ALBANY, NEW YORK

May 18, 1993

3:43 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: Senate will come to order. Senators will please find their seats.

Will you please rise with me for the Pledge of Allegiance to the flag.

(Whereupon, the Senate joined in the Pledge of Allegiance to the Flag.)

Today, in the absence of visiting clergy, we will bow our heads for a moment of silent prayer.

(Whereupon, there was a moment of silence.)

Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, May 17. The Senate met pursuant to adjournment, Senator Farley in the chair upon designation of the Temporary President. The Journal of Friday, May 14, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as

read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

We have a report from a standing committee. Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Daniel B. Tauriello, of Buffalo, member of the State Board of Parole.

ACTING PRESIDENT FARLEY: Senator Volker.

SENATOR VOLKER: Mr. President. I rise to put forth the name of Dan Tauriello.

You know, I do it I guess with mixed feelings. For those of you that are wondering -- probably most of you realize this is Joe Tauriello's brother, who served with us in Senate for so many years -- with the distinction, as Senator Padavan makes it very

clear.

I date back a lot longer with Dan Tauriello, because we go back a long time in our law enforcement days. Dan, frankly, has been a guy who has been primarily in charge for many years of protecting dignitaries. I suppose that's probably one of the ways that the Governor probably would notice Danny, because he is the guy that has always been protecting him and protecting so many of the people in the Buffalo area when they come in from outside.

But other than that, I got to say this, that he has not only been a fine police officer, he is also a fine gentleman; and I mean that very sincerely; and I haven't the slightest doubt that he will make an excellent member of the Parole Board. Certainly, nobody knows the streets any better than Dan and knows the problems of the streets and the individuals that unfortunately clash with the law.

I would like to highly recommend him and say it's probably one of the best appointments to the Parole Board that the

Governor has ever made. And I say once again that I'm very proud to stand here and say not only that he deserves to be on the Parole Board but also that he is a good friend, and that I wish him the best of luck.

ACTING PRESIDENT FARLEY: Senator Masiello.

SENATOR MASIELLO: Thank you very much, and certainly I rise, too, to second the nomination of my great friend, Dan Tauriello, to the Parole Board.

The Tauriellos and the Masiellos are like family back in Buffalo, Western New York. As a matter of fact, we all come from the same little province in Italy.

But aside from that, all of you know that I took Dan's brother's place, Joe Tauriello, here in the Senate; and those are big shoes to fill and I'm still working hard trying to fill those shoes. And you make sure you tell Joe I'm doing that.

But certainly -- Dale Volker alluded to that -- Dan Tauriello comes to this

chamber with a wonderful reputation in the city of Buffalo and in Western New York. He is highly respected and regarded by law enforcement people throughout the community, but also civicly, he has offered much and given much to the Buffalo community especially the west side of Buffalo; and his intelligence, his expertise, his knowledge, will go a long way to making him a superb member of the Parole Board, and I'm thrilled that Governor Cuomo has found it in his heart, especially in his mind, to appoint you to this position.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR MASIELLO: Absolutely, especially from you, Senator Gold.

SENATOR GOLD: I'm sorry. Yes, I got confused for a minute. In other words -- I was prepared to debate against this violently. This is not Joseph Tauriello. This is the

brother, is that what you're saying?

SENATOR MASIELLO: This is Dan Tauriello.

SENATOR GOLD: Oh! Oh, that one's all right.

SENATOR MASIELLO: Thank you very much.

ACTING PRESIDENT FARLEY: On the resolution. On the nomination, rather. On the nomination, all in favor say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The ayes have it.

We're fortunate to have Dan Tauriello right with us in the gallery. And on behalf of the state of New York state Senate, let me congratulate you on this appointment and say how much we not only appreciate you but the Tauriello family and your brother. Best wishes and good luck.

(Applause)

Senator Present, we also have

some other nominees. Shall we do them?

SENATOR BRUNO: Do the nominees.

ACTING PRESIDENT FARLEY: Thank you. Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Member of the State Council on Home Care Services, Roslyn Bilford of Syracuse; Joan E. Caserta of White Plains; Philip G. DiSorbo of Scotia; Alexine L. Janiszewski of Williamsville; and Sally J. Leiter of Pittsford.

Member of the Battery Park City Authority, Martin S. Begun of New York City.

Member of the Buffalo and Fort Erie Public Bridge Authority, Rita J. Crangle of Buffalo.

Member of the Board of Oswego Authority, Christopher C. Dain of Oswego.

Member of the Advisory Council to the Commission on Quality of Care for the Mentally Disabled, Judy Eisman of Great Neck.

Member of the Mental Health Services Council, Phyllis Harrison-Ross, M.D., of New York City.

Member of the Board of Directors of the Great Lakes Protection Fund, Ronald J. Scrudato, Ph.D., of Oswego.

Member of the Life Care Community Council, Adele Shiman Trobe of Somers.

Member of the Board of Visitors of the St. Lawrence Psychiatric Center, Orman Bomyea of Malone.

Member of the Board of Visitors of the Mid-Hudson Psychiatric Center, Thomas Colligan of Middletown.

Member of Board of Visitors of the Oswald D. Heck Developmental Disabilities Services Office, Basil Hick of Castleton.

Member of the Board of Visitors of the Middletown Psychiatric Center, Robert R. Hoag of Middletown.

Member of the Board of Visitors of the Rome Developmental Disabilities Services Office, Doris Latimer of Rome.

Member of the Board of Visitors of the Rome Developmental Disabilities Services Office, Arthur A. Wood of Kent.

ACTING PRESIDENT FARLEY: On the nominees. All those in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The ayes have it. The nominees are confirmed.

Senator Present.

SENATOR BRUNO: Mr. President, I move that we adopt the Resolution Calendar with the exception of Resolution 1413.

ACTING PRESIDENT FARLEY: On the resolutions with the exception. All in favor, say aye.

((Response of "Aye.")

Those opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Present.

SENATOR BRUNO: Mr. President. Will you recognize Senator Holland.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: Mr. President. On Resolution 1390, it's a long-term care resolution asking that the federal government assist the state in the cost of this.

Mr. President, as you know, our state is being strangled by a program that although well-intentioned has become an albatross around the neck of New York State taxpayers.

Long-term care is the fastest growing component of Medicaid. It is already the most expensive part of the program, and its rapid growth shows no sign of abatement. We have tried to address the problem of long-term care at the state level by instituting reforms such as nursing home without walls program, the long-term care insurance experiment through the Robert Wood Johnson Foundation, but it is obvious that this is a national problem and

should be treated as such.

Before us we have a call. It is a call which Washington needs to heed. It is a call for responsibility. It is a call for vision. But most of all, it is a call for action, and I am calling on all of you here today, my fellow legislators, to let your voice be heard in our nation's capital and support this resolution that will affect not only the elderly but those in the work force as well as our children.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Thank you, Senator Holland.

Senator Present.

SENATOR PRESENT: Would you recognize Senator DeFrancisco, please.

ACTING PRESIDENT FARLEY: Senator DeFrancisco.

SENATOR DeFRANCISCO: I request that Senate Resolution Number 1413 be read in its entirety. Mr. Fisher, who is being honored, is present with us today.

ACTING PRESIDENT FARLEY: Secretary will read the resolution.

I'm going to ask that the Senate please be quiet for the reading of this resolution. We have the honoree here in the chamber.

THE SECRETARY: Legislative Resolution Number 1413, by Senator DeFrancisco, honoring Marine Victor T. Fisher upon his selection as the 1992 Marine of the Year by the National Marine Corps League.

WHEREAS, it is incumbent upon the people of the state of New York to recognize those individuals within our midst who have made significant contributions to the quality of life of those who reside within its borders.

Marine Victor T. Fisher has proven to be an invaluable asset not only to the Marine Corps League, where he commenced service in 1963, but as an active and involved member of the community as a whole.

In recognition of his unique dedication to his career, his community, and his

country, he has been singled out as the 1992 Marine of the Year by the National Marine Corps League.

Throughout his career, Marine Fisher has served with honor and integrity with the Greater Syracuse Detachment and held many offices on the departmental and national levels, including the Marine Corps League's National Sergeant at Arms, the Department of New York Military Order of the Purple Heart's Sergeant at Arms, the Marine Corps League Department of New York State's Sergeant at Arms, and the Sergeant at Arms of the Memorial Association of the city of Syracuse and Onondaga County.

Marine Fisher initiated the Star Spangled Banner project which educates the public on proper care and display procedures for our nation's flag and diligently advises presidents, governors, police chiefs and government officials when he cites instances of improper care and display.

Despite the demands of his professional position, he always finds time to

lend a hand with the Marine Corps Reserves annual Toys for Tots Campaign, the state children's hospital doll collecting drive and the American Cancer Society's annual fund raiser.

Marine Fisher has assisted the St. Lawrence Detachment and the St. Lawrence Seaway Festival Committee for the past eight years as the area hosts the Marine Corps Drum and Bugle Corps for a series of special concerts and parade performances that the community looks forward to.

Marine Fisher received the Chapel of Four Chaplains Humanitarian Award in 1991 for a lifetime of outstanding humanitarian service profoundly affecting the quality of life in our community and nation.

He also was awarded the Chapel of Four Chaplains Bronze Medallion in 1992 for exemplary individual commitment to religious, cultural and racial understanding and to the cause of world service and world peace.

Marine fisher has exhibited

uncommon consideration and respect for his fellow man and possesses qualities that distinguish him as an exceptional contributor to his community, state and nation.

Now, therefore, be it resolved, that this legislative body pause in its deliberations and honor Marine Victor T. Fisher upon the occasion of his selection as 1992 Marine of the Year by the National Marine Corps League; and be it further

Resolved, that a copy of this resolution be transmitted to Victor T. Fisher in recognition of this notable and extraordinary accomplishment.

ACTING PRESIDENT FARLEY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President. I am truly honored that this body would take its valuable time to honor Victor Fisher. I have known Victor for about fifteen years, and he and his wife, June, are here today.

He was not honored last year

because the award took place after session was over, and I wasn't here. But I think anyone who was here in my position would have honored Vic Fisher.

You know, we debate bills all the time about how we should treat everybody the same way and how we should not discriminate against people, how we should not deal with people differently no matter what their status or preferences might be.

If there were more people in this world like Victor Fisher, we could save an awful lot of time because this man is truly an individual of decency and integrity.

He served our country as well as anybody could possibly be expected to serve it, and I'm very, very pleased that we stopped in our deliberations to honor him today, and I thank all of you for taking the time to do so, and I would hope that this resolution passes unanimously.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: Mr. President, as a former Marine and a member of the Marine Corps League from Rockland County, I certainly want to join with my colleagues here to honor the 1992 Marine Corps League Member of the Year, Victor Fisher, and say to him that I'm sure Jack Nash and Ernie Pomeroy from my detachment join me and us in honoring him.

Thank you.

ACTING PRESIDENT FARLEY: Thank you. On the resolution. All those in favor, aye.

(Response of "Aye.".)

Those opposed, nay.

(There was no response.)

The resolution is unanimously carried.

Mr. Fisher -

I'm sorry, Senator Stavisky.

SENATOR STAVISKY: Mr. President. On resolution 1318, which has already passed, some members have expressed a desire to go on as co-sponsors of the

resolution. May we open up the sponsorship at the desk?

ACTING PRESIDENT FARLEY: Senator Stavisky, just -- we're in the middle of passing a resolution here.

The resolution is passed.

Mr. Fisher, we're honored to have you in our chamber. Congratulations on this outstanding award. I know there's a number of Marines that serve in this Senate, and each and every one of them are very proud of you.

Congratulations.

(Applause)

Senator Stavisky.

SENATOR STAVISKY: Mr. President. I'm sorry that I interrupted the introduction.

On Calendar Resolution Number 1318, would you please open that for multiple sponsorship of any members of the chamber. I know Senator Levy and others wish to be added for sponsorship. Please open it up at the desk.

ACTING PRESIDENT FARLEY: That's

your resolution?

SENATOR STAVISKY: In honor of Jim Valvano.

ACTING PRESIDENT FARLEY: Oh, yes. I thought we opened that up the other day, but let's open up 1318 to anybody who wishes to be a sponsor.

Senator Present.

SENATOR PRESENT: Let's do a little housekeeping right now.

ACTING PRESIDENT FARLEY: Yes. Okay, a little housekeeping. The housekeepers, we'll start with Senator Volker.

SENATOR VOLKER: Mr. President. On page 44, I offer the following amendments to Calendar Number 859, Senate Print Number 3401, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection, the bill will retain its place.

Hold on, he's got another one.

SENATOR VOLKER: Mr. President. On behalf of Senator Sears, we would like to

star Senate 861. Senate 861.

ACTING PRESIDENT FARLEY: The bill is starred at the request of the sponsor.

Are you finished, Senator Volker?

SENATOR VOLKER: Yes.

ACTING PRESIDENT FARLEY: Okay. Senator Saland.

SENATOR SALAND: Mr. President. On page 50, I offer the following amendments to Calendar Number 644, Senate 4560, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection, the bill will retain its place.

Senator Cook.

SENATOR COOK: Mr. President. On behalf of Senator Velella, who at the moment is otherwise disposed, on page 27, I offer the following amendments to Calendar 712, Senate Print 2589, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: The amendments will be received, and the bill will

retain its place on Third Reading Calendar.

Senator Holland.

SENATOR HOLLAND: Mr. President. On behalf of Senator levy, ask that a sponsor star be placed on Calendar 766, Senate 5434; Calendar 768, Senate 5557; Calendar 849, Senate 184, please.

ACTING PRESIDENT FARLEY: Without objection.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I would like to place a sponsor star on several of my bills that are on the calendar. Calendar Number 805.

ACTING PRESIDENT FARLEY: 805 is starred.

SENATOR LIBOUS: 811.

ACTING PRESIDENT FARLEY: 811 is starred.

SENATOR LIBOUS: 827.

ACTING PRESIDENT FARLEY: 827 is starred.

SENATOR LIBOUS: 893.

ACTING PRESIDENT FARLEY: 893 is starred.

SENATOR LIBOUS: And 894.

ACTING PRESIDENT FARLEY: 894 is starred.

SENATOR LIBOUS: And I thank you, Mr. President.

ACTING PRESIDENT FARLEY: That's a lot of stars.

Senator Stavisky.

SENATOR STAVISKY: Mr. President. Some minor record clearing. If I had been in the chamber on Calendar 662, Bill 4479 I would have been recorded in the negative.

If I had been in the chamber at the time that calendar 660, Bill 3205, had been voted on, I would have been voted in the negative; and similarly Calendar 432, Bill 2549.

I wish the record to reflect that.

ACTING PRESIDENT FARLEY: The record will so show.

Senator Sheffer.

SENATOR SHEFFER: Mr. President. I would like to place a sponsor star on Calendar 753, Print Number 3321, please.

ACTING PRESIDENT FARLEY: 753 is started at the request of the sponsor.

Senator Present.

SENATOR BRUNO: Mr. President. I would like to call an immediate meeting of the Rules committee in Room 332.

ACTING PRESIDENT FARLEY: There will be an immediate meeting of the Rules Committee in Room 332.

We have some substitutions. All right to do those?

Secretary will read the substitutions.

THE SECRETARY: On page 11 of today's Calendar, Senator Farley moves to discharge the Committee on Rules from Assembly Bill Number 2853 and substitute it for the identical Third Reading 173.

ACTING PRESIDENT FARLEY: Substitution ordered.

THE SECRETARY: On page 10, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 6436 and substitute it for the identical Third Reading 476.

ACTING PRESIDENT FARLEY: Substitution ordered.

THE SECRETARY: On page 21, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 1335A and substitute it for the identical Third Reading 598.

ACTING PRESIDENT FARLEY: Substitution ordered.

THE SECRETARY: On page 41, Senator Wright moves to discharge the Committee on Rules from Assembly Bill Number 6557 and substitute it for the identical Calendar Number 835.

ACTING PRESIDENT FARLEY: Substitution is ordered.

THE SECRETARY: On page 27, Senator Velella moves to discharge the Committee

on Insurance from Assembly Bill Number 672 and substitute it for the identical Third Reading 6713. The Senate bill is high; the Assembly bill is not.

ACTING PRESIDENT FARLEY: Substitution is ordered.

Senator Kuhl, we're ready for the calendar. What is your pleasure?

SENATOR KUHL: Senator Farley. Senator Espada wanted to address the floor.

ACTING PRESIDENT FARLEY: Senator Espada.

SENATOR ESPADA: Thank you, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar Number 660.

ACTING PRESIDENT FARLEY: Is that today's calendar?

SENATOR ESPADA: Yesterday.

ACTING PRESIDENT FARLEY: Well, actually, you can't do that. What you will have to do, Senator Espada, is say that if you were here that you would have voted in the negative.

SENATOR ESPADA: Thank you very

much, Mr. President. If I had been here yesterday, I would have voted nay on Calendar Number 660.

ACTING PRESIDENT FARLEY: The record will so show.

SENATOR ESPADA: Thank you very much.

ACTING PRESIDENT FARLEY: Senator Kuhl, I guess it's you.

SENATOR KUHL: Mr. President. May we begin with the non-controversial calendar, please.

ACTING PRESIDENT FARLEY: Non-controversial. Secretary will read.

THE SECRETARY: On page 15, Calendar Number 339, by Senator Sears, Senate Bill Number 3452B, Agriculture and Markets Law, in relation to manufacturer's information.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47, nays one, senator Kuhl recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Also Senator Daly.

ACTING PRESIDENT FARLEY: Hold on just a second.

Senator Dollinger.

SENATOR DOLLINGER: Which calendar was thaqt, 330?

ACTING PRESIDENT FARLEY: That was 339.

Results.

THE SECRETARY: Ayes 46, nays 2, Senators Daly and Kuhl recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 357, by Senator Stafford, Senate Bill Number

3287, legalize, validate, ratify and confirm the acts of a town board, town supervisor, town collecting officer.

ACTING PRESIDENT FARLEY: Lead the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 458, by member of the Assembly Lentol, Assembly Bill Number 6457, Civil Practice Law and Rules, in relation to the use of depositions.

SENATOR FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 465, by Senator Hannon.

SENATOR KUHL: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 480, by Senator Lack, Senate Bill Number 937, Civil Service Law, in relation to the duration of eligible lists.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 610, by member of the Assembly wine /STAOEPB.

SENATOR TRUNZO: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 613, by Senator Wright, Senate Bill Number 4106.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 654, by Senator Volker.

SENATOR GOLD: Lay it aside for Senator Montgomery, please.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 669, by Senator Volker, Senate Bill Number 4013, an act to amend the Criminal Procedure Law and the Correction Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 671, by Senator Padavan, Senate Bill Number 4166, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 687, by Senator Hannon, Senate Bill Number 3171A, Private Housing Finance Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 701, by Senator Farley, Senate Bill Number 1023,

to allow David Young retroactive membership in the local employee retirement system.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 703, by Senator Kuhl, Senate Bill Number 3430, Retirement and Social Security Law.

ACTING PRESIDENT FARLEY: There is a home rule message here at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 706, by Senator Spano.

SENATOR KUHL: Lay it aside for the day, please.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 714, by member of the Assembly Bragman, Assembly Bill Number 505, Insurance Law, requiring the disclosure and credit life insurance policies.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 715, by Senator Velella, Senate Bill Number 4998.

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar 716, by

Senator Velella, Senate Bill Number 4999, an act to amend the Insurance Law, in relation to reduction in homeowners insurance rates.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 730, by Senator Kuhl, Senate Bill Number 3408, Agriculture and Markets Law, in relation to the definition of the term food salvager.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 733, by Senator Johnson, Senate Bill Number 3934, General Business Law, in relation to limitations to certain contracts.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 739, by Senator Levy, Senate Bill Number 4045.

SENATOR KUHL: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar 741, by Senator Maltese, Senate Bill Number 4519, Executive Law, requiring certain notices.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 742, by Senator LaValle, Senate Bill Number 4564, establish the New York State Waste Management Institute.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 743, by Senator DeFrancisco, Senate Bill Number 4905, Executive Law and the State Finance Law.

ACTING PRESIDENT FARLEY: There is a local fiscal impact note here at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 754, by Senator Holland, Senate Bill Number 3535, relocate the Spring Valley Toll Plaza of the New York State Thruway.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 757, by Senator Levy, Senate Bill Number 3886A, directing the Commissioner of Transportation to develop test pilot programs.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49, nays one, senator Libous recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Leichter.

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative on Calendar 754.

ACTING PRESIDENT FARLEY: 754, Senator Leichter will be in the negative.

Continue, Mr. Secretary.

THE SECRETARY: Calendar Number 758, by Senator Levy, Senate Bill Number 3887, New York City charter and the Public Authorities Law.

ACTING PRESIDENT FARLEY: Read

the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 772, by Senator Lack, Senate Bill Number 2028, an act to amend the Labor Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

783, by Senator Lack, Senate Bill Number 1334A, Family Court Act, in relation to the definition of person in need of supervision.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 784, by Senator Saland, Senate Bill Number 1555, Criminal Procedure Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 786, by Senator Saland, Senate Bill Number 4686, Social Services Law, in relation to the discharge of children from foster care.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 787, by Senator Saland, Senate Bill Number 4687, an act to amend the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 788, by Senator Saland, Senate Bill Number 4867, Social Services Law, in relation to notice of surrender proceedings.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 789, by Senator Saland, Senate Bill Number 4868, Family Court Act, in relation to the placement of children.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 790, by Senator Saland.

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 791, by Senator Saland.

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 796, by Senator Johnson, Senate Bill Number 3367A, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 802, by Senator Stachowski, Senate Bill Number 1297, Education Law, in relation to school lunch periods.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 812, by Senator Present, Senate Bill Number 4883, Education Law, in relation to computation of approved operating expense.

ACTING PRESIDENT FARLEY: There is a local fiscal impact note here at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 816, by Senator Skelos.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 817, by Senator Maltese, Senate Bill Number 1648, an act to amend the Correction Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49, nays 1, Senator Waldon recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Also Senator Smith recorded in the negative.

ACTING PRESIDENT FARLEY: Senator Galiber also in the negative.

THE SECRETARY: In relation to Calendar Number 817, Senators Galiber, Pataki, Smith and Waldon recorded in the negative. Ayes 46, nays 4.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 819, by Senator Cook, Senate Bill Number 2288, an act to amend the Correction Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49, nays 1, Senator Espada recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar 821, by Senator Maltese, Senate Bill Number 3799, an act to amend the Executive Law, in relation to a crime victims or crime victims representatives.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

822, by Senator Present, Senate Bill Number 1832D, an act to amend the Real Property Law.

ACTING PRESIDENT FARLEY: There is a home rule message here at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar 823, by Senator Cook, Senate Bill Number 2410, proposing amendment to the Constitution.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Mr.

President. Calendar 819, could we please reconsider the vote by which that bill passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration of Senator Cook's bill, 819.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is before the house.

Lay it aside.

THE SECRETARY: Calendar Number 831, by member of the Assembly Gottfried, Assembly Bill Number 2200, Social Services Law, in relation to payment of interest by providers of medical assistance.

SENATOR HOLLAND: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 833, by Senator Holland, Senate Bill Number 3656, an act to amend the Social Services Law.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 835, by member of the Assembly Singer, substituted earlier today, Assembly Bill Number 6557, an act to amend the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 837, by Senator Levy, Senate Bill Number 787, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Excuse me. Ayes 50, nays 1, Senator Johnson recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 839, by Senator Cook, Senate Bill Number 2409, an act to amend the Vehicle and Traffic Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Did you say lay it aside?

Lay it aside.

THE SECRETARY: Calendar Number 840, by Senator Sears, Senate Bill Number 3471, an act to amend the Public Health Law and the Executive Law.

ACTING PRESIDENT FARLEY: Read

the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 841, by Senator DeFrancisco, Senate Bill Number 3716, an act to amend the Military Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR DOLLINGER: I just rise to ask to abstain on this ballot.

ACTING PRESIDENT FARLEY: Without objection, Senator Dollinger will abstain.

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 844, by Senator Larkin, Senate Bill Number 4354, an act to amend the Education Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 845, by Senator DeFrancisco, Senate Bill Number 4476, Executive Law, in relation to veterans credits.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 847, by Senator DeFrancisco.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 850, by Senator Spano, Senate Bill Number 953, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 854, by Senator Johnson, Senate Bill Number 1624, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49. Nays 2. Senators Gold and Leichter -- and Senator Montgomery.

ACTING PRESIDENT FARLEY: Hold on. Negatives raise your hands.

THE SECRETARY: Those recorded in the negative on Calendar Number 854 are Senators Espada, Gold, Leichter, Montgomery and Smith. Ayes 46, nays 5.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 866, by Senator Bruno, Senate Bill Number 5001, Labor Law, in relation to the payment of manual workers.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present, that's the first time through.

SENATOR BRUNO: Mr. President. Let's go through the controversial calendar.

ACTING PRESIDENT FARLEY: Controversial.

THE SECRETARY: On page 18, Calendar Number 480, by Senator Lack, Senate Bill Number 937, Civil Service Law, in relation to the duration of eligible lists.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Lack.

SENATOR LACK: Thank you, Mr. President. This bill would amend Civil Service Law Section 56 to extend during the life of the

Eligibility List 6643 for Fire Marshal, the Fire Department in the city of New York, until the number of positions that have been lost to the department are filled by candidates on such lists or for an additional two years from the expiration date that was fixed by such list, whichever date would occur first.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes. Senator Lack yield to a question?

SENATOR LACK: Sure.

ACTING PRESIDENT FARLEY: Will you yield to Senator Gold?

SENATOR LACK: Of course.

SENATOR GOLD: Senator, are you aware of the memorandum filed by the City in opposition?

SENATOR LACK: Yes, Senator, I realize it's a little bit of an anomalous situation here. There's a memorandum filed by the Mayor of the city of New York in

opposition. There is also a home rule message at the desk in which the City Council of the city of New York passed a home rule in support of the bill.

SENATOR GOLD: I appreciate your helping me clarify that.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 613, by Senator Wright, Senate Bill Number 4106, Administrative Procedure Act.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Wright.

SENATOR WRIGHT: Thank you, Mr.

President. The bill amends the Administrative Procedures Act and addresses two issues. One is to restrict state agencies from exceeding the rulemaking process and increasing standards beyond the established standards of the federal government, and the second purpose is to require state agencies to accept compliance at the state level if they achieve compliance with the federal standards. The intent is to restrict the rulemaking authority of agencies unless expressly approved by the Legislature to exceed the federal standards.

SENATOR GOLD: Mr. President, will the gentleman yield to a question?

SENATOR WRIGHT: Mr. President, I will yield.

(Senator Padavan in the chair.)

SENATOR GOLD: Mr. President. Will the gentleman yield to a question?

SENATOR PADAVAN: Will the Senator yield?

SENATOR WRIGHT: Yes.

SENATOR GOLD: Senator, I

understand the language of the bill, but what I don't understand is the following. A state agency cannot, according to New York State law, promulgate any rule or regulation, none, unless it is specifically authorized by the New York State Legislature; isn't that a fact?

SENATOR WRIGHT: That's correct.

SENATOR GOLD: Senator yield to another question.

ACTING PRESIDENT PADAVAN: Senator Wright yield?

SENATOR WRIGHT: I do, Mr. President.

SENATOR GOLD: Senator, your bill says that they shall not by rule or regulation go past a certain point. Isn't it a fact, Senator, that that's really up to us? They can not pass rules and regulations that go anywhere unless this Legislature gives them the enabling legislation. Otherwise, the rule or regulation itself can be stricken down as in violation of law. Isn't that true?

SENATOR WRIGHT: In fact, what

you find is that while the enabling legislation by the very nature of enabling legislation tends to be general, the regulations themselves tend to be far more specific, and liberties will be taken in terms of that rulemaking process that may, in fact, exceed the federal standards without specific state enabling legislation to do that.

And while there is an oversight process to review that rulemaking, in fact it is not sufficiently tight enough that many of those issues are addressed.

SENATOR GOLD: Will the Senator yield to another question?

Senator, I don't have the exact section in front of me. It may be subdivision 16 of Article III, something like that, in our state Constitution, which basically says that we can not pass any legislation that adopts in it the laws of any other state or the federal government unless we actually take the language and put it in. That article of the Constitution has been emasculated by our courts, which as

bright as they are sometimes don't read our Constitution.

But Senator, in effect, isn't that what your bill is doing in a general way? You are saying that a state agency getting the rulemaking authority from the state Legislature is bound, no matter what we say, to whatever happens to be at the time a federal regulation. Therefore, you are subjecting our rulemaking and our legislation to the whim what may or may not be a federal rule at the time. Isn't that in effect what happens?

SENATOR WRIGHT: So, in effect, I believe, Senator, what we're doing is by enacting this legislation we're establishing the state's practice of adhering with those minimum federal requirements unless we as a body and the other house specifically decide that we want to exceed those standards, and we say so in the enabling legislation.

SENATOR GOLD: Well, that's the part I'm trying to find here, and I apologize. Is there language in your bill which

specifically says that they cannot exceed the federal standard unless authorized by us to use that phrase?

SENATOR WRIGHT: In fact we do. "The state agency shall not promulgate a state rule that imposes requirements which are greater than those imposed by a federal law or rule unless the agency is specifically authorized by state law to exceed federal standards for such a rule."

SENATOR GOLD: Fine. Senator will yield to a question? How would you envision a statute would read that does that?

SENATOR WRIGHT: I'm sorry.

SENATOR GOLD: How would you envision the language of a statute that would do that?

SENATOR WRIGHT: Well, I would envision -- first of all, we've had circumstances. I think the most recent example would be the air quality standards as it relates to low emission vehicles, where we had an agency proceeding with standards significantly in

excess of the minimum federal requirements; and, in fact, it required action by both houses of the Legislature to specifically say that's not our intent; that's not our purpose. Had this legislation in fact been in place at that particular time, we would not have had to act accordingly.

SENATOR GOLD: All right. Senator, if you yield to a question? Isn't it a fact in the situation you just discussed that the Legislature was able to handle that situation appropriately under existing law? I mean are there other -- and if I may, just to give you a chance to respond. Had there been other situations where we've had to do that as a legislative body with any degree of regularity?

SENATOR WRIGHT: Well, there have been situations. In that particular case, yes, there was a remedy. However, it's not necessary. I don't believe that the Legislature should have to go through that process where it actually restricts an administrative agency that's exceeding its authority and intent of the

statute.

More importantly, there are other instances. An example would be standards for landfill closures as they apply to local governments. There are federal standards and then state standards that exceed those federal standards that place an additional burden on those local governments that have not been explicitly approved by this Legislature but have been approved in a broader context of dealing with the environmental concerns of landfill closure. Those circumstances have sufficient costs and requirements on the agency -- on the local government. That's why I believe we need to control it on the front end rather than the Legislature reacting after the fact in rescinding or recalling those actions.

SENATOR GOLD: Mr. President. I'm going to yield to Senator Leichter.

SENATOR LEICHTER: Thank you. Would Senator Wright yield?

ACTING PRESIDENT PADAVAN: Will the Senator yield?

SENATOR WRIGHT: I will, Mr. President.

SENATOR LEICHTER: Senator, is it your view that the bureaucrats down in Washington have a better idea of the needs of the people of the state of New York than we do here in the state?

SENATOR WRIGHT: No, sir, it is not. My view is that, in fact, they are dealing on the national perspective, and they establish those standards that apply equally to all 50 of the states, thereby providing in effect a level playing field relative to New York State and its ability to compete with those other 50 states. It then becomes the wisdom of this legislative body and our executive branch to determine whether or not those standards, in fact, meet New York State's needs; and if they do not, we have the right and the obligation to impose additional standards, and we do that legislatively. This does not prevent that. It simply provides for a rational process of putting in place the federal standards,

eliminating the duplication and the conflicts that occur between the two. Then if we deem that there are additional requirements, we have the opportunity to enact same.

SENATOR LEICHTER: Well, Senator, in the first instance, is it not correct, you take the idea of the regulations of the people within the Beltway are more suitable and more appropriate for the people of the state of New York than the regulations that might be made here within the state of New York?

SENATOR WRIGHT: No, Senator.

SENATOR LEICHTER: Isn't that what your bill does?

SENATOR WRIGHT: No. In fact, what it does is it accepts the federal standards as they apply to all of the states as a baseline for the basis of comparison; and working off that federal baseline, we then determine whether or not that is sufficient for the needs of New York State or whether additional action is required.

And I would anticipate that in

many instances that, in fact, is what the agencies would be doing, recommending legislation to us that would address those issues.

SENATOR LEICHTER: But am I not correct, Senator, based on what you just said that in the first instance it's the people down in Washington who know more about what we need here in New York State than what we decide locally?

SENATOR WRIGHT: No.

SENATOR LEICHTER: Because you are making -- you're making that decision that's made by the bureaucrats down in Washington as the baseline that should apply in the state of New York. Isn't that what your bill does?

SENATOR WRIGHT: No, that is not. There are a number of occasions where Washington assumes that they know best, and I think we've all seen examples of that. Once they do that, we then have an obligation or an opportunity to respond. This gives us a basis of comparison from which to respond.

SENATOR LEICHTER: But, Senator -- if Senator Wright would be good enough to continue to yield.

ACTING PRESIDENT PADAVAN: Senator yield?

SENATOR WRIGHT: I will.

SENATOR LEICHTER: But, Senator, is it a fact, until we act -- and this Legislature is not known to act quickly -- the decision that is made in Washington binds us here in the state of New York. We've had the boys and the girls within the Beltway decide what we're going to do here in New York State. I wonder -- is that your position -- Washington knows best?

SENATOR WRIGHT: No, I'm not saying that at all. But, in fact, Washington has the authority which they exercise on occasion whether we concur with that authority or not.

SENATOR LEICHTER: And am I also correct in understanding your bill that where additional action may be desirous for the people

of the state of New York, nothing can be done until the Legislature meets and authorizes it? Is that correct?

SENATOR WRIGHT: That's correct. And I did firmly believe that's appropriate, Senator, that, in fact, we have agencies that are acting as legislators in exceeding standards and pursuing their own agenda on many occasions; and, in fact, that should be the prerogative of the elected officials and the elected Legislature.

SENATOR LEICHTER: Senator Wright, if you would be good enough to continue to yield? Senator, isn't it a fact that when Washington wishes, the national government, those people within the Beltway that you seem to have so much faith in, when they want to preempt the field that under the commerce clause -- and that just about covers any action -- they have the power to do so? Isn't that a fact?

SENATOR WRIGHT: I'm not conversant with the commerce clause; but in terms of general federal action, certainly they

can supersede states.

SENATOR LEICHTER: Right. And there are instances where the federal government establishes a national minimum course of action and then says to the states, knowing that there are variations in the 50 states, that the states may act in this area even though there exist federal laws or federal regulations that the states are free to impose different standards or higher standards, if you will. Isn't that the case?

SENATOR WRIGHT: Generally, as I understand it, it's equal to or greater than.

SENATOR LEICHTER: Right. And -

SENATOR WRIGHT: My bill, in effect, accepts the equal to and says, if we're going to have greater than, this legislative body should act or at least consider whether or not it should be pursued to a higher standard.

SENATOR LEICHTER: And, of course, if the Legislature is not in session, then the Legislature would not be in a position to act even though there may be a need to do so.

SENATOR WRIGHT: Well, there, in fact, may be -- if there were a sufficiently compelling need, there are terms to address that in terms of convening the Legislature. But my experience is such that generally the rule making process is sufficiently prolonged that the Legislature will be back in session before things are finalized.

SENATOR LEICHTER: Good. Thank you very much, Senator Wright.

SENATOR WRIGHT: Thank you, Senator.

SENATOR LEICHTER: I appreciate Senator Wright's candid and full explanation, and I think we see very clearly what the bill does; that it gives preeminence to the bureaucrats in Washington and says to the people here in New York State that except under those limited circumstances where you are going to have action by the Legislature, your state officials cannot act, and what Washington says is the minimum standard will become the standard for New York.

So you may have situations where there is a need because of peculiar and particular situations here in New York State - it may involve landfills; it may involve a need to clean up water, to clean up air -- that we're going to be handcuffed by Senator Wright's bill if it ever becomes law until the Legislature acts.

Now, I just want to point out, and I'm sure, Senator Wright, you are aware of it, there are thousands of areas where the state needs to enact regulations. We may all feel that at times the regulations aren't particularly salutory. Sometimes they may not even be needed, but most of the regulations people have no problems with.

Those regulations are made to protect the people of the state of New York, and they cover an enormous range of areas, and to require in every instance where there is also some federal statute or federal regulation in that particular area that our state officials cannot act in the interest of the people of the

state of New York until the Legislature first considers it would be thousands of different actions that would be required by the Legislature.

And, Senator Wright, I'm sure you've noticed in the few months that you have been with us that we're not exactly known for acting expeditiously, for bringing the two houses together, for getting the Governor to lead us. I guess in part it's the nature of the legislative process.

But because of the complexities of our modern life, you need regulatory action. The Legislature sets the overall course of action. But you would require that the Legislature act in minutiae in many areas where you have some federal minimum standard that has been established, and the federal government never intended that the state could not try to meet local conditions.

I am troubled by that basic premium, Senator, in your bill; which is, that what Washington does and those people down in

Washington who may be thinking of a condition in Wyoming or in South Dakota that that is more appropriate for New York State and that you would not trust New York State officials to do what's necessary and needed and proper for the welfare of the people of the state of New York until you can get the Legislature together and they can deal with all this minutiae.

I tell you, sir, you are leaving the people of the state of New York unprotected. You are paying enormous deference to the people down in Washington, and I don't want to give them that sort of power over the people of the state of New York, and I think you are going to find out that you are really hamstringing effective government in the state of New York.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Gold.

SENATOR WRIGHT: I don't share that view, obviously -

SENATOR GOLD: No, I don't mind.

ACTING PRESIDENT PADAVAN:

Senator Wright.

SENATOR WRIGHT: -- from the perspective that I think that we are hamstrung now by the fact that we have agencies promulgating excessive regulation, in many instances merely to pursue their own agenda, to justify the existence of the agency itself and its participation in rulemaking. I think we, in fact, should be restricting just that process.

I think there are a number of instances in New York State where the federal minimums are appropriate to New York State; that, in fact, we have a natural inclination for some reason in our rulemaking to try to exceed those federal standards, and in many instances put ourselves in an uncompetitive situation relative to other states in this nation.

So I think there is merit to pursuing. I don't see ourselves being involved in a great deal of minutiae. In fact, I see us -- by virtue of that practice that there is, in fact, a very deliberative legislative practice that reviews those rules will eliminate an awful

lot of rules that are not necessary, that are redundant and merely being pursued by the agencies themselves.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Gold.

SENATOR GOLD: Thank you. Senator Wright, you answered a couple of questions for me. I'm not asking you to yield, Senator.

But, Senator Wright, I asked you a few questions; and while you quoted accurately some language from your bill, you didn't give me an accurate answer as to what the bill does, and that's because we didn't get far enough.

Your bill says -- page 1, lines 12 to 16, that the agency shall not impose a standard higher than a federal standard, and then you said, "unless we specifically authorize it." So that sounds like we're in very good shape.

Except that when you get to lines 16 to 19 which says, "Any person subject to the

requirements by both the state and the federal government, the agency must accept if they've complied with the federal government."

So, Senator, if this Legislature authorized standards for our people which we thought were better for our people and went past the federal standards and the agency followed the dictates of the New York State Legislature and Governor, they -- under your bill, it would be meaningless, because the person affected only has to comply with the federal government's directives, anyway.

So on the one hand, Senator, you've got the language that you pointed out to me which makes it sound like everything is fine because the New York State Legislature is keeping control, but you take that right away. Because while the lines 13 and 15 allow the New York State Legislature and the Governor to suggest stricter compliance, when the individual who must comply does not comply, you have given them a legislative out, and I think that's the problem.

If you eliminated that subdivision 2, then maybe, Senator, you could make the argument that the agency itself can't go past the federal government and leave it in the hands of the Legislature; but as long as you have that escape clause in there, this bill absolutely voids the right of the Legislature, the Governor, or anyone in the state of New York to set standards that we think might be better for our people.

SENATOR WRIGHT: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Wright, there has not been a question asked, so I'm disposed to follow a list.

SENATOR WRIGHT: Okay.

ACTING PRESIDENT PADAVAN: Senator Saland.

SENATOR SALAND: Thank you, Mr. President. I would like to commend Senator Wright for bringing this bill before us today.

And I heard mention during the course of somebody's comments earlier -- and I apologize, I didn't hear the entire debate -

about concern that somehow or other the whole process would be hamstrung because it would require that the process would stand still until the Legislature acted.

Well, I think what Senator Wright has done with this bill is basically to say that the Legislature shall be preeminent; that we shall not place ourselves in a situation in which we shall have people who are not responsive to the electoral process, people who are not even responsive very often to many of the elected officials including many of the people who reside in this house, and the other house for that matter, having the final say.

ACTING PRESIDENT PADAVAN: Why do you rise, Senator Leichter?

SENATOR LEICHTER: Will Senator Saland yield?

SENATOR SALAND: At the conclusion of my remarks, I'm be very happy to yield.

SENATOR LEICHTER: Thank you.

SENATOR SALAND: I think that it

is somewhat tortuous to -- to somehow or other impose upon Senator Wright the kinds of interpretation that some have attempted to ascribe to him here today.

What we're really talking about is that commonplace phrase that comes into so many of our bills, to the effect that "the Commissioner shall promulgate such reasonable rules and regulations," being replaced in appropriate instances with different language, language to the effect of either giving him the authority to exceed the federal regulations or language that either by reason of this bill would or by reason of language contained in any subsequent act dealing with promulgation of regulations would merely say that you are bound by whatever would be the federal authority to the extent that this body determined that federal authority would be accurate.

And I'm not at all troubled by that nor am I troubled by the idea that somebody who complies -- where the Legislature has made that determination that compliance with the

federal statute is adequate or federal regulations is adequate, somebody who complies is effectively also complying for state purposes, as well. It is a legislative determination. It is not something that's been abdicated to an agency or a bureaucrat. The determination will be made in part by this house, and I think that's where the authority should lie.

I've had instances where people have come to me. Not too long ago, a health provider came to me with two forms. One was fifty-some-odd pages long; one was four-plus pages long. They both dealt with the same health provider. They both sought the same information. The four-page form surprisingly was the federal form; and the equally surprisingly -- I am see being facetious -- the fifty-some-odd page was the state form.

That really is not the way we ought to be doing business here in New York. I think it may require more of us as the elective body to be more discerning in how we extend that

authority to our regulators, but I think we're up to that task.

ACTING PRESIDENT PADAVAN: Senator Leichter.

SENATOR LEICHTER: Thank you, Senator Saland. Let me ask you this question. I would be interested in Senator Wright's answer to it also, if he chooses to.

Senator, if the concern is -- and I gather that's what underlies this -- that we have regulations that are promulgated by our state agencies that are unnecessary, that are cumbersome, that do not carry out the will of the people of the state of New York, we as a Legislature have the power, and I dare say the obligation, right now to strike down those regulations, and that's how we ought to proceed.

But you are doing it, frankly, in a round-about way which imperils action by the state where -- and by state agencies where there would be no problem whatsoever. If Senator Wright's concern is that by -- or Senator Wright thinks he's achieving his purpose by having us

accept as a -- not as a minimum but becomes as a maximum really of any action, that action which is taken by the people within the Beltway, and nothing can be done by state officials until we act as a sort of a prophylactic measure to keep those state agencies from enacting regulations that we don't want, why in the first instance don't we just be more vigilant in acting against improper state regulations?

I'm sorry I made that question so long. It could have been stated much more simply.

(Laughter.)

SENATOR SALAND: I think I understand the question.

Let me start off by saying that we in New York suffer from somewhere in the area of about four and a half miles worth of regulations were they extended end to end, some 23- to 24-, 25,000 feet worth of regulation. Certainly an unenviable record, one which I would hope that Senator Wright's bill today would take us on the path to correcting.

I don't view this as somehow or other the emasculation of federalism. I think it just places a burden upon us -- you're talking about prophylactics. I'm talking about emasculation. Excuse me. Let's get this on the same wave length. I don't think it does anything but put the onus on us, Senator Leichter, to be more responsive and perhaps a little more discriminating in the way we extend the authority to our agencies to regulate.

I don't think we're being preempted by the fed's. I think what we're saying is that due to the kinds of experiences that many, if not all of us, have had with those who regulated in New York, we think that it's excessive regulation. We think this is the means by which to deal with the excessive regulation, and we're not waiving our ability in those cases where legislatively we determine that there should be a more extensive requirement by New York State to do that.

SENATOR LEICHTER: If Senator Saland will yield to just one more question, and

I'll make it shorter. It will be the last one because I know other people want to speak on this.

But, Senator Saland, I don't know whether it was fully responsive to my concern, but that was maybe because my question was sort of cumbersome.

But why? If you are concerned about these miles and miles of regulations, why aren't you putting in bills striking down this regulation, taking away that authority from an agency? In other words, you've got all the power -- you and me, you more than me, but all of us collectively here in this Capitol. Let's do it. Why do it in such a round-about way which may leave the people of the state of New York unprotected?

SENATOR SALAND: Thank you, Senator. I would just also try to respond briefly. I think this is a well-organized, comprehensive way within which to deal with the issue. It certainly makes it a front burner issue. And I think that were we to attempt to

take those four-plus miles worth of regulations and do them one at a time, there really wouldn't be the ability to do it in the kind of more, I think, expeditious, comprehensive fashion that this bill can accomplish.

Thank you.

ACTING PRESIDENT PADAVAN: Senator Dollinger.

SENATOR GOLD: Will Senator Saland yield to one question?

ACTING PRESIDENT PADAVAN: Excuse me?

SENATOR GOLD: Will Senator Saland yield to one question?

SENATOR SALAND: To you, Senator Gold, always.

ACTING PRESIDENT PADAVAN: Does the Senator yield?

SENATOR SALAND: Certainly.

SENATOR GOLD: Senator, my concern is very specific. I understand your support of the concept, of the general concept as explained by Senator Wright. But isn't it a

fact that line 16 to 19 on page 1 undoes our capacity to be able to do anything once we pass this law?

SENATOR SALAND: I -- I would think that those lines merely reaffirm. The intent of Senator Wright basically says that when somebody acts in compliance that compliance is adequate.

SENATOR GOLD: Yes. Well, Senator, my point is that if you -

SENATOR SALAND: I think the first provision presupposes the second.

SENATOR GOLD: Yes. But what I'm saying is that if you agree with line 16 through 19, which is fine, doesn't line 16 through 19 absolutely void lines 13, 14 and 15? That's all I'm getting at. Don't those lines void the other lines?

SENATOR SALAND: I don't believe so, Senator. I believe -- I do believe they are consistent. I do believe -

SENATOR GOLD: You say that with a straight face?

SENATOR SALAND: Excuse me?

SENATOR GOLD: You believe they are consistent.

SENATOR SALAND: I believe they're consistent.

SENATOR WRIGHT: Mr. President.

ACTING PRESIDENT PADAVAN: We have a list. I already excluded Senator Daly, inadvertently, but I did recognize Senator Dollinger, and he is next and then Senator Daly and then you.

SENATOR DOLLINGER: Thank you, Mr. President. Will the Senator yield to a question? Senator Wright, if you will yield to a question?

ACTING PRESIDENT PADAVAN: Senator Wright, do you yield?

SENATOR WRIGHT: I'm looking forward to the opportunity. Yes, Senator.

SENATOR DOLLINGER: I'll give you a chance to fill in the blank, too.

My first question, Senator, is, is this proposal retroactive on the body of

regulations, the 27 miles or 24 miles or 24,000, whatever that number is that Senator Saland talked about? Is this proposal retroactive on all the current state regulations?

SENATOR WRIGHT: No, in fact, it is not, Senator. The effective date talks about October 1 of '93 as related in the bill. But inasmuch as we would like to go back and address all of those regulatory issues, in fact this goes forward. And the reason for that is very simply, as Senator Leichter points out, to go through the process of recalling and correcting all of those issues, in fact, has one additional requirement that this procedure would modify; and that is approval by the Governor.

So that where this house identifies an issue and the Assembly concurs so that the Legislature has, in fact, acted and said, "We believe that this is an inappropriate regulation," in fact the very executive that oversees that agency then has to concur with that legislative intent to roll back that regulation promulgated by his own agency or her

own agency. Therein lies the concern.

By placing a procedure in place in the beginning so that this Legislature, in effect, acts and provides its legislative authority and authorization, we are restored to the appropriate role of making laws and providing the policy of this state and not the appointive bureaucrats. And I think that's a significant difference.

SENATOR DOLLINGER: Okay. Just so I understand it, Mr. President, it's not intended then to affect any prior regulations. It will go into effect October 1st and apply to all the regulations promulgated after that.

SENATOR WRIGHT: That is correct.

SENATOR DOLLINGER: Okay.

SENATOR WRIGHT: We need to establish a particular time frame.

And I would point out, in looking at the issues as identified by Senator Gold, that it appears that we've agreed with the initial provisions now that relate to statute

and, therefore, have to deal with the requirement; and those requirements as related in 16 through 19 are very specific where they talk about being imposed by a state statute, the very procedure that we're talking about -- the Legislature has acted.

And, in fact, if the Legislature does not -- if, in fact, the Legislature imposes a higher standard, that higher standard would have to be met. This talks about a similar requirement. So if we have a higher standard than the federal, they are certainly not similar. In the instance that they are similar, we're saying we accept federal compliance to meet state compliance, because the example Senator Saland used is a very good one. In fact, you have both federal and state statute achieving the same thing except we require 50-plus pages to do it when the federal government requires several.

That's the kind of issue that's important to growing the business community and dealing with the concerns that our businesses

and local governments have raised.

SENATOR DOLLINGER: Mr. Chair man, I'm having some difficulty hearing Senator Wright.

ACTING PRESIDENT PADAVAN: Yes, I understand. May we have some order, please, in the chamber, particularly in the rear.

Thank you, gentlemen.

SENATOR DOLLINGER: If Senator Wright would just yield to another question.

ACTING PRESIDENT PADAVAN: Senator Wright yield?

SENATOR WRIGHT: Certainly, Mr. President.

SENATOR DOLLINGER: The use of the term "standard" in this bill is a term of art in the regulatory environment. Is that a fair statement, Senator?

SENATOR WRIGHT: I'm sorry, Senator.

SENATOR DOLLINGER: The use of the term "standard", I'm trying to find out what you mean by the term "standard". It's used.

It's a term of art that you use in this bill about federal standards. Generally, my understanding is that those standards apply, for example, in parts per million for presence of certain items in water testing. But is it intended to apply simply in the ecological area, or does the term "standard" have a broader meaning as used in this bill?

SENATOR WRIGHT: No, the term "standard" can be applied to any particular area whereby the federal government establishes a standard incorporated within its rule and regulation that must be met regardless of it being in a particular environmental area or other areas.

SENATOR DOLLINGER: Again, Mr. President, if Senator Wright would yield? What is the effect if the federal government changes the standard after we've promulgated our regulation?

SENATOR WRIGHT: Well, Senator, that would depend on the actions the federal government took. If, in fact, the federal

government exceeded New York State's existing requirements at a particular point in time, they have established a new base line; therefore, a new federal minimum; and that, in fact, applies to New York State without New York State taking any action. That's required on the state. That's the minimum.

SENATOR DOLLINGER: But -- again, through you, Mr. President -- if the federal government rolled back the regulatory requirement, our regulation at that point would be meaningless. Is that correct?

SENATOR WRIGHT: Well, it would depend on the actions the state Legislature had taken in promulgating that rule. If we established a standard that exceeded the federal standard and the federal government rolled back their standard, in fact we still exceed the federal standard. And that was specifically authorized by this Legislature if this bill was in effect.

SENATOR DOLLINGER: Is it fair to say -- again through you, Mr. President, with

Senator Wright continuing to yield -- that this Legislature will have to be fully conversant with federal regulatory principles, with federal regulatory standards, before it can enact any specific piece of legislation that will require rulemaking or rule promulgation by any one of the agencies that exist in this state?

SENATOR WRIGHT: No, I don't believe that's the case, Senator.

SENATOR DOLLINGER: Now how will we know whether or not we want to give them the authority to exceed the federal standard if we don't know what the standard is?

SENATOR WRIGHT: Any more than you currently know. You rely on the agencies to provide that information and recommendation, and you rely on various oversight, such as the committee that I co-chair with an Assembly colleague that oversees those processes.

SENATOR DOLLINGER: Okay. Final question. Do you have any estimate of how much time this will take for the bureaucracy to figure out whether federal regulatory standards

are exceeded or not, whether the state regulations will exceed them or not? Do you have any computation for how much time in the bureaucracy it will take to do that extra work?

SENATOR WRIGHT: No, I don't, because I don't see it as extra work, Senator. Right now, when there is a federal minimum standard, the state is required to achieve compliance; therefore, the agency must be conversant on that standard under current requirements to make that determination whether or not they, in fact, have achieved compliance.

So there's no additional burden of work. In fact, I believe that there will actually be less work as there will be less rulemaking and regulatory propagation.

SENATOR DOLLINGER: A final question that ties in with Senator Leichter's point.

One of the issues you brought up, Senator, was the issue of landfills. My understanding in this state is that on Long Island, where we have an extreme water aquifer

problem, there are certain regulations for the construction of landfills. In other parts of the state which have drumlins and natural hills, perhaps in your part of the state and my part of the state, there are different state regulations for the construction of landfills because of differences in topography and geography and a number of other factors.

Why should we buy into a single standard that might be set for a place like Wheeling, West Virginia or Albuquerque, New Mexico, for the construction of a landfill when our own state regulators know the differences between parts of our state and can create different regulations for construction of those to reflect the differences in their natural state?

SENATOR WRIGHT: Well, this bill, Senator, does not require you to buy in that. In effect, says if you believe that a higher standard should be applicable to New York State, it gives you the obligation or the opportunity to do that; and in fact, that's how the Long

Island landfill standards were achieved, specific action by the state Legislature to protect that particular aquifer, the sole aquifer on Long Island, because of those concerns; and, in fact, that exceeded the federal standard as did the general application of landfill standards to the balance of the state but by specific state action.

Now, what we find in hindsight is that the Governor requires his agencies to appoint a task force to go back and review those particular regulations at the behest of local government; and in doing that, we find that they have rescinded and they've modified a number of those that exceeded the federal standards they've now determined to be redundant, and they are saving local governments money.

In my own county, one small town is saving $750,000 in a closure because of the rollback of those regulations that exceeded the federal standard. The unfortunate part is in the intervening three years there are numerous municipalities across this state that had to pay

a higher price because of that.

SENATOR DOLLINGER: Mr. President, on the bill.

I understand the intent of Senator Wright's proposal and I appreciate that. What I, unfortunately, think is that - and I'm actually surprised is that the New York State Trial Lawyers are not a part of this bill and are not writing in support of it because, in my judgment, Mr. President, this lit... this bill will open an unbelievable door to litigation in this state, over the meaning of terms like the "same subject matter", the requirements that are "greater than those imposed by a federal law or rule", "unless the agency is specifically authorized". These terms are so broad that they would generate a flood of litigation.

I guess I can understand why. They won't be the Trial Lawyers because this is where the corporate lawyers go to work in this type of rule-making by legislatures that write up an attempt to modify the rule-making powers

of state agencies, the issues of whether there are federal standards, whether they have been exceeded, whether they have specific legislative authority to exceed those standards. This will generate an unbelieveable pile of litigation in this state which will cost business tons of money, which will cost communities tons of money, which will cost the state of New York tons of money.

I think that the critical issue of whether we should look at the regulatory process ought to be done on a case-by-case basis as issues come up before the commission that you head or Senator Saland's Committee on State and Local Government. We do have the power, as Senator Leichter said, to go back and to change those. We did it in the case of the California car emissions standards. We were able to do that. We did that as a legislative body.

In my judgment, we're better off doing that than we are opening the door to an absolutely totally contentious situation where businesses will be arguing that there are

federal standards, that these standards have been exceeded, that there is no express legislative grant. We will end up in this bill, frankly, my colleagues, at least in Monroe County that the trial bar will be salivating knowing that this bill might pass and that the whole issue of federal authority and state authority over regulatory powers will be bottled by future lawsuits.

I appreciate the interest. I see that it stems from the right motive, but it seems to me that this bill is going to be the subject of unbelieveable litigation and cost and the beneficial purpose that you're seeking will be lost on years if not centuries of litigation.

I'm going to vote no.

ACTING PRESIDENT PADAVAN: Senator Daly.

SENATOR DALY: Thank you, Mr. President.

Mr. President, on the bill. There have been so many red herrings thrown on

the floor here this afternoon I think we should open up our own canning factory. This is good legislation and I commend the Senator for drafting it and putting it before us.

You know, when you get right down to the bottom line, I think this bill clearly shows us what's happening and why we have to do something about it. We literally have department heads taking on the mantle that belongs to the Legislature, that of policy making in this state. We have department bureaucrats writing or putting together reports, putting together questionnaires, similar to the one that Senator Saland mentioned, 54 pages, which is driving both the private and the public sector in this state crazy.

I heard one of my colleagues on the other side say that this bill gives preeminence to the officials and what -- to the bureaucrats in Washington. It does just the opposite. It discourages the bureaucrats in Albany from usurping the rights and powers of this Legislature. We are the policy-making body

in the state. The Commissioner of Environmental Conservation, the Department of Transportation do not set policy for the state.

One of the other comments raised on the other side concerned the fact that, well, let them write the rules and regs and then, if you don't like them, you know, throw them out by law, and I just remind you what happens. Basically, if they -- we have rules and regulations coming down from Washington and the state of New York, the Commissioner decides that they're not strict enough -- you take the California standards versus the federal standards that was mentioned before -- then both houses have to concur before those rules and regulations are thrown out. That's the point, Senator. Both houses have to concur. That's why our policy-making should begin in the Legislature in both houses and stay here.

As I said, we see rules and regulations coming down. Our house might say, Hey, wait a minute. We think this goes much too far, but we need action from the other house and

so literally our house is taken out of the play.

And so I really believe this is very important and very good legislation. The complaints I get back when I finish, Senator, back from my district, from business primarily, concern the bureaucracy that we've formed in New York State and the myriad of rules and regulations that we roll out day after day after day, and I think it's about time the Legislature took back what the Constitution gave us and that's the power and right of making policy in this state and take it away from commissioners who think they've got the God-given right to tell us what's best in New York State.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Daly just yield to one question?

ACTING PRESIDENT PADAVAN: Will

you yield to a question?

SENATOR DALY: I'd be happy to.

SENATOR DOLLINGER: Senator, borrowing on my colleague, Senator Leichter's phrase, who should make the policy in this state, bureaucrats we can control through the process I describe, or bureaucrats in Washington we can't control at all?

SENATOR DALY: Well, when bureaucrats in Washington make policy we can change, we then change it. But remember this bill says if the state bureaucrats feel that they want to change the rules and regs established by Washington they don't have the power unless they come here. That's what the bill says, Senator.

ACTING PRESIDENT PADAVAN: Senator Gold, to close for the Minority.

SENATOR GOLD: Yeah, thank you, Mr. President.

Mr. President, I understand the problem, and I think everybody understands the problem, but I think that one of my colleagues

who I asked a question to was not really frank, and I understand that. There's a huge reluctance in this chamber once a bill is on the floor for anybody to ever admit there's anything wrong with it. What usually happens when something is dreadfully wrong is that we have the debate, the Majority votes to pass it and then a week or so later it sneaks back in on a motion to recall and reconsider and it gets amended and whatever, and I think that's really foolishness.

This bill is defective. If it's the sense of this house that we want to set the federal standard -- and that's bad -- then let's say it out front, let's do it and let's not even pretend that we have a right to override that because this bill does not give us that right.

My colleague, Senator Leichter, however, is absolutely correct when he says that this bill is, in effect, an attempt to cure all the mistakes that you're saying we make because if -- if we think that something is -- is wrong with existing regulation, it's within our power

to correct it. Not only that, but we have something called the Administrative Regulations Review Commission. In my opinion, and I might -- may be a minority of one in this world, I think that that commission could be one of the most powerful forces we have in government because when it was created, the concept was that we would look into what the administrative agencies were doing and we would help bring it all into line.

Now, we have done a lot of work and I respect the people who have chaired that commission as it's gone along and perhaps the - it's our fault in not communicating funding or what, but that is one way to get at the morass of regulations. That is real legislative oversight.

In addition to that, I know we used to have a procedure. I know when Senator Present was the very distinguished chair of that commission, I used to ask him every once in a while whether or not certain bills had been reviewed by his commission to see whether or not

the grant of administrative authority was a proper grant and Senator Present assured me that, in fact, the grants were proper and within line.

No, Senator Wright, if for years we have been passing bills giving grants to the agencies to do rule-making and nobody has done anything to put in bills to repeal it except maybe once or twice, I don't know who we're complaining about if we're not complaining about the Majority in this house and the Majority in the other house.

If there is a problem -- and Senator, there isn't one Democrat in this house who isn't sensitive to the needs of small business and large business in the state of New York when it comes to adherence to regulations. But you don't in one bill, which seems incentive enough in its one and a half pages, wipe out the authority of every member of this Legislature to be involved in this process.

Now, theoretically, Senator Wright, we could have a situation where each

bill we pass from now on says "notwithstanding the provisions of section (b) 2," and then we go on from there. But unless you had that language in every single bill from now on where we dealt with regulations, we have basically voided the regulatory power of this state to set these minimums.

The problem is there, Senator Wright. We have created a commission to help us with it and we have a legislative authority to deal with it on an individual basis. I think the way you're doing it is wrong. It's too much of a blanket and I think the bill itself has an inconsistency which ought to be cured.

ACTING PRESIDENT PADAVAN: Senator Wright, to close for the Majority.

SENATOR WRIGHT: Thank you, Mr. President.

I think what this bill speaks to are the issues that we hear every time we have occasion to meet with anyone in our communities, any time we have occasion to meet with the business community. I, in fact, had that

opportunity again today in meeting with representatives of the forest and paper industry, and number one on the list of many of those individuals when they're speaking with us in the district or down here in Albany is very simply their concern over regulation, the continuing growth of regulation in this state, the continuing cost being imposed on businesses in this state by virtue of those regulations.

Where do those regulations come from? From agencies with appointed individuals. I do not believe the bureaucrats in Washington nor do I believe the bureaucrats in Albany should be making those determinations, but, in fact, it should be the elected members of the Legislature that have been sent here by our constituents, by those small businesses, by those local governments to make sure we look out for their interests, to make sure we make it a clear and distinct determination of what is in the best interests of this state and if there is a federal standard that, in looking at that standard, we determine whether or not there, in

fact, is a greater need that should be addressed and if there is not, we do not add additional burdens to the process. We do not require duplication; we do not require redundancy. We, in effect, provide the streamlining, the efficiency, the right sizing of our regulatory process just as the private sector is currently doing that within their businesses.

I believe that's what this bill speaks to. It will not embroil the Legislature in minutiae. It will, in fact, provide a very deliberate process to the rule-making of those agencies and then and by doing that, enhance the legislative oversight of this body, my colleagues and your colleagues in the Assembly, so that we're in a position to address that.

I think it's a step forward. There are a number of other initiatives such as negotiated rule-making that we further need to address. This is the beginning of a salvo, I hope, that will begin to dismantle the rule making process so it's a much more streamlined and efficient process to assist the people of

this state.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect October 1st, 1993.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Leichter, why do you rise?

SENATOR LEICHTER: Just to explain my vote, please.

ACTING PRESIDENT PADAVAN: Senator Leichter, to explain his vote.

SENATOR LEICHTER: I want to just point out that listening to Senator Wright and point out to you, Senator Wright, you've got the power right now to do something about not only regulations in the future but regulations that are on the books now. I have trouble under standing the Majority here. They'll vote for large spending increases and then Senator Bruno

will put in a bill that you can't -- or rather a Constitutional Amendment.

I mean there's a certain amount of hypocrisy. You've got that here now. Do something about it if you think the regulations are wrong, but don't add -- don't turn it over to Washington and say that the premise of your bill happens to be that the bureaucrats in Washington know better what should happen in New York State than the people of the state of New York and their elected representatives and those people who they appoint to office. I can't understand it.

I vote in the negative.

ACTING PRESIDENT PADAVAN: Will the negatives raise their hands?

Senator Daly.

SENATOR DALY: There goes another red herring.

Mr. President, I think Senator Leichter is missing the point. The point is that this house feels that it has to have a voice and should have a voice in policy-making.

If the -- if the commissioners of the departments in New York State set their own rules and regulations that are accepted by one house but rejected by the other house, those rules and regulations stay in force. If we force them -- I should say, if the rules and regulations come down from Washington and the commissioner wants to make them more stringent, they have to go through both houses. Then this house has a voice. Then the entire Legislature has a voice, and that's the point, Senator. Your way, you can wipe out one house. You can't make changes. This way the Legislature sets the policy and both houses have a voice.

ACTING PRESIDENT PADAVAN: How do you vote?

SENATOR DALY: I vote aye.

ACTING PRESIDENT PADAVAN: Senator Dollinger. Do you rise to explain your vote?

SENATOR DOLLINGER: Yes.

I disagree with my colleague from western New York. I think that that was a live

flipping, flopping herring, not a red herring, that was tossed on the table. When Senator Leichter says that we have the power, we clearly do have the power to look at every regulation that's passed by every agency. We have the ability to go back and say, that's inconsistent with our original intent. We have the ability to look at it and to say that that doesn't achieve the goal that we want, and we can decide whether we want to move it back to the federal standard or not.

You say it requires two houses. It does require two houses for the Legislature to act, but that's the legislative power. We've got the power. All we have to do is convince our colleagues in the Assembly or convince our colleagues on the other side of the aisle that we ought to exercise that power. We've got the power to do it, in my opinion, and I agree with Senator Wright on this. The greatest complaint I hear is that there are regulations in effect in this state that are no longer consistent with what the Legislature wanted. Our obligation in

that instance is to go back, look at that rule-making and decide what is in the best interests of the people of this state and tell the bureaucrats that that doesn't meet our wishes, our collective wishes, the wishes of both houses. It's the only way we can act but unless we go back and do it on a case-by-case basis, we're doing it with far too broad a brush. We're placing far too much reliance on people inside the Beltway who have never been a part of this state.

I vote no.

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Those recorded in the negative -- those recorded in the negative on Calendar Number 613 are Senators Dollinger, Gold, Markowitz, Mendez, Ohrenstein, Oppenheimer, Stachowski, Stavisky, also Senator Espada. Ayes 47, nays 9.

ACTING PRESIDENT PADAVAN: The bill is passed. Continue the calendar.

THE SECRETARY: Calendar Number

654, by Senator Volker, Senate Bill Number 3362, an act to amend Chapter 198 of the Laws of 1978.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT PADAVAN: Explanation is requested. Senator Volker.

SENATOR VOLKER: Yes. Senator Montgomery and I, I believe, had a discussion last year about this bill. I think this amendment that I'm proposing is restrictive of her amendment. What this bill is, is an extender of the school health services program.

This bill which originated in the Laws of 1978 is like a lot of pieces of legislation we have around here and it's part of a program that was passed along with a demonstration project for -- primarily for the city of Buffalo, in the state originally, and several of these demonstration projects are still around, but what happens is they get extended from year to year.

There are several reasons for it, one reason being they are extended because the

three parties being the Assembly, the Senate and the Governor for one reason or the other does not want to permanentize it. I believe in this case there are two parts of the three that don't want to permanentize it, one of the reasons being that because of the nature of the programs, the parties to the program would prefer that they remain demonstration projects to make sure that the programs accomplish what was intended in the first place.

So that is why, frankly, we've extended it from year to year. I understand that Senator Montgomery has an amendment she'd like to present.

ACTING PRESIDENT PADAVAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would like to offer up my amendment to Senator Volker's bill.

ACTING PRESIDENT PADAVAN: You waive its reading?

SENATOR MONTGOMERY: Yes, and I'd like to waive it.

ACTING PRESIDENT PADAVAN: To explain it.

SENATOR MONTGOMERY: All right, to explain my amendment.

Mr. President, I am -- I consider this really a friendly hostile amendment, if you will, and I've offered it up at other times specifically I guess more often with Senator Tully and now that Senator Volker has decided to do this legislation, I'm very pleased and supportive of it, and I fully understand why you may have made a decision initially to make it a demonstration program. I think that was probably a wise thing to do, but my amendment simply would make it a permanent program and attempt to expand this program to -- so that it is accessible to many, many more youngsters in the state of New York.

The reason that I am ready to make a comment is because it has been demonstrated without question that this is one of the most valuable and most cost-effective primary health programs that we have in this

state and it meets the needs of those people in our state who are the most at risk of all the people in the world and that's teens. At least some of our programs are in high schools and junior high schools in the state. We know now that parents do consent to their children to use the services.

We know now that those health services provided in school-based health clinics go far beyond a narrow concept of their being specifically there for reproductive health services. They do physical exams for youngsters; they treat asthma and hypertension and colds and coughs. They are there to keep students from dying who have been shot, as in one case in Brooklyn in particular in the last month.

These programs very often are the first -- provide the first opportunity for primary shelter for teens in our state. A large number of students who are immigrants, from immigrant families, are treated in those programs, so there is full and complete

justification, Senator Tully, for expanding this, not only expanding it but making it permanent, making it a permanent part of our health care system in this state, so that we can say without question that the state of New York is supporting and delivering health care to teen, pre-teen as well as younger children in our state.

So my amendment just simply goes a little bit beyond what the bill does. I am again supportive of this legislation, Senator Volker. I think it's been a wonderful opportunity for us that you've given even though initially you were very probably narrow minded about it, you only wanted it for Buffalo, but thank -- thanks to the wisdom of the Legislature, they extended it and now there - there are 124 or so programs in the state. There's not one in my district, unfortunately, but at least we've gotten this far, and I'm only saying to you now that we need to really just go ahead and accept the fact that what you have done, your proposal, your hypothesis has been

proven to be correct, and so let's now live by it and I certainly would hope that this body would for once, maybe the only time in the history of the state, vote for a friendly hostile amendment to a bill and then vote for the legislation.

Thank you, Mr. President.

ACTING PRESIDENT PADAVAN: Senator Markowitz.

SENATOR MARKOWITZ: Thank you very much, Mr. President.

First, I want to commend you, Senator Montgomery, for your sensitivity, your awareness and concern for school age children. It's not often that a guy from Brooklyn really looks to Buffalo with a great amount of thanks, not only for your great street scene and the great scenes that come out of Buffalo but also for legislation like this that really has provided, initially under Buffalo's leadership, some superb services for kids in school, especially health services that are ever increasingly necessary as part of the mix in

terms of educational or non- educational services provided by public schools.

I share Senator Montgomery's concern. The high school that she was referring to is within the Senate District that I serve in and I might say my alma mater, Wingate High School, and I know how important their school based health care program is and what it could mean to every high schooler, whether it be John Jay or Prospect Heights, for instance, Clara Barton or Erasmus, all of these wonderful schools, would certainly like to join in if this bill was expanded and made permanent so that it doesn't have to continue to come back each year as it has since 1984.

Certainly, Senator, you have asked for us to support your efforts. Won't you yield on this and agree with Senator Montgomery's sensitive amendment to your legislation?

ACTING PRESIDENT PADAVAN: On the amendment, all those in favor signify by saying aye.

(Response of "Aye.")

Those opposed nay.

(Response of "Nay.")

The nays have it. The amendment is defeated.

Senator Volker.

SENATOR VOLKER: Mr. President, very quickly, and I didn't want to -

Senator, first of all, the reason that this started out as a Buffalo program was that my recollection is that at one time there were some different kinds of programs in several cities in the state, that there were a series of demonstration programs, some of which fell by the wayside, I believe, back in the '70s.

We developed -- I think Assemblyman Eve and myself and some other legislators I think initially developed this health program because of some studies that were done in the city of Buffalo. As you say, as the years went on, it's expanded, and so forth.

The problem with making it permanent, I know very honestly -- I'd be more

than happy to work with Senator Tully and any people in the Assembly, and so forth, in permanentizing it, but the problem with a lot of these areas, and I have another -- at least two other areas where I carry bills that we do extend this on, because the agreements that we made years ago still hold, and I hesitate to mention, one of them happens to be in community block grants where Senator Mendez has asked me on several occasions and other people to change the formula that we did with the community block grants, and people have come to me, lobbyists in the industry, and so forth, and my problem was -- the problem with changing the formula was - I talked to the initial negotiators and very honestly the big problem was in the city of New York. At that time we had a different mayor. There were a lot of different feelings on how the community block grant should be set up.

We were told by a number of people that, if we made any small changes in the formulas, we were risking unraveling this whole agreement that happened many, many years ago,

and I'm not saying that maybe it's quite as complicated here, but the problem I think is that maybe we should look at this in terms of permanentizing it, but I think what would have to be done by three parts, the Governor, the Assembly and Senate and, of course, as you know, this is your bill here. It seems to me, if passed, there was some other language in it that would actually do the expanding which we did this year to permanentize it which I understand, but I think what we would have to do is, in order to do that, we would have to get the agreement of the Health Department and the Bureau of the Budget, and so forth, to lift this from a demonstration project category, and I really don't have any objection to it.

I guess just the problem is that this is the proposal that we have right now and it seems to me that we should pass this and, if we can go on from there and expand it, I'd be more than happy to. I happen to agree with you that it has been very successful and I think we have slowly begun to move, as I understand, to

expand the program and I think it could be expanded some more.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT PADAVAN: The bill is passed.

Continue the calendar.

THE SECRETARY: Calendar Number 687, by Senator Hannon, Senate Bill Number 3171-A, Private Housing Finance Law.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Ayes 56.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 701, by Senator Farley, Senate Bill Number 1023, to allow David F. Jung -

SENATOR GOLD: Explanation.

THE SECRETARY: -- retroactive membership in the employees' retirement -

ACTING PRESIDENT PADAVAN: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

This bill authorizes David Jung of Gloversville, New York to file a request to obtain retroactive membership in Tier I of the New York State/local employees' retirement system.

David Jung served as the assistant city attorney for the city of Gloversville from October '68 to December '79.

In 1968, David Jung filled out a -- proper paperwork to join the employees' retirement system. However, the city of Gloversville failed to forward this paperwork to the ERS. As a result, this individual, Jung, was not enrolled in the employees' retirement system in 1968 and cannot receive service credit for 11 years he -- he spent as assistant city attorney.

David Jung discovered this error in 1989, when he requested credit for his previous service. The bill will rectify a clerical error made by the city of Gloversville and will award David Jung, who is now a judge, 11 years of service credit in the employees' retirement system which he deserves.

The city of Gloversville has acknowledged their error and has agreed to pay $30,000, the cost of this bill.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR FARLEY: Yes.

ACTING PRESIDENT PADAVAN:

Senator yields.

SENATOR GOLD: Yes. Mr. Jung is an attorney?

SENATOR FARLEY: No, he's a judge.

SENATOR GOLD: No, no. Will you yield to another question?

SENATOR FARLEY: Certainly.

SENATOR GOLD: Is he an attorney, a licensed -- I know his job as a judge -- is he an attorney?

SENATOR FARLEY: Yes, he is. He was city attorney.

SENATOR GOLD: And Senator, during the time that he was an attorney, he didn't know that as a member of the retirement system he would get statements on a periodic basis about what was doing with his retirement and things would be taken -- money would be taken out or not taken out? He didn't get them?

SENATOR FARLEY: There was no money taken out in Tier I.

SENATOR GOLD: Yeah, but as an attorney, Senator, he wasn't aware for 11 years that there was a document missing from his mail once or twice a year?

SENATOR FARLEY: Well, as an attorney, he wasn't getting any mail and he had no reason to suspect. He filed all properly, as all good attorneys would do, and he thought he was a member of the system, and he wasn't.

SENATOR GOLD: Mr. President, oon the bill.

Mr. President, I -- in an effort to be humane, I will make my comments on this bill and just continue what I've been doing in voting no on these bills, but since I haven't raised the issue before this year, in case there are some new faces around that want to under stand what I've been doing, this is just not our job.

Senator Trunzo, I understand, has a bill and I hear that explanation. I heard it last year; I heard it the year before. It's in negotiation. I think we got to negotiate harder.

These are ridiculous decisions for us to have to make. I have nothing against this gentleman and if this gentleman, in fact, filed his paperwork and if this gentleman, in fact, is entitled to a pension, then the pension board, the retirement system should have a method by which they can correct clerical errors and by which they can make these corrections, but I don't know these people from a hole in the wall. I am not equip ped to be a juror or a judge in these cases, and it is absurd for the Legislature to, on an individual basis, change people's pensions.

Now, there's no doubt in my mind, as I say, I don't know this man so I'm not labeling him in any way, but there is no doubt in my mind that since we passed the first one of these a year, two or three years ago, four years ago, there has to be one of these along the way where somebody had a brilliant idea of how they can get a bigger pension. They spoke to a few people in town because a lot of these towns are one-party political towns, and the next thing you know we've been flooded with them. Now,

this year I haven't seen too many. Last year was a disaster, but I think it's the wrong floodgate to open up.

ACTING PRESIDENT PADAVAN: Senator Farley.

SENATOR FARLEY: Senator Gold, I tend to agree with you in what you're saying, that there should be a uniform bill to handle this. But this is a dreadful inequity that has happened and, unfortunately, this is the only way we can address this situation. This is - this is an inequity that is no fault of the individual and he had no reason to know that and it's a terrific loss to the -- to the person and, consequently, this is what we have to do.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR FARLEY: Yes.

SENATOR GOLD: Senator, in my humble opinion -- I can't speak for anybody else. In my humble opinion, Senator Farley, you wouldn't know how to lie if there was money, all right? You're an honest man, honorable man.

You're an honorable man, but you and I weren't there when this person signed on, we don't know what was filed and not filed. We don't know why his papers weren't transmitted in the normal course with everybody else's and the answer is, if he is entitled to it, let him get it.

So then let us go to the Speaker, who is a compassionate, decent, kind man and say, "Speaker, we shouldn't be in this business." I don't think he enjoys it any more -- any more than we do. I know the Governor doesn't enjoy this kind of bill. So if we want to help these people and other people, Senator, let's pass Senator Trunzo's bill or some amendment to it and set up a process whereby people who, through no fault of their own, can be taken care of if there's no injustice, but it is -- it is absurd, Senator Farley; you know, in the Congress very often they have investigations of things that come before them. I know that you and your staff didn't investigate this. I don't expect you to.

SENATOR FARLEY: We have.

SENATOR GOLD: Well, Senator, did you interview the witnesses? Do you know who the people were?

SENATOR FARLEY: I know the judge quite well.

SENATOR GOLD: I know you know the judge but did you speak with the clerks that took his paperwork? Did you trace it through?

SENATOR FARLEY: Yes, we have talked to the city of Gloversville -

SENATOR GOLD: Yeah, and you -

SENATOR FARLEY: -- and they admit their error. It was an error.

SENATOR GOLD: And you conducted a trial and you held a hearing on it?

SENATOR FARLEY: No, we have not conducted a trial.

SENATOR GOLD: I don't expect you to, but I do expect that if the law was properly drawn, that the retirement system would have a process and then it wouldn't be a question of can David Jung, who is a judge, probably an excellent judge and who knows Senator Farley and

you know him, and so he gives a private law.

There are other people who don't know Senators. There are other people who don't know Assemblymen and who don't go through the process and if we passed proper law, everybody in the system, even the little person who is not a lawyer, would have an opportunity to have his errors rectified.

ACTING PRESIDENT PADAVAN: Senator Farley.

SENATOR FARLEY: Senator Gold, this was investigated by the city of Gloversville. They truly had an investigation, I'm told. It is not a private bill for Judge Jung. It was a bill requested by the city of Gloversville.

ACTING PRESIDENT PADAVAN: There is a home rule message at the desk. Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 701 are Senators Espada, Gold, Leichter and Santiago.

Ayes 52, nays 4.

ACTING PRESIDENT PADAVAN: The bill is passed.

Continue the calendar.

THE SECRETARY: Calendar Number 715, by Senator Velella, Senate Bill Number 4998, Insurance Law, in relation to rate changes.

SENATOR BRUNO: Lay aside.

ACTING PRESIDENT PADAVAN: Lay aside. Lay it aside temporarily.

THE SECRETARY: Calendar Number 733, by Senator Johnson, Senate Bill Number 3934, an act to amend the General Business Law.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Ayes 55, nays one, Senator Montgomery recorded in the negative.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 741, by Senator Maltese, Senate Bill Number 4519, an act to amend the Executive Law.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Ayes 56.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Ayes -- excuse me, ayes 55, nays -

SENATOR GOLD: Just -

SENATOR LEICHTER: Will Senator Maltese yield to a question?

ACTING PRESIDENT PADAVAN: Senator, we're in the middle of a roll call. Do you want the vote reconsidered?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT PADAVAN: All right. Withdraw the roll call.

Senator Maltese, will you yield?

SENATOR MALTESE: Yes.

SENATOR LEICHTER: Senator, I appreciate that you say the intended purpose of the bill is to reduce government costs. I just question and wonder whether it may not actually make expenditures by state agencies greater, because it seems to me that, as you know, when mail is sent out, it is sometimes sent out under

Senate auspices working from computerized lists and it's extremely difficult to review names on computerized lists.

So I question whether there's going to be any savings. I think there's just going to be added expenses. I just wondered if you'd comment.

SENATOR MALTESE: Yes, Mr. President.

I think the legislation contemplates the addition of one paragraph which is spelled out in the legislation, which indicates that the recipient can notify the producer of the document to delete his name or make a correction, and the addition of that paragraph is an inconsequential de minimus at the same time.

While there would be a cost in a computer operator seeking out the individual's name and address, in many cases it's simpler to -- any of these computerized systems where you only have to feed in the person's perhaps last name and slight additional information to bring

up the name, so I think especially in the case of annual reports and this is the section - this is what we're specifically aiming at, one of the main offenders that we're aiming at, these are usually bulky, lengthy articles and the expense that would be saved by this tightening cost, I think, is out of proportion to the small amount of cost to include this information.

SENATOR LEICHTER: Senator, if you would be good enough to continue to yield, am I not correct that your bill would also apply to the Legislature?

ACTING PRESIDENT PADAVAN: Senator Maltese.

SENATOR MALTESE: Yes.

SENATOR LEICHTER: And would it not be correct to say that newsletters that we send out could be considered annual reports or reports of similar publications?

SENATOR MALTESE: Mr. -

SENATOR LEICHTER: And the rest of my question is, would not your bill apply to

newsletters sent out by the Senate?

SENATOR MALTESE: Mr. President, I don't believe they would come within the exact letter of this legislation, but very frankly, I don't feel that the addition of this wording would in any way harm or impair the sending out of our Legislative newsletters. I invite Senator Leichter to use the terminology and I would probably use the terminology myself on my newsletters.

SENATOR LEICHTER: Well, Senator -- Senator, I appreciate your saying that you probably will. Let me just point out because I know it has happened, I am chagrinned that occasionally one of my constituents will write back and say, "Don't ever send me a damned news letter again." So I go to the secretary's office, and say, "Please take this guy off the list." They say, "We can't do it," but I'll tell you this, Senator, and it would apply equally to me as it will apply to you, you put that on your newsletter and you're going to get hundreds of people who say, "I don't want to get

your newsletter," because it happened to me too, and it would seem to me that under this bill, if it should become law, that clearly will be required of us. Even if not required, as you say, it would be the intent to put that on, you're going to get thousands of these things and we can't remove them, so I point out to you that the bill might have some unintended problems.

SENATOR MALTESE: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Maltese.

SENATOR MALTESE: The benefit would be intended, and I'll accept that as a challenge and put the wording on my next newsletter and see what happens.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section -

SENATOR GOLD: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Gold.

SENATOR GOLD: Mr. President, I

hope Senator Maltese puts it on his newsletter and, Senator, I do not agree with Senator Leichter. He is absolutely wrong. All you have to do is have the printer deliver the letters to you before they're put in the mail and Senator Marino can give you a new staff member who, on an hourly basis, can go through the 85,000 pieces and pick out the two people that you now send it to, and I'm sure that will be a great savings for the taxpayer because we're here to protect the taxpayer and if those two people don't want your newsletter, I think it's worth a $30,000-a-year job to have a staff member to pull those two people out.

Senator Leichter, shame on you!

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, on the bill, just want to make sure I understand it. Perhaps Senator Maltese can clarify. Does this apply to newsletters coming

from the Majority and Minority?

SENATOR MALTESE: Mr. President, it was not intended to apply to the state Legislature in the term "annual report or similar publication." I think it brings to mind the Latin phrase expressio unius est exclusio alterius, so since these were expressly enumerated, it would seem to me that it would not include our legislative newsletter.

SENATOR DOLLINGER: Mr. President, just so that I understand it, is it safe to say if it's a good idea for all the other agencies in the state, that we should do it here as well? Senator Leichter and I might want to consider a similar bill, and I would welcome your support for it for the Legislature.

SENATOR MALTESE: Mr. President, I certainly would consider it, and I would also indicate, as I have said, that had there been an attempt to reduce taxpayers' cost, I would use it in my newsletter, and I would invite Senator Dollinger and Senator Leichter to do the same.

SENATOR DOLLINGER: I would certainly think about that. Through you, Mr. President, another question.

What would happen if this isn't done? Suppose some agency decides not to do it. What's the enforcement mechanism under this bill?

SENATOR MALTESE: Mr. President, it would probably be to have all the reports delivered to Senator Dollinger's office.

SENATOR DOLLINGER: I'd point out, Mr. Chairman, I think it's a good bill. I think it's a good idea. I support the bill. I hope you concur, if Senator Leichter and I can draft bills which apply to us and which achieve the same beneficial purpose, you might agree to support them.

I do disagree with my colleague, Senator Leichter that I think there will be thousands of people who would write me a little note back saying, "Don't bother to send it to me the next time."

ACTING PRESIDENT PADAVAN: Read

the last section.

SENATOR LEICHTER: Mr. President, just one more point in debate on this important bill. I was initially going to vote against it but I'm going to -- I think I'm going to change my mind, based in part on something that I thought I heard Senator Maltese say, which is that in your next newsletter as an example to all of us here, irrespective of whether this bill covers the Legislature and irrespective of whether the bill passes or not, you're going to put one of these notices on your newsletter and, Senator, may I also ask you, will you share that information with us, because it may be a very helpful guide for the rest of us.

SENATOR MALTESE: Yes.

ACTING PRESIDENT PADAVAN: Senator Markowitz.

SENATOR MARKOWITZ: Just a question of Senator Maltese.

How big will the type be on your newsletter alerting the public?

SENATOR MALTESE: It will

probably be as big as the type that you put on yours, that it's not printed at government expense.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Ayes 56.

ACTING PRESIDENT PADAVAN: The bill is passed.

Continue the calendar.

THE SECRETARY: Calendar Number 788, by Senator Saland, Senate Bill Number 4867, an act to amend the Social Services Law.

SENATOR GOLD: Last section.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Numnber 790 by Senator Saland, Senate Bill Number 4940, an act to amend the Social Services Law.

SENATOR SALAND: Lay aside.

ACTING PRESIDENT PADAVAN: Lay aside.

THE SECRETARY: Calendar Number 791, by Senator Saland.

SENATOR SALAND: Lay aside.

ACTING PRESIDENT PADAVAN: Laid aside at the request of the sponsor.

THE SECRETARY: Calendar Number 816, by Senator Skelos, Senate Bill Number 1156, an act to amend the Executive Law and the Penal Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT PADAVAN: Explanation. Senator Skelos.

SENATOR SKELOS: Lay aside.

ACTING PRESIDENT PADAVAN: Laid aside.

THE SECRETARY: Calendar Number 819, by Senator Cook, Senate Bill Number 2288, an act to amend the Correction Law.

ACTING PRESIDENT PADAVAN: Read the last section.

SENATOR LEICHTER: Yes, Mr. President.

ACTING PRESIDENT PADAVAN: Senator Leichter.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT PADAVAN: Senator Cook.

SENATOR COOK: Mr. President, since the state facilities are going to pay property taxes, obviously we have an inequity in those fire districts in which prisons are located, in that the local property taxpayers have to provide the cost of fire protection and

ambulance service for the prisons, and this bill simply provides some small amount of revenue for those fire districts and ambulance districts providing the state would pay one dollar per inmate toward the budgets of those local fire protection and ambulance protection districts in order to help compensate them for the coverage that they provide.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Leichter.

SENATOR LEICHTER: Mr. President.

Senator Cook, this bill strikes me as being somewhat greedy. Here -- here we find members of the Majority try as hard as they can to get a prison situated in their communities because they provide jobs, and it's unfortunate that that seems to be the economic development for part of the state, but that's where it is, so you -- you people who represent the districts are delighted. You fight for them, you hold up the budgets to get these prisons. Then when you get them, you say, Oh,

this is unfair. We're losing real estate taxes and we're providing all these services.

Now, you got to pay us for these services.

I don't think you can have it both ways, Senator, but let me just say what bothers me even more about the bill. It just seems to me that we need a cogent uniform policy throughout the state on whether or not we're going to charge the state for services received from the locality. I mean there's no sense whatsoever just taking prisons. Why not take state office buildings in the city of New York or the city of Albany or the city of -- or the city of Buffalo.

You remember -- I think you were in the Assembly with me when we passed a bill whereby the state was going to pay real estate tax and the cost to the state was so enormous every year we had to put off the effective date and finally that bill was killed, that law was killed. Maybe there ought to be a policy but if there is a policy, it can't just be for

prisons. That really doesn't make sense.

ACTING PRESIDENT PADAVAN: All right. Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PADAVAN: Results. (Long Pause)

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 819 are Senators Connor, Espada, Leichter, Montgomery and Solomon. Ayes 51, nays 5.

ACTING PRESIDENT PADAVAN: The bill is passed.

Senator Present.

SENATOR BRUNO: Mr. President, let's do some housekeeping and we'll adjourn.

ACTING PRESIDENT PADAVAN: Senator Daly.

SENATOR DALY: I laid aside Calendar 831, Print Number 2200. I'd like to withdraw my objection.

ACTING PRESIDENT PADAVAN: You had laid aside 831?

SENATOR DALY: I laid aside 831.

ACTING PRESIDENT PADAVAN: Senator Tully, do you wish to take up that bill?

SENATOR TULLY: Yes.

SENATOR PRESENT: Call up 831, please.

ACTING PRESIDENT PADAVAN: Yes, sir.

THE SECRETARY: Calendar Number 831, by member of the Assembly Gottfried, Assembly Bill Number 2200, Social Services Law, in relation to payment of interest by providers of medical assistance.

ACTING PRESIDENT PADAVAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT PADAVAN: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT PADAVAN: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I wish to call up my bill, Senate Print 3282-A, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT PADAVAN: Secretary will read.

THE SECRETARY: By Senator Kuhl, Senate Bill Number 3282-A, an act to amend the General Municipal Law.

SENATOR KUHL: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT PADAVAN: Bill is before the house. Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT PADAVAN: The bill is before the house.

SENATOR KUHL: Mr. President, I now offer up the following amendments.

ACTING PRESIDENT PADAVAN: Amendments are received.

SENATOR KUHL: Also, Mr. President, I wish to call up my bill, Senate Print 2667, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT PADAVAN: Secretary will read.

THE SECRETARY: By Senator Kuhl, Senate Bill 2667, an act to amend the Navigation Law.

SENATOR KUHL: Mr. President, I now move to reconsider the vote by which this bill was passed.

SENATOR PADAVAN: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

SENATOR KUHL: Mr. President, I offer up the following amendments.

ACTING PRESIDENT PADAVAN: Amendments are received.

Senator Daly.

SENATOR DALY: On page 29, Calendar 731, Senate Print 3784, would you please star that bill?

ACTING PRESIDENT PADAVAN: Bill is starred.

SENATOR DALY: And Calendar 810, Senate Print 4413, would you please strike the enacting clause and recommit.

ACTING PRESIDENT PADAVAN: Calendar 810?

SENATOR DALY: Calendar 810.

ACTING PRESIDENT PADAVAN: Print Number 4413, bill is recommitted, enacting clause stricken.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I ask unanimous consent to be recorded in the negative on Calendar Number 813, S. 3106.

ACTING PRESIDENT PADAVAN: So ordered.

Senator Espada.

SENATOR ESPADA: Thank you, Mr. President. I ask unanimous consent to be recorded in the negative on Calendar Number 817.

ACTING PRESIDENT PADAVAN: So ordered.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Johnson.

SENATOR JOHNSON: I would request unanimous consent to be recorded in the affirmative on Calendar Number 847.

ACTING PRESIDENT PADAVAN: So ordered. Did you say "affirmative", Senator Johnson?

SENATOR JOHNSON: In the affirmative.

ACTING PRESIDENT PADAVAN: Affirmative, yes.

SENATOR JOHNSON: Yes, I'm already recorded in the negative.

ACTING PRESIDENT PADAVAN: Senator Present.

SENATOR PRESENT: Mr. President, there being no further business -

ACTING PRESIDENT PADAVAN: Senator Present, we have a report from a standing committee.

SENATOR PRESENT: Mr. President, we have a report of the Rules Committee at the desk. May we have it read?

ACTING PRESIDENT PADAVAN: Secretary will read.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following bills directly for third reading:

Senate Bill 3940-B, by the Committee on Rules, an act to amend the Tax Law;

Senate Bill 4521, by Senator Seward, an act to amend the Tax Law;

Senate Bill 5690, by Senator Skelos, an act to amend a chapter of the laws of 1993, proposing Legislative Bill Number A-4463.

All three bills reported directly for third reading.

ACTING PRESIDENT PADAVAN: Reported to third reading.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move we adjourn until tomorrow at 11:30 a.m.

ACTING PRESIDENT PADAVAN: So ordered.

(Whereupon at 6:07 p.m., the Senate adjourned.)