

TO HOUSING", having been read throughout, passed Final Reading by a vote of 49 ayes, with Representatives Cobb and Morioka being excused.

Conf. Com. Rep. No. 39 on H.B. No. 2253-76, HD 1, SD 1, CD 1 (Deferred from April 15, 1976):

On motion by Representative Shito, seconded by Representative Kiyabu and carried, the report of the Committee was adopted and H.B. No. 2253-76, HD 1, SD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO RESIDENTIAL LEASEHOLDS", having been read throughout, passed Final Reading by a vote of 46 ayes to 3 noes, with Representatives Amaral, Kamalii and Sutton voting no, and Representatives Cobb and Morioka being excused.

Representative Shito requested that the following be inserted into the Journal:

"Mr. Speaker, I rise to speak in favor of H.B. No. 2253-76, HD 1, SD 1, CD 1.

The purpose of this bill is to enable lessees of residential leaseholds to acquire fee simple ownership of their residential lots at a fair and reasonable price through the Hawaii Housing Authority; to enable lessees of residential leases to derive full enjoyment from their leaseholds; and to clarify the law relating to renegotiation of lease rents. This bill provides a vehicle for lessees of residential leaseholds to purchase the leased fee from lessors at a price which is just compensation to the lessor and which is fair and reasonable to the lessees.

During the last legislative session, Act 184 was enacted to facilitate the implementation of the Land Reform Act of 1967, thus increasing the opportunities for lessees to convert their properties from leasehold to fee. It utilizes a formula based on the current fair market value of the lot excluding onsite improvements, less any replacement costs of existing offsite improvements. During implementation of this Act, however, it was discovered that this formula is difficult to effectuate when it is not stated whether the lessee or the lessor paid for the offsite improvements. An inequity was also encountered under the present formula, in that the lessee is not credited for the number of years remaining on his lease. Additionally, despite passage

of this Act, prices still remain beyond the reach of the majority of lessees in the State.

The conference draft of this bill is designed to alleviate the above-mentioned problems and to reduce the lessee's purchase price, while equitably compensating the lessor. This bill utilizes an equitable method of determining the fair market value of the leased fee interest in residential leasehold properties based on either the income or market data approach. The fair market value of the leased fee shall be determined by whichever approach provides just compensation to the lessor and gives consideration to the lessee's interest.

Your Conference Committee has spent many long hours toiling over this bill in order to arrive at a formula which would be equitable to both parties. I feel that it is a good bill, and I urge all members of this honorable body to join me in voting for its passage."

Conf. Com. Rep. No. 40 on S.B. No. 2394-76, SD 1, HD 1, CD 1 (Deferred from April 15, 1976):

Representative Kawakami moved that the report of the Committee be adopted and that S.B. No. 2394-76, SD1, HD 1, CD 1, having been read throughout, pass Final Reading, seconded by Representative Blair.

At this time, Representative Larsen, upon being recognized, stated:

"Please bear with me, Mr. Speaker. I've been carrying this speech with me for ten days in my pocket.

Mr. Speaker, members of the House, I rise to speak in opposition to Senate Bill 2394-76, Conference Draft 1, otherwise known as the Kakaako bill.

I oppose the bill for one specific reason: Urban renewal is not the State's kuleana. It is a County responsibility. Through Article 7 of our State Constitution, the people of this State have sanctified the right of each County to govern itself by a charter which shall be superior to all but general laws. Mr. Speaker, one of the most critical areas of local government is zoning. HRS 46-4 states that, and I quote, 'zoning shall be one of the tools available to the County to put the general plan into effect in an orderly manner.' This section further states that,

'the powers granted herein shall be liberally construed in favor of the county exercising the, and in such a manner as to promote the orderly development of each county . . . . in accordance with long-range, comprehensive, general plan. . . . .'

For some reason, this Legislature has continually sought to bypass the principle of home rule when it comes to the City and County of Honolulu. This bill is another example. Whether these efforts are cheap political shots at the present Mayor of Honolulu or merely misdirected efforts at city planning, I do not know. But laws should not be made on the basis of personalities.

Members of the House, this is a bad bill because it would allow the State to usurp powers that properly belong to the people of the island of Oahu. We do not need another issue to intensify the feud between our State and City governments. A State-operated redevelopment district right in the heart of Honolulu will, I promise you, tie the island in knots for years to come.

Kakaako cannot function without city integration and, possibly, the city will be unable to function with the State holding its crossroads for political ransom.

I urge you, therefore, to vote 'no' on this measure.

Thank you."

Representative Clarke then rose to speak against the bill, stating:

"Mr. Speaker, one of the most significant provisions in this bill is the potential by-passing of county ordinances. It should be obvious that the enactment of such a provision would jeopardize the concept of comprehensive State and county planning as adopted last session by this Legislature, and embodied in Chapter 225 of the Hawaii Revised Statutes and in Article V, Chapter 4, of the Charter of the City and County of Honolulu.

It is the avowed policy of this State that all State actions be coordinated through integrated planning. A plan, once adopted, should be altered only if the changes enhance the plan when considered as an integrated unit.

These concepts were cornerstones

of the Honolulu Charter Revisions and the Republican's comprehensive planning program which is now embodied in Hawaii Revised Chapter 225 and in support of which this House worked so hard just last session. Many of us, in fact, spoke in favor of the concept of comprehensive planning contained in House Bill 677.

Yet, this bill we are voting on today, seeks to establish yet another burdensome layer of planning bureaucracy not bound by the concept of the State and county plans. The State plan need only be considered, compliance is not mandated.

Under the principle of home rule, the counties have been given the power and the mandate to plan the development of urban lands within coordinated State guidelines. The county in question, Honolulu, has chosen to insert many provisions in its Charter to protect against piecemeal planning changes and against changes lacking public participation. This bill ignores these principles and permits a State agency, the Hawaii Community Development Authority, to spot-plan and spot-zone.

County ordinances on health, safety, building, planning and zoning need only be followed 'as closely as is consistent with standards meeting minimum', and I repeat minimum, 'requirements of good design, pleasant amenities, health, safety and coordinated development', in the sole discretion of the Hawaii Community Development Authority.

As drafted, this bill simply reintroduces traditional urban redevelopment, which has been thoroughly discredited throughout America. Moreover, if this route is the only route to follow, then responsibility for it should, as indicated above, lie with the county which has the responsibility for local planning and the experience in conducting renewal operations to date, all within the constraints of our State plan.

Therefore, Mr. Speaker, I ask that the members of this House uphold the integrity of our concept of comprehensive planning and to vote 'no' on this concept until it is revised to require compliance with the State plan upon adoption.

Thank you, Mr. Speaker."

Representative Blair then rose

to speak in favor of the bill, stating:

"It has been noted that it is a county's responsibility, but I think it should also be noted that it is a county responsibility by delegation only, and that when such delegation results in unproductive inaction in a critical area, then that delegation is properly revoked. Thank you, Mr. Speaker."

Representative Sutton then rose to speak against the bill, stating:

"Mr. Speaker, what we have before us, in this conference draft, is an invitation to sue. In at least three places, this bill treads upon our Federal and State Constitutions.

First, the theory of local government, embodied in Article 7 of the State Constitution, is very severely threatened, Mr. Speaker. By general law, we have recognized the rights of the counties to play their development. In fact, according to our Hawaii Revised Statutes 205-2, once land is designated urban, Mr. Speaker, the county is given sole jurisdiction as follows: 'Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated'. Moreover, Hawaii Revised Statutes 205-5, Section 4, states: 'The powers granted to the counties under Section 46-4 shall govern the zoning within the districts other than in conservation districts'.

Yet, under proposed Section 7 of this bill, Mr. Speaker, the authority having command to establish rules on health, safety, building, planning, zoning and land use, which shall supersede all inconsistent county ordinances thereon. Moreover, and perhaps more importantly, Mr. Speaker, for the violation of all local government and the concept that government begins at the lowest level, this bill specifies from the heart of Honolulu, its geographical hub - namely Kakaako - and separates it from local government by placing it in the hands, Mr. Speaker, of a non-elected body.

To be true to the concept of home rule, this bill should have amounted to no more than an enabling act under which the counties could designate and plan their own integrated development district. We have suffered enough from state-county conflicts, Mr. Speaker. This bill creates the Godiva of state-county discords,

and shall fail under close constitutional scrutiny.

Secondly, this bill's delegation of health, safety, building, planning, zoning and land use, Mr. Speaker, are a law-making power to a non-elected body, and it's an unconstitutional delegation of legislative power, Mr. Speaker; in violation of Article 3 of both the State and Federal Constitution. To delegate the entire health and welfare powers to a non-elective body returns us, ironically, in this bicentennial - 200 years we've been alive, Mr. Speaker, as a great union of states - and it takes us back to the days of non-representation - taxation without representation of the Boston Tea Party.

Also, Mr. Speaker, this Legislature has abdicated its prerogative to establish CIP priorities under proposed Section 6, by directing the authority to develop the district-wide improvement program. Of course, our representatives from the 15th District may not have wanted to exercise their pork barrel rights anyhow.

Yet another unconstitutional delegation of legislative power is contained in proposed Section 14, which permits the authority to sell or lease land without public auction on such terms as it sees fit. Without public auction, Mr. Speaker, besides being an open invitation for law suits, for injunctions, for terms in equity, and even law, this provision opens a door to favoritism and graft in a field historically subject to such influences.

Thirdly, Mr. Speaker, this bill treads upon vested rights when it seeks to permit a non-elective body to extract land, facilities and cash - its condition precedent to development. Even our City Council, an elective body, has treaded lightly in the area of conditional zoning since several mainland cases have ruled that these are unconstitutional.

A bill like this, Mr. Speaker, so replete with constitutional shortcomings, should be voted down on these grounds alone; let alone its other problems of violating our comprehensive planning policy of just last year.

Mr. Speaker, I am sentimental - I played for the barefoot Kakaako football team - and I hate to see Kakaako subject to this, so I would urge that you vote 'no' and that my colleagues do likewise.

Thank you."

Representative Abercrombie, speaking against the bill, stated:

"Mr. Speaker, the previous speakers have covered most of the ground, I think, in legal detail and philosophical terms.

I would like to draw the members' attention to page 2 of the Conference Report, at the bottom (10) - this refers to page 13 of the Conference draft itself - and if I can read from page 2 briefly: 'The provision giving the agency management and control of all State lands within the community development district has been amended to allow the Governor to set aside public lands located within the district to the authority for its use.' And it goes on to say: 'There are possible constitutional problems with reference to the University and Hawaiian Homes Commission lands.'

I think reading of page 13 of the bill itself, on that section to which the Conference Committee Report refers, will indicate that the provisions are even more drastic than it might appear in the Conference Committee Report itself.

I do not think that it is prudent for the State Legislature, keeping in mind the comments of the previous speakers, to step in and indicate that our will, our desire, our intention, to allow the Governor, at his discretion, subject only to certain legal covenants that may be in existence with Boards and so on as is related on page 13, to abdicate the area of how University land or Hawaiian Homes Commission land shall be used. I think that is an extremely dangerous circumstance.

I presume that the constitutional reference has to do, in the one instance, with the Board of Regents now having the constitutional power to direct the functioning of the higher education system. I'm not precisely sure what provisions of the Hawaiian Homes Commission Act would apply, but I certainly can understand what the reference is - and that is to say that University business and Hawaiian Homes Commission business; that is to say the proper business they should be engaged in, will be in the hands of the executives, to the exclusion of the Legislature in all likelihood. I do not subscribe to such a view. I think we have much too much administrative authority over us now, in terms of Boards and Commissions, that are not subject to the will of the people in terms of having to seek re-election,

or election in the first place. And such a development authority, as has been indicated, as would be put together under the bill, probably will have no better luck than previous development authority throughout the country, which have failed miserably in this respect.

I don't think the delicate mechanism involved in the University system, and certainly not the delicate mechanism that's involved in the proper disposition of Hawaiian Homes Commission lands, should be allowed to pass into the hands of a non-elected authority such as the one proposed in this bill."

As requested, Representative Ikeda's speech against the bill, is as follows:

"Senate Bill 2394-76, as amended by your Conference Committee, proposes that we create another layer of bureaucracy involved in planning: The Hawaii Community Development Corporation. Merely adding to the bulk of our government would not be so bad, if this new agency were not so powerful and so potentially dangerous.

Just imagine this: a non-elected body of 11 - not directly responsible to the people - with the power to spot zone, spot plan, and to formulate a myriad of rules and regulations, completely unrestricted by county ordinances, general plans, and even by the forthcoming State plan.

I refer you to page 11, section 5d, of the conference draft, and I quote: 'Whenever possible, planning activities of the authority shall be coordinated with Federal, State and County plans.'

'Consideration shall be given to State goals and policies, adopted State plan or land use guidance policies, county general plans, development plans or ordinances.'

It appears obvious that the Development Authority is not legally obligated to do more than to give consideration to existing plans, whether they be State or County. And the phrase 'whenever possible; could be interpreted to mean 'if the authority feels like it'.

And what has happened to all the talk we heard last session about taking the comprehensive approach to planning the development of our State?

If a State agency such as the Development Authority is not required to follow the State plan, it would amount to hypocrisy of the worst kind. I would hate to tell all those people at DPED and everyone else working on the State plan that they are wasting their time.

And, where are all the promises of cooperation between the State, County and Federal governments?

SB 2394-76, in its current form, allows the counties a voice in selecting the minority block on the authority's executive board. This is the last time the county governments are guaranteed any direct influence in the development of areas within their respective counties.

County ordinances and general plans are to be given consideration and then may be bypassed. Neither the Mayor nor the County Councils need be consulted regarding the formulation or the implementation of development plans. Now, this could be interpreted as cooperation by any stretch of the imagination. Passage of this bill would be tantamount to gagging the counties on matters dealing with development districts.

In closing, Mr. Speaker, I wish to make it clear that I am all for the development of Kakaako so that it may realize the potential that it has. Governor Ariyoshi said in his State of the State address that the time for 'Kakaako has come'. I agree full heartedly. But there are already mechanisms and resources currently at our disposal that can allow the area to flourish. We need not create a monster agency to do it for us. Let us not act out of haste.

I ask all members of this honorable body to join me in voting 'no' on this measure."

Representative Roehrig then rose and stated:

"Mr. Speaker, I rise to speak briefly against this bill.

When this bill was considered by the House and sent back to the Senate, it related to Kakaako community development, and I believe this was all a result of considerable amount of study that has been done with respect to the Kakaako area to try to have some urban renewal there, and which I think we are generally in favor of.

But the way this bill came out of conference, it applies to the whole State. It has Kakaako as being the first district that is being designated. But I think the members here better understand loud and clear that this affects every single county. It's not just Kakaako any more. And it's not just some Kakaako development corporation. This can take place in any county of the State. It flies directly in the face of all the county planning departments and the county planning commissions and the authority of the County Councils and the City Councils. And for that reason, Mr. Speaker, I think this is a very bad bill.

In the neighbor islands we have tried very hard to try and have a plan of moderate and well-planned growth, having a general plan, having adequate zoning and subdivision ordinances. And I'm very surprised this bill's been on our desks a number of days now and that the neighbor island planning departments haven't brought this to our attention. But this seems to usurp all of the powers that they've had up to now to do the planning in the various neighbor island counties and I hope we vote this matter down."

At this time, Representative Poepoe asked that his remarks against the bill be inserted into the Journal:

"Mr. Speaker, I rise to speak against SB 2394-76, SD 1, HD 1, CD 1.

Mr. Speaker, according to Act 189, which we enacted last session, it is the declared policy of the State of Hawaii that all planning be comprehensive in nature, encompassing every imaginable factor and giving serious consideration to the interests of all.

If this is so, I cannot understand why the honorable members of the House and the Senate have gone through such great effort in order to bring this bill before us this evening.

In its present form, Mr. Speaker, SB 2394-76 holds many dangers and pitfalls which would seriously hamper our efforts to establish a truly comprehensive approach in planning the development of our State.

First of all, Mr. Speaker, SB 2394-76, as amended, allows a new

State agency known as the Hawaii Community Development Authority to disregard any State or County land use plan in order to carry out its duties. All that is required of the Authority is to 'consider' any existing plans.

In addition to that, Mr. Speaker, once the development plan has been approved by the Governor and the Legislature, the Development Authority has the prerogative of changing the plan without the consent of either the Executive or Legislative branches.

I ask you, Mr. Speaker, does this not leave the door wide open for piecemeal planning? If a State agency such as the Development Authority is not required to follow even the State plan - which is currently being formulated - why have a State plan at all?

Now, Mr. Speaker, let us examine the other interesting powers of the Hawaii Community Development Authority. This super agency will have the authority to establish community development rules regarding health, safety, building, planning, zoning, and land use which would supersede all county ordinances. Not only does this violate the concept of State-County cooperation and interaction in comprehensive planning, but also amounts to the unconstitutional delegation of legislative authority to a non-elected body.

This is not the only instance of this. SB 2394-76, as amended, gives the Development Authority the power to require developers to dedicate land, facilities, and/or cash as a condition of being allowed to develop parcels in the community development district.

It should be noted that even the Honolulu City Council has encountered considerable constitutional problems in cases dealing with conditional zoning.

Mr. Speaker, I recognize that there is good reason for the impatience regarding the development of Kakaako. I need not mention the reasons for the long periods of discussion without positive action. But, I ask you, is this the right way? Does this bill really provide long-range answers to the problems of Kakaako and other areas with similar problems and similar potential? Or will this bill cause more problems than it would solve?

Thank you, Mr. Speaker."

At 9:50 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

Upon reconvening at 9:59 o'clock p.m., the Chair directed the Clerk to note the presence of Representative Cobb.

At this time, Representative Kawakami rose and stated:

"In reference to Senate Bill 2394-76, SD 1, HD 1, CD 1, I would like to make one clarification before I ask for a deferral for one day, and that is that the Legislature plays a big part in the procedures of designating areas for renewal.

The Legislature will have two cracks, or two chances, before action is taken. The first will be the designation portion. And the second, when it comes time to appropriate funds for the redevelopment; again, the Legislature will take action.

With these comments, Mr. Speaker, I ask for one day deferral."

The Chair then asked:

"Will you withdraw your motion for passage on Final Reading?

Representative Kawakami replied:

"I will."

Representative Blair then rose and stated:

"Mr. Speaker, before withdrawing my second, I would like to also note that there's substantial County representation on the governing body.

With that caveat, I will withdraw my second."

The Chair then stated:

"If there's no objections, Senate Bill No. 2394-76, SD 1, HD 1, CD 1, deferred for one day."

At 10:01 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

The House of Representatives reconvened at 10:02 o'clock p.m.

Conf. Com. Rep. No. 41 on H.B.

## SIXTY-SECOND DAY

Tuesday, April 20, 1976

The House of Representatives of the Eighth Legislature of the State of Hawaii, Regular Session of 1976, convened at 12:15 o'clock a.m., with the Speaker presiding.

The Divine Blessing was invoked by Representative Segawa, after which the Roll was called showing all members present with the exception of Representative Morioka, who was excused.

Representative Kimura moved that reading and approval of the Journal for the Sixty-First Day be deferred.

Representative Ajifu then rose and asked:

"Mr. Speaker, before I second the motion, I would like to ask, what happens to all of the Journals that we have not approved before this session ends?"

The Chair answered:

"The Chair assures the members that it will be done sooner or later."

Representative Ajifu asked:

"Will they be ready for approval?"

The Chair answered:

"We will approve all of the Journals today."

The motion was seconded by Representative Ajifu and carried, and the reading and approval of the Journal for the Sixty-First Day was deferred.

## SENATE COMMUNICATION

A communication from the Senate (Sen. Com. No. 534) transmitting Senate Concurrent Resolution No. 96, requesting the cooperation of nations overseas in the State's observance of the two hundredth anniversary of the arrival of Captain James Cook in Hawaii, which was adopted by the Senate on April 19, 1976, was read by the Clerk and was placed on file.

On motion by Representative Kimura, seconded by Representative Ajifu and carried, S.C.R. No. 96 was

adopted.

## UNFINISHED BUSINESS

Conf. Com. Rep. No. 40 on S.B. No. 2394-76, SD 1, HD 1, CD 1 (Deferred from April 19, 1976):

Representative Kawakami moved that the report of the Committee be adopted and that S.B. No. 2394-76, SD 1, HD 1, as amended in CD 1, having been read throughout, pass Final Reading, seconded by Representative Blair.

Representative Poepoe then rose and asked whether or not the Majority Leader would yield to a question to which Representative Ushijima replied in the affirmative.

Representative Poepoe asked:

"Mr. Speaker, this is a new legislative day and I want to know if his caucus has had time to meet and review this matter before us this morning?"

Representative Ushijima replied:

"Mr. Speaker, in answer to the question, yes, we had already met and discussed this matter."

Representative Abercrombie then rose and remarked:

"In answer to the last question, I don't know when we did."

The motion was put by the Chair and carried, and the report of the Committee was adopted and S.B. No. 2394-76, SD 1, HD 1, CD 1, entitled: "A BILL FOR AN ACT RELATING TO COMMUNITY DEVELOPMENT", having been read throughout, passed Final Reading by a Roll Call vote of 31 ayes to 19 noes, with Representatives Abercrombie, Ajifu, Amaral, Carroll, Clarke, Cobb, Evans, Fong, Hakoda, Ho, Ikeda, Kamalii, Larsen, Lum, Medeiros, Poepoe, Roehrig, Santos and Sutton voting no, and Representative Morioka being excused.

The Chair directed the Clerk to note that S.B. No. 2394-76 had passed Final Reading at 12:26 o'clock a.m.

At 12:27 o'clock a.m., the Chair declared a recess, subject to the call of the Chair.