflated and suspect refinery. And with James F. Gary. And with his minority shareholder position in the two new refineries.'

"Senator Cayetano alluded to the purchase of Mr. Dave Chalmers' shares by PRI at a time when Mr. Gary was the executive. There was a suit and this is contained in a June 20, 1981 stockholder report put out by PRI and there is an item that: 'On June 3, 1981 Mr. Chalmers and certain affiliates filed suit against the Company, certain of its directors (Messrs. Gary, Ing and Smales) and certain of its officers (including Mr. Pelletier) in the United States District Court for the District of Hawaii, alleging violations of federal securities laws and proxy rules and waste of corporate assets. The Company believes that the lawsuit is without merit.'

"The bottom line, however, notwithstanding this opinion expressed in this report is that Mr. Dave Chalmers' almost a million shares was bought by PRI at the leadership of Mr. Gary for a total sum of \$20 million. They paid, as Senator Cayetano pointed out, \$20 for shares that were selling in the open market for \$13 or in excess of \$7 dollars over what was the price on the open market.

"Now, this affects the interest of the Retirement System because they had about 924,000 shares at that time. This is indicative, again, of Mr. Gary's rather-biased attitude about leadership in a private corporate entity, however

legal it may be, however sophisticated it may be.

"In a listing of compensation to the top five people at PRI...and there is a formula they use for compensating these people...Mr. Gary, I think, today receives in excess of \$350,000 a year in salary, plus bonus, on top of which there is set aside for him in a profit-sharing plan, according to a formula which I will describe very shortly, \$192,000 annually. This brings his total compensation in excess of a half a million dollars.

"The formula used to compensate Mr. Gary for this profit-sharing portion of \$192,000 is based on his service (as listed in the annual report) at 34 years of service to the Honolulu Gas Company and its subsequent affiliate companies. It just is a matter of record that Mr. Gary has been in Hawaii for only fifteen years; a matter of record that his service with this same Gas Company is not in excess of, so far as I am concerned, sixteen years.

"It just seems to me that a person with good conscience, however much the board of directors at that time may have approved such a formula for this gentleman, I don't think a man of character could really in good conscience agree to such a compensation plan. I think, perhaps, this is indicative of the gentleman's posture. I was most disturbed by his very cavalier attitude in some of my questioning...that these corporate activities as listed in the Wedbush, Noble, Cooke leaflet, which if it was false, which if it was scurrilous, would have been the basis for a suit, a sizeable suit instituted by Mr. Gary against this company, which is a good, big-sized company.

"All of these things leave doubt in my mind. I am a little disturbed in my discussion about this gentleman's qualifications with some of the members of this body that apparently some of these very sophisticated corporate moves are 'quite legal and there's nothing very wrong with them.'

"You know, Mr. President, last week we refused confirmation of a judge, a hard-working judge that really had done great work on the motions calendar. We refused confirmation of this gentleman on the basis that he had favored certain friends of his, that he was guilty of favoritism and that he had perhaps a conflict of interest.

"We also denied the emergence from the Committee on Economic Development a gentleman whose name was up to

be reappointed as a member of the Board of Land and Natural Resources, again, on the complaint by Senators here or a few Senators, that this gentleman also favored a few friends while serving on the Board of Land and Natural Resources.

"Now, if I were to measure Mr. Gary's favoritism, favoritism in his own behalf and a conflict of interest in his own behalf, I think the so-called favoritism and conflict of interest charges made against these two gentleman that we rejected is...there is no comparison.

"Mr. Gary's personal favoritism in his own behalf, I think, is even a greater conflict, even a greater favoritism in his own behalf than anything we can imagine. Are we to have double standards, one for an ordinary citizen who wants to be reappointed as judge to the bench; for a person who wants to serve on the Board of Land and Natural Resources (and so far as I'm concerned he's done a good job)?

"Do we have a separate basis for a standard that we are going to allow for a gentleman because he belongs in the right circles, belongs to the right clubs, because he happens to have great connections in the upper economic circles in this state? It just seems to me appalling that we would let the public believe this to be true. We don't have different standards for different people serving on different boards and commissions or the Board of Regents.

"I recall Regent Wally Fujiyama making a comment in the papers about a month ago that what the University seeks or what well-meaning people connected with the University seek, are faculty members who not only have scholastic credentials, but people who have character. I think this is imperative. I am in total agreement with this gentleman.

"Now, if we are to provide leadership at the University of Hawaii, inspired leadership, then we've got to provide people there with unimpeachable character. And I have nothing to judge Mr. Gary by other than his corporate activities, as I said, however sophisticated and legal it may have been.

"I think it behooves this body to prove to the public that when citizens come to us with complaints, legitimate complaints, and so far as I can ascertain these complainants had nothing to gain by coming to us to provide us with information in opposing the confirmation of this gentleman. They had nothing to gain, but their concern was that this may not be the right appointee

to the Board of Regents, because of his drive, because of his ability they feel that in no time at all this gentleman can possibly get to be the chairman of the Board of Regents. I share this concern that these people have, and certainly I would like them to know that we do not take lightly concerns that people have and these concerns appear to be very legitimate to me and they are related to us...they are communicated to us.

"For these reasons, I would hope that some of us here have the sense of responsibility enough to vote against this confirmation."

Senator Soares spoke in favor of Mr. Gary and stated:

"Mr. President, I know the day has been a long one but I'd be remiss not to speak in favor of the nominee Jim Gary for the Board of Regents, primarily because I think that the many minutes of dialogue from my colleague across the floor here should be rebutted.

"We have never had, that I can recall, a more talented individual, a more recognized individual, a more dynamic addition to the Board of Regents than we have here. And I've heard, in my many years here in the Senate and in the House, the need for the downtown people to contribute their time and talents to assist us in the development of the University of Hawaii. I consider us very, very fortunate, indeed, to have a man like James F. Gary giving himself with all of the tremendous contributions he's made in every sector of our community.

"I also believe that we've got some other outstanding members of the executive staff in various corporations like Castle & Cooke, Bank of Hawaii and Brewer Pacific Agronomics who have some tremendous people that would know, before any of us, just how great a man Jim Gary is and would certainly, if he were not, make a lot of noise and he wouldn't be on their board of directors. Mr. Gary wouldn't have been chosen 'Man of the Year' by the sales and marketing executives. He wouldn't have four pages of affiliations in both the community... giving of various contributions in the community as well as his memberships, nationally and internationally, in tremendously important boards and associations.

"A man of Mr. Gary's caliber is a tremendous asset to our University Board of Regents. We are fortunate to have a man like him.

"I can tell you now, it is unfortunate

we brought up the name of the nominee for the judgeship which we had agonized over two hearings in Judiciary and we agonized on the floor here discussing the pros and cons about the nominee who is in the public sector; that he had his problems and many of us, except my colleague across the room, voted him down. Speaking of double standards...we had stacks of papers and many, many phone calls that I was surprised to receive, against that nominee, and I haven't received one phone call or one letter or derogatory comment made about this outstanding executive before us this afternoon.

"Mr. President, I know that the time has been long today and I can go on and on because I know the man personally. I admire him and respect him.

"I will conclude by saying, ladies and gentleman of the Senate, we have an opportunity to confirm an outstanding individual with many, many talents and I urge we vote him in and, by golly, if he's got the talents spoken of I'm sure the Board of Regents will elect him chairman four years from now."

Senator Holt then rose to request a conflict ruling as Mr. Gary is on the Board of Directors of his employer and the Chair ruled that Senator Holt was not in conflict.

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

Ayes, 20. Noes, 4 (Carpenter, Cayetano, Kawasaki and Toyofuku). Excused, 1 (Campbell).

At 6:06 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 6:20 o'clock p.m.

Standing Committee Report No. 896-82 (Gov. Msg. No. 290):

Senator Cobb moved that Stand. Com. Rep. No. 896-82 be received and placed on file, seconded by Senator Soares and carried.

Senator Cobb then moved that the Senate advise and consent to the nomination of Kenneth N. Kato to the Board of Regents, University of Hawaii, term to expire December 31, 1985, seconded by Senator Soares.

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

Ayes, 22. Noes, none. Excused, 3 (Campbell, Kawasaki and Yee).

Standing Committee Report No. 1040-82 (Gov. Msg. No. 222):

Senator Cobb moved that Stand. Com. Rep. No. 1040-82 be received and placed on file, seconded by Senator Soares and carried.

Senator Cobb then moved that the Senate advise and consent to the nomination of Raymond M. Hightower to the Policy Advisory Board for Elderly Affairs, term to expire December 31, 1983, seconded by Senator Soares.

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

Ayes, 22. Noes, none. Excused, 3 (Campbell, Kawasaki and Yee).

Standing Committee Report No. 1041-82 (Gov. Msg. No. 262):

Senator Cobb moved that Stand. Com. Rep. No. 1041-82 be received and placed on file, seconded by Senator Soares and carried.

Senator Cobb then moved that the Senate advise and consent to the nomination of Donn A. Carswell to the Advisory Commission on Manpower and Full Employment, term to expire December 30, 1985, seconded by Senator Soares.

Senator O'Connor spoke in support of the nominee and stated:

"Mr. President, Mr. Carswell is a very fine person, a good friend of mine, but I don't know about this full employment stuff. He's the one that blew himself up with the aerial display on Kauai a few months ago. He hasn't been in full employment ever since."

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

Ayes, 22. Noes, none. Excused, 3 (Campbell, Kawasaki and Yee).

Standing Committee Report No. 1042-82 (Gov. Msg. No. 263):

Senator Cobb moved that Stand. Com. Rep. No. 1042-82 be received and placed on file, seconded by Senator Soares and carried.

Senator Cobb then moved that the Senate advise and consent to the nomination of Rose T. Ohashi to the Board of Social

Services and Housing, term to expire December 31, 1985, seconded by Senator Soares.

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

Ayes, 22. Noes, none. Excused, 3 (Campbell, Kawasaki and Yee).

Standing Committee Report No. 1044-82 (Gov. Msg. No. 324):

Senator Cobb moved that Stand. Com. Rep. No. 1044-82 be received and placed on file, seconded by Senator Soares and carried.

Senator Cobb then moved that the Senate advise and consent to the nomination of Charles T. Akama to the Western Interstate Commission for Higher Education, term to expire December 31, 1985, seconded by Senator Soares.

Senator Abercrombie, although in support of the nomination, stated:

"Mr. President, I'm going to vote for this nomination despite my deep disappointment that I was not named to be the gubernatorial nominee to the Western Interstate Commission for Higher Education so that I could see that it turns into a loan program."

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

Ayes, 22. Noes, none. Excused, 3 (Campbell, Kawasaki and Yee).

Standing Committee Report No. 1046-82 (Gov. Msg. No. 172):

By unanimous consent, action on Stand. Com. Rep. No. 1046-82 and Gov. Msg. No. 172 was deferred until Tuesday, April 27, 1982.

Standing Committee Report No. 1047-82 (H.B. No. 2316-82, H.D. 1):

On motion by Senator Cobb, seconded by Senator Soares and carried, Stand. Com. Rep. No. 1047-82 was adopted and H.B. No. 2316-82, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, April 28, 1982.

Standing Committee Report No. 1048-82 (H.B. No. 2540-82):

On motion by Senator Cobb, seconded by Senator Soares and carried, Stand. Com. Rep. No. 1048-82 and H.B.

No. 2540-82, entitled: "A BILL FOR AN ACT RELATING TO THE AUTHORIZATION OF SPECIAL PURPOSE REVENUE BONDS," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, April 28, 1982.

THIRD READING

House Bill No. 1971-82, H.D. 1:

By unanimous consent, action on H.B. No. 1971-82, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAIIAN AFFAIRS," was deferred until Tuesday, April 27, 1982.

Standing Committee Report No. 862-82 (H.B. No. 2010-82):

By unanimous consent, action on Stand. Com. Rep. No. 862-82 and H.B. No. 2010-82, entitled: "A BILL FOR AN ACT RELATING TO THE COMPENSATION OF CERTAIN PERSONS UNDER THE CRIMINAL INJURIES COMPENSATION ACT AND PROVIDING APPROPRIATIONS THEREFOR," was deferred until Tuesday, April 27, 1982.

FINAL READING

Senate Bill No. 1308, S.D. 2, H.D. 1:

By unanimous consent, action on S.B. No. 1308, S.D. 2, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL PROTECTION," was deferred until Wednesday, April 28, 1982.

Senate Bill No. 2470-82, S.D. 2, H.D. 2:

By unanimous consent, action on S.B. No. 2470-82, S.D. 2, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF HEALTH," was deferred until Wednesday, April 28, 1982.

Senate Bill No. 397, S.D. 2, H.D. 2:

By unanimous consent, S.B. No. 397, S.D. 2, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," was recommitted to the Committee on Ways and Means.

STANDING COMMITTEE REPORTS

Senator Kawasaki, for the Committee on Government Operations and Intergovernmental Relations, presented a report (Stand. Com. Rep. No. 1053-82) recommending that Senate Resolution No. 80 be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 1053-82 and S.R. No. 80, entitled: "SENATE RESOLUTION

URGING CONGRESS TO AMEND PRESIDENT REAGAN'S NEW FEDERALISM PROGRAM," was deferred until Wednesday, April 28, 1982.

Senator Yamasaki, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1054-82) recommending that Senate Resolution No. 136 be referred to the Committee on Legislative Management.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the Committee was adopted and S.R. No. 136, entitled: "SENATE RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO CONDUCT A PROGRAM AUDIT OF THE STATE'S PROGRAM OF SPECIAL TAX CREDITS AND EXEMPTIONS," was referred to the Committee on Legislative Management.

Senator Yamasaki, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1055-82) recommending that Senate Concurrent Resolution No. 89 be adopted.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the Committee was adopted and S.C.R. No. 89, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO CONDUCT A PROGRAM AUDIT OF THE STATE'S PROGRAM OF SPECIAL TAX CREDITS AND EXEMPTIONS," was adopted.

Senator Yamasaki, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1056-82) recommending that Senate Resolution No. 47, as amended in S.D. 1, be adopted.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the Committee was adopted and S.R. No. 47, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING A STUDY ON THE IMPACT OF ALLOWING SHARES OF A PROFESSIONAL CORPORATION TO BE TRANSFERRED INTO A REVOCABLE LIVING TRUST," was adopted.

Senator Yamasaki, for the Committee on Ways and Means, presented a report (Stand. Com. Rep. No. 1057-82) recommending that Senate Concurrent Resolution No. 31, as amended in S.D. 1, be adopted.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the Committee was adopted and S.C.R. No. 31, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A STUDY ON THE IMPACT OF ALLOWING SHARES OF A PROFESSIONAL CORPORATION TO BE TRANSFERRED

INTO A REVOCABLE LIVING TRUST," was adopted.

CONFERENCE COMMITTEE REPORT

Senator Yamasaki, for the Committee on Conference, on the recommittal to Conference of Senate Bill No. 732, S.D. 1, H.D. 1, C.D. 1, having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses this bill as previously recommended by your Committee, presented a report (Conf. Com. Rep. No. 92-82) recommending that S.B. No. 732, S.D. 1, H.D. 1, C.D. 1, as amended in C.D. 2, pass Final Reading.

In accordance with Article III, Section 15, of the Constitution of the State of Hawaii, action on Conf. Com. Rep. No. 92-82 and S.B. No. 732, S.D. 1, H.D. 1, C.D. 2, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," was deferred for a period of 48 hours.

MATTER DEFERRED FROM EARLIER ON THE CALENDAR

Standing Committee Report No. 1050-82 (H.C.R. No. 103, H.D. 1):

By unanimous consent, action on Stand. Com. Rep. No. 1050-82 and H.C.R. No. 103, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE AUDITOR TO REVIEW THE ADMINISTRATION AND ADEQUACY OF THE UNEMPLOYMENT COMPENSATION FUND, INCLUDING THE UNEMPLOYMENT TRUST FUND ACCOUNT, AND THE RELATED STATUTORY PROVISIONS," was deferred until Tuesday, April 27, 1982.

At 6:27 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 6:28 o'clock p.m.

At this time, Senator Holt rose on a point of personal privilege and stated:

"Mr. President, this morning we received a letter from Senators Anderson and Saiki with respect to their resignations from the coalition, and my question to the Chair is, with these resignations what happens to the rest of the Republican chairmen we currently have?"

The Chair answered: "As I understand it, Senator Holt, they retain their chairmanships. The caucus has not met as yet to decide their fate. Whether or not the membership will ask that they be removed or stay on, that question

has not been decided."

Senator Holt then responded: "The reason I ask this question, Mr. President, is because in the past when the question was posed about the dissolution of the coalition when Senator Anderson announces for governor, I don't believe there was a caucus to decide whether the coalition will be dissolved, but all of a sudden it is a caucus decision. I thought it was the interpretation of the Chair that he had not made an announcement."

The Chair answered: "Senator Holt, the Chair requires thirteen votes to preside over this body and to assign chairmanships. We haven't decided what that does with Senator Anderson and Senator Saiki at this precise moment."

Senator Holt then remarked: "Then it is my understanding that what you said on November 5, 1981 and again on February 17, 1982...that the coalition is not automatically over once Senator Anderson announces for governor, that it is subject to a decision of the majority members of the Senate."

The Chair answered: "I would think it's not only the majority members of the Senate but the majority members that formed the Senate two years ago to decide whether or not it is sufficient that we ask them to step down from their chairmanships. We haven't had an opportunity to do that."

Senator Holt then said: "The only reason I'm raising these questions, Mr. President, is that because I believe I have on record your word, and you told me yourself that your word is good, that once Senator Anderson announces for governor the coalition would be over with. And we have it in the Journal, and I'm asking you at this time..."

The Chair interjected: "The coalition is not dissolved at this time. It may

be tomorrow morning, but we'll decide that issue tonight when we meet in caucus."

Senator Holt concluded by thanking the Chair.

Senator Abercrombie on a point of inquiry asked: "Mr. President, pending this, I presume that you will still want to retain thirteen votes to be president, should you choose to be president of whatever exists here in the Senate, is that correct?"

The Chair answered: "Yes, and I hope you and the 'seven' will vote for me as president."

Senator Abercrombie continued: "I understood in your answer to Senator Holt...you said that that would take place...some decision on this will be made at a caucus this evening, is that correct?"

The Chair answered in the affirmative.

At this time, the Chair made the following observation:

"For the events of Friday night, I must at this time acknowledge that apology is due Senators Toyofuku, Machida, Mizuguchi, Holt, O'Connor and Ushijima. They were willing to stay here the full course of the day, pending some word that we had resolved whatever differences we had. They were patient throughout the period. The Chair appreciates that and apologizes for not keeping them readily informed on what was going on here in the Senate."

ADJOURNMENT

At 6:34 o'clock p.m., on motion by Senator Cobb, seconded by Senator Yee and carried, the Senate adjourned until 11:00 o'clock a.m., Tuesday, April 27, 1982.