ALBANY, NEW YORK

May 24, 1993

3:15 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: The Senate will come to order. Senators will please find their seats.

If you will please rise for the Pledge of Allegiance to the Flag.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

Today we're pleased to have with us the Reverend Peter G. Young, Pastor of the Blessed Sacrament Church of Bolton Landing, New York, for the opening prayer.

Father Young.

REVEREND PETER G. YOUNG: Dear God, as we gather this week with Memorial Day in the offing, may we think of those people who have dedicated themselves in this chamber and for those that have committed themselves in the way that they have led the leadership of the state to the better kind of a society that we enjoy, and give them an attitude of gratitude for that that they have given as a citizen and as a Senator. We ask You that we bless them and

again encourage others to be like them. In Your name, now and forever more. Amen.

ACTING PRESIDENT FARLEY: Thank you, Father.

The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Friday, May 21st. The Senate met pursuant to adjournment, Senator Bruno in the Chair upon designation of the Temporary President. The Journal of Thursday, May 20th, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. Do we have any motions on the floor?

Senator Wright.

SENATOR WRIGHT: Mr. President, on page number 26, on behalf of Senator Skelos, I offer the following amendments to Calendar Number 800, Senate Print Number 4720, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments received, the bill will retain its place.

SENATOR WRIGHT: Mr. President, on behalf of Senator Farley, I would request a sponsor's star on Calendar Number 883, Senate 2724.

ACTING PRESIDENT FARLEY: The bill is starred.

Senator Mega.

SENATOR MEGA: Mr. President, amendments are offered to the following Third Reading Calendar bills. I will give you the name of the sponsor, and next will be the page,

then the calendar number, and then the Senate print number.

ACTING PRESIDENT FARLEY: All right.

SENATOR MEGA: Padavan: 4, 124, 1861; Spano: 5, 195, 1005-A; LaValle: 9, 434, 3722; Wright: 12, 491, 4280; Larkin: 13, 547, 2737; Volker: 21, 728, 2798; Johnson: 26, 809, 4410; Tully: 29, 853, 1243; Seward: 38, 623, 4076; Libous: 38, 625, 3815; Saland: 16, 643, 4545; Velella: 20, 715, 4998; Lack: 24, 771, 1614-A.

Mr. President, I now move that these bills retain their place on third place on the order of reading calendar.

ACTING PRESIDENT FARLEY: Without objection. That's efficiency.

Senator Skelos.

SENATOR SKELOS: Mr. President, on page number 23, I offer the following amendments to Calendar Number 747, Senate Print Number 4540-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Bill will retain its place.

SENATOR HOLLAND: Mr. President.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator, just a moment. I think I have Senator Holland and then Senator Gold.

SENATOR GOLD: Oh, it's my honor to wait.

SENATOR HOLLAND: Thank you, sir.

ACTING PRESIDENT FARLEY: I take them in the order that I see them; and then Senator LaValle.

SENATOR HOLLAND: On behalf of Senator Levy -

(Inaudible remarks.)

ACTING PRESIDENT FARLEY: Senator Holland, you have the floor.

SENATOR HOLLAND: On behalf of Senator Levy, I'd like to have two sponsor's stars removed: Calendar 277 and 63.

ACTING PRESIDENT FARLEY: 277 and 63, the stars -

SENATOR HOLLAND: No, 63.

ACTING PRESIDENT FARLEY: 63. The stars are removed at the request of the sponsor.

SENATOR COOK: Mr. President.

ACTING PRESIDENT FARLEY: Wait a second. Senator Gold is next. I got to take this in some sort of order, then Senator LaValle.

SENATOR GOLD: Thank you, Mr. President. On behalf of Senator Nolan I ask that Print 3838 be recalled from the Assembly now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Nolan, Senate Bill 3838, an act to amend the city charter of the city of Cohoes.

SENATOR GOLD: Mr. President, I move that the vote be reconsidered.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on

reconsideration.)

THE SECRETARY: Ayes 31.

ACTING PRESIDENT FARLEY: Bill is before the house, Senator Gold.

SENATOR GOLD: Yes. I offer the following amendments, move their adoption and ask that the bill retain its place on the Third Reading Calendar or Senator Nolan will be very mad at me.

ACTING PRESIDENT FARLEY: The bill will retain its place.

Senator LaValle.

SENATOR LAVALLE: Mr. President, I'd like to star my bill, Calendar Number 910.

ACTING PRESIDENT FARLEY: Bill - sorry.

SENATOR LAVALLE: And also on behalf of Senator Sears, on page 35, please remove the star on Calendar Number 187, Senate Print Number 2003-A.

ACTING PRESIDENT FARLEY: 187, the star is removed.

Senator Cook.

SENATOR COOK: Mr. President, on page 20, could you place a star on Calendar Number 721, please.

ACTING PRESIDENT FARLEY: 721 is starred at the request of the sponsor.

Senator Volker.

SENATOR VOLKER: Mr. President, on page 34 of the starred calendar, Calendar Number 55, Senate Print 1141-A, would you please remove the star.

ACTING PRESIDENT FARLEY: Star is removed at the request of the sponsor.

Senator Johnson.

SENATOR JOHNSON: Now, Huzzah! Mr. President, I wish to call up my bill, Print Number 1703, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Johnson, Senate Bill Number 1703, an act to amend the Real Property Tax Law.

SENATOR JOHNSON: Mr. President,

I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 31.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Johnson.

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

And, Mr. President, also on behalf of Senator Bruno -

ACTING PRESIDENT FARLEY: Amendments are received, bill will retain its place.

Senator Johnson.

SENATOR JOHNSON: Mr. President, on behalf of Senator Bruno, I wish to call up his bill, Print Number 3218, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY:

Secretary will read it.

THE SECRETARY: By Senator Bruno, Senate Print 3218, an act to establish a library district in the town of North Greenbush, Rensselaer County.

ACTING PRESIDENT FARLEY: Senator Johnson.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 31.

ACTING PRESIDENT FARLEY: Bill is before the house.

Senator Johnson.

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

ACTING PRESIDENT FARLEY: Amendments are received. Bill will retain its place.

Do we have any other motions?

SENATOR PADAVAN: Mr. President, would you recognize Senator Holland, please, for a privileged resolution.

SENATOR HOLLAND: May I ask that it be read, please.

ACTING PRESIDENT FARLEY: The title or in the entirety?

SENATOR HOLLAND: In the entirety if it's possible.

ACTING PRESIDENT FARLEY: Secretary will read the entire resolution.

THE SECRETARY: Legislative Resolution Number 1480, by Senator Holland and other members of the Senate, designating May 24th through 28th, 1993 as Bone Marrow Donor Awareness Week in New York State.

WHEREAS, bone marrow trans plants now give people dying of blood-related diseases such as leukemia and aplastic anemia a chance to be cured, if a donor can be found whose bone marrow matches their own;

An individual has only a 30

percent of finding a donor among his or her own family members; once family members have been tested and no match is found, an individual is faced with only about one in 20,000 unrelated people who will match closely enough to allow the opportunity for a bone marrow donation;

Although national donor registry was begun in 1987 to assist in finding suitable donors from a pool of "typed" readily available volunteers, it is estimated that at least one million potential donors worldwide must be listed on the registry if the majority of the 9,000 afflicted individuals presently waiting for matches in the United States are to be saved;

Many people in the United States have died because their desperate searches have not produced a matching donor in time. It is vital, therefore, that every effort be made to assure that the donor pool is as large and diverse as possible;

Marrow transplants require matching tissue types which are characterized by

complex genetic traits often unique to a particular race, and currently 92 percent of the volunteer donors are Caucasian;

It is of critical importance that African-American, Hispanics, Asians and Native Americans who are presently under-represented on the registry, become volunteers so that the same hope can be offered to all Americans in need;

In memory of the late Senator Eugene Levy, it is the intent of this legislative body to designate May 24th through the 28th, 1993 as Bone Marrow Donor Awareness Week in New York State, recognizing and honoring all those who have selflessly donated marrow or been tested as a potential donor, and to enhance public awareness of the desperate need for bone marrow donors, particularly minority donors;

During Bone Marrow Donor Awareness Week, the Bone Marrow Resource Foundation will distribute educational material and conduct a donor drive to test individuals as potential donors in the Legislative Office Building. Donors will be registered with the

National Marrow Donor Program through the local donor center at the American Red Cross in Albany;

Everyone has the ability to give "the gift of life" by donating bone marrow to someone who faces imminent death from a blood related disease;

Through its commitment to the preservation and enhancement of human life, Bone Marrow Donor Awareness Week so clearly advances that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to proclaim May 24th through the 28th, 1993, as Bone Marrow Donor Awareness Week in New York State, and

BE IT FURTHER RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to the Bone Marrow Resource Foundation, the National Marrow Donor Program and the New York State American Red Cross of

Albany, in recognition of their efforts in educating the public and assisting those in need of a bone marrow donation.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: Mr. President, as you've just heard, this is Bone Marrow Awareness Week. It was originated by the late Senator Gene Levy who passed away of leukemia just about three years ago. I think he was aware of that. What we're trying to do is get enough people involved in the international and national registry so that people who have leukemia and other diseases that can be helped by a bone marrow transplant, can find people who match.

In your own family, if you have a problem like this and you need a bone marrow transplant, you only have about a 25 percent of matching in your family. If you have to go out of your family, your chances of finding a match are one in 20,000.

Presently we only have approxi

mately 300,000 people in the international registry. We are trying to expand that registry this week. We're doing two things basically. First thing so everybody that can hear, we have a registry downstairs on the third floor in the LOB.

Anybody that would like to have their blood typed for this bone marrow registry could go down there. All it takes is a little pinprick and about two tablespoons of blood and if you match at some point in the future they will come and ask you but not require you, if you would please have some of your bone marrow transplanted to someone who is dying of leukemia or some other disease like that.

The other disease we're doing is it costs upwards of $45 to test each individual. You will not be charged downstairs but we are having a Bowl-a-Thon tonight, our second annual Bowl-a-Thon at the Playdium. There will be Senators there, such as Senator Skelos, bowling there with their spouses tonight. Last year we raised about $10,000 with

our program. The lobbyists assisted us. This year we expect to raise about $10,000 also and that money will go to pay for the typing.

We thank everyone involved, all the staff, all the Senators, and hope everybody bowls well tonight, and remember if you'd like to get tested, it's on the third floor of the LOB from 11:30 to 5:00 o'clock today and tomorrow.

Thank you, Mr. President.

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

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The resolution is adopted.

Senator Padavan, what's your pleasure?

SENATOR PADAVAN: Non controversial, please.

ACTING PRESIDENT FARLEY: Non-controversial calendar, the Secretary will read.

THE SECRETARY: On page 4, Calendar Number 31, by Senator Padavan, Senate Bill Number 128-A.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 454, by Senator Volker, Senate Bill Number 3165 A, 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 38.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 465, by -

SENATOR PADAVAN: Lay it aside, please.

ACTING PRESIDENT FARLEY: Lay it

aside for the day, Senator Padavan?

SENATOR PADAVAN: For the day, also 615, please lay aside for the day.

ACTING PRESIDENT FARLEY: 615 will be laid aside for the day.

THE SECRETARY: Calendar Number 656, by Senator Velella, Senate Bill Number 4650, an act to amend Chapter 934 of the Laws of 1985.

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 38.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 723, by Senator Trunzo, Senate Bill Number 3473, an act to amend the Public Authorities Law and the General Municipal Law.

ACTING PRESIDENT FARLEY: Read your -- 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 38.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 737, by Senator Velella, Senate Bill Number 1887, an act to amend the State Finance Law, the Tax Law and the Administrative Code of the city of New York.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk. You can 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 40.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 744, by Senator Cook, Senate Bill Number 2836, General Municipal Law, in relation to establishing uniform procedures.

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 40.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 748, by Senator Skelos, Senate Bill Number 4658, an act to amend the Real Property Tax 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 40.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 756, by Senator Levy, Senate Bill Number 3884, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR DOLLINGER: Could we lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 782, by Senator Lack, Senate Bill Number 4818, an act to amend the Workers' Compensation Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2 -

SENATOR GOLD: Lay it aside,

please.

SENATOR LACK: Lay it aside for the whole day.

ACTING PRESIDENT FARLEY: Lay it aside; withdraw the roll call. Lay it aside for the day.

THE SECRETARY: 791, by Senator Saland, Senate Bill 4941.

SENATOR SALAND: Lay aside, please.

ACTING PRESIDENT FARLEY: Lay aside, just temporarily or for the day?

SENATOR SALAND: For the day.

ACTING PRESIDENT FARLEY: For the day.

THE SECRETARY: Calendar Number 801, by Senator Johnson, Senate Bill Number 4775, Environmental Conservation Law, in relation to tidal wetlands fees.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 816, by Senator Skelos, Senate Bill Number 1156.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 818, by Senator Johnson, Senate Bill Number 1898.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 826, by member of the Assembly Cahill, Assembly Bill Number 4966, Public Health Law, in relation to approval of amended applications for construction.

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 40.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 828, by Senator Tully, Senate Bill Number 4752, New York State Medical Care Facilities Finance Agency Act.

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 42.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 829, by Senator Tully, Senate Bill Number 4997, an act to amend the Public Health Law, the Penal Law and the Domestic Relations 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 42.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 830, by Senator Tully, Senate Bill Number 5272, an act to amend the Public Health Law, in relation to the appointment of members of the breast cancer detection.

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 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 852, by Senator Volker, Senate Bill Number 1137, Civil Practice Law and Rules.

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 43.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 857, by Senator Volker, Senate Bill Number 2421, an act to amend the Penal Law, in relation to the offense of battery.

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 43.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 867, by Senator Mega, Senate Bill Number 2633, an act to amend the Public Housing Law.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 900, by Senator Marchi, Senate Bill Number 3919, an act to amend Chapter 812 of the Laws of 1983, amending the Navigation Law.

SENATOR MARCHI: Star the bill.

ACTING PRESIDENT FARLEY: Star the bill at the request of the sponsor.

THE SECRETARY: Calendar Number 904, by Senator Sheffer, Senate Bill Number 1818, Education Law, in relation to mandatory

continuing education for pharmacy.

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

ACTING PRESIDENT FARLEY: Laid aside for the day.

SENATOR GOLD: Can we ask what happened to 880, please.

ACTING PRESIDENT FARLEY: 880, it's going to be amended.

SENATOR GOLD: Amended.

ACTING PRESIDENT FARLEY: We're going to amend it, I'm told.

THE SECRETARY: Calendar Number 909, by Senator LaValle, Senate Bill Number 5373, Education Law, in relation to -

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

Senator Present, that's the first time through.

SENATOR PRESENT: Mr. President, let's take up the controversial calendar.

ACTING PRESIDENT FARLEY: Controversial, the Secretary will read the controversial calendar.

THE SECRETARY: On page 4, Calendar Number 31, by Senator Padavan, Senate Bill Number 128-A, an act to amend the Executive Law.

SENATOR GALIBER: Explanation.

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

SENATOR PADAVAN: Very simple bill, Mr. President. It requires that, if the state Board of Parole is considering the release of an inmate that they seek guidance or approval from the sentencing judge. If that judge is no longer sitting or does not respond within 25 days, then the Parole Board would act as they normally do.

SENATOR GALIBER: Yes. Will the Senator yield for a question?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT FARLEY: Senator

Padavan, will you yield to Senator Galiber?

SENATOR GALIBER: Senator, prior to your introducing this bill, are you aware of what the philosophy was as far as the Parole Board in terms of indeterminate sentences as it relates to the judge sentencing that person to an indeterminate sentence?

SENATOR PADAVAN: Senator, I'm not sure what you mean by "philosophy;" could you be more specific?

SENATOR GALIBER: Yes, perhaps I'll go on the bill, Senator, and then I can ask a question.

On the bill, Mr. President.

ACTING PRESIDENT FARLEY: Senator Galiber, on the bill.

SENATOR GALIBER: Mr. President, for years now, those of us who have been fraught with the notion of indeterminate sentences have been told by the Parole Board over and over again that they are in the process of taking over where a judge sentences a person to an in determinate sentence, that they have the prime

responsibility of either letting that person go, abiding by, if you will, the presumption of eligibility and a number of other categories that come up, which is basically the Parole Board's responsibility.

Under this bill, Senator Padavan would have the judge who has said historically that "I have no longer anything to do with it, once I sentence someone to that independent sentence I'm out of the picture. Now, I can make a recommendation, if you ask me to do so" which some of us said if they're out they're out, they shouldn't even be given that opportunity to make that recommendation, but through custom and usage when someone comes up for parole, what happens is that they send a little note to the district attorney and also a note to the judge who, in my judgment, should have absolutely nothing to do with it, nothing whatsoever to do with it.

So the bill that Senator Padavan has put here and amended -- I believe you amended this bill, didn't you?

SENATOR PADAVAN: Yes.

SENATOR GALIBER: Yes, we were concerned initially that the judge -- it was mandated in the original language that the judge would have to respond to this -- a judge who doesn't want to respond in the first place, a judge who has washed his hands of it, a judge who has said, "Look, I've sentenced that person, that's the end of it."

It was amended to say, well, if he doesn't do -- meaning the judge, if he or she does not do anything affirmative within a period of time, so that's just another way of putting the judge in, I don't think the amendment means very much because the bill itself is not needed.

So the question I'd ask of you, Senator, why, if part and parcel of what I've said is so, why do we need this piece of legislation if we have a Parole Board who has the responsibility of determining when a person leaves because they have exclusive jurisdiction over that person? Why do we have to involve,

now, a judge or a district attorney who's finished prosecuting the case and, secondly, a judge who has sentenced the case and, secondly, a Parole Board who takes the position that they take over the responsibility of the sentencing judge and they decide whether he or she should be released, why do we need this piece of legislation?

SENATOR PADAVAN: Well, Senator, I think it is clear what the intent is and that is to allow an opportunity for the sentencing judge who, after all, sat during the trial, the criminal trial, was aware of many, many aspects of that trial including recommendations on sentencing which you are obviously more familiar with than I, but I know to exist and is privy, by personal experience, and it would appear to me and others who support this bill that it would be helpful to have the benefit of that experience if the judge so chooses to exercise it.

So that, in essence, is the reason for the legislation, Senator.

SENATOR GALIBER: Well, let me try again. I -

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: It's always been a very frustrating thing with the number count here. Let me try again.

The judge has absolutely nothing to do with this case. Once he or she has heard all the facts and all the circumstances and a jury comes in and says, We find this person guilty, and they give you a 30-day probation report and they interview the victims and they interview a whole slew of people and based on that they come back, the district attorney makes a recommendation for sentence, it's over with. It's finished. That's the end of it.

I see no reason whatsoever we should go through the back door to attempt to bring a district attorney in who has an opinion, and a judge who has an opinion. The judge has an opinion, just he sentences that person, that judge is out of the picture.

There is absolutely no need for this type of legislation. As I said before, they're all over the picture so I would be opposed to the legislation. It doesn't make good sense to me, no reflection on the sponsor of the bill; it's just not needed because they're out of the -- out of the swim anyway.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yeah. I would point out that there was a letter from the Division of Parole in opposition and one of their objections has been cured by the amendment by Senator Padavan. I think, however, that the one thing that the amended bill doesn't cure is the basic philosophical argument raised by Senator Galiber which I will not repeat, but I think that's more than the technical issue involved.

I would agree with Senator Padavan that if you require an answer within 25 days, obviously you could send out the letter 30

days before the eligibility. If you get an answer back and there wouldn't be a time lag, but there is a major philosophical issue, and I understand where Senator Padavan is coming from, but in the real world, in the real world, knowing judges, knowing district attorneys, the fact is they do, in fact, lose sight of what happens over a period of time.

A judge has a calendar, it's constantly moving. District attorney is responsible for thousand and thousands of cases and the concept of them coming back, having memories jarred, makes no sense.

In those few cases where that jarring is necessary, the present procedures are taking care of that, so I think on the philosophical issue, there ought to be a no vote.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of September.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 31 are Senators Connor, DeFrancisco, Espada, Galiber, Gold, Gonzalez, Leichter, Ohrenstein, Smith and Waldon. Ayes 37, nays 10.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 756, by Senator Levy, Senate Bill Number 3884, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section. Explanation has been asked for.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 801, by Senator Johnson, Senate Bill Number 4775, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read

the last section.

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

SENATOR LEICHTER: Explanation.

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

SENATOR JOHNSON: Mr. President, the law presently provides if you want to submit an application for some improvement in a wetland area, named wetland area, the fee shall be from 100 to $900. Invariably, the Department charges $900, and many times a permit is never granted. This is certainly an excessive application fee, coupled with the fact that there's concurrent jurisdiction of the local town or village which means you have two applications, two permit fees, very expensive, not even knowing if you're going to get the right to use your land if you desire.

So what this bill says that we're going to cut down the application from 50 to 250 and then the permit fee, if it's granted, would

be an additional $250 up to 650, which means the $900 will be paid if you get a permit, up to 900 but not just for getting the application and being turned down.

It seems like an overdue method of correcting some of the abuses developing in the DEC permitting program.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: I don't know what abuses Senator Johnson is talking about in the permitting process and, if there are abuses, certainly this doesn't address it.

The issue here is, as made by DEC in their memo, memorandum in opposition which, frankly, makes sense to me, is that the cost in processing an application is in the determining whether the application should be granted or

not. It's not in the issuance of the -- of the permit as such. They need to review the application. They need to review, I assume, the history of that wetland and to determine whether the application should be given.

Now, under Senator Johnson's bill, somebody submits an application, they do all the work, they may deny the application because it's not justified and because the particular project would be harmful to the -- to the wetlands.

Now, under Senator Johnson's bill, that person would only pay the lesser fee. That really isn't fair. We've asked DEC to do the work. What the fee is based on is going through the application.

Now, we complain about the need to fund these agencies and so on, but one of the reasons they're funded is because they're trying to respond to the public asking them to process applications, so on. They ought to be by and large user/consumer fees, and if we're going to make it a consumer fee, if we're going to charge

people for the work that DEC does, the work is in processing the application, so it certainly makes sense to say, You come in with the application, you got to put up the money that it's going to cost us to do the work.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of January.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46, nays 2, Senators Dollinger and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 816, by Senator Skelos, Senate Bill Number -

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 818, by Senator Johnson, Senate Bill Number 1898, an act to amend the Executive Law.

ACTING PRESIDENT FARLEY: Read the last.

SENATOR LEICHTER: Explanation.

SENATOR JOHNSON: Lay that aside today.

ACTING PRESIDENT FARLEY: Lay that aside for the day.

THE SECRETARY: Calendar Number 867, by Senator Mega, Senate Bill Number 2633, an act to amend the Public Housing Law.

ACTING PRESIDENT FARLEY: Read the last -

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Mega.

SENATOR MEGA: Mr. President, this bill amends the Public Housing Law that

affects the police in the housing buildings in our city of New York and, at the present time, the detective division is discretionary with the Housing Authority.

What this bill does is to make the detectives division permanent. This bill passed this house last year.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Leichter.

SENATOR LEICHTER: Mr. President, my problem with this bill, and we've had a number of these bills, is that we're really making decisions on administration of police departments that has to be left to the supervisors, to the heads of those departments. We have a Housing Authority. We have a person who's in charge of the Housing Authority Police. I just don't think it's proper for us to try to micromanage these police departments by these sort of bills.

I'm going to vote in the negative.

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 45, nays 3, Senators Espada, Leichter and Paterson recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Markowitz.

SENATOR MARKOWITZ: Yes, I'd like to have unanimous consent to be voting in the negative on Calendar Number 31.

ACTING PRESIDENT FARLEY: Senator Markowitz is in the negative on Calendar 31, without objection.

THE SECRETARY: Calendar Number 909, by Senator LaValle, Senate Bill Number 5373, Education Law, in relation to tuition at community colleges.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY: Explanation.

SENATOR LAVALLE: Mr. President, this legislation was born out of my concern and the fact that there has been greater and greater pressure on the increase of tuition at our community colleges.

There were discussions at the time that we were doing the budget, when we increased our base aid from $1600 per F-TE to $1650 per F-TE, but we put in certain language dealing with cost containment of some of the costs at community -- our community colleges. However, at that time, we did not succeed and I must say it doesn't mean that before this session is over that we, either in the form of this legislation or in the budget clean-up bills, that we will not address this concern.

This legislation specifically indicates that, before we trigger in the cost containment progisions, that the state must increase its share by another $50 per F-TE

bringing us back to a commitment of $1,700 per full-time equivalent.

To show you my concern and the need for this legislation, during the last budget deliberations, one community college president, while making a case for the restoration of base aid, gave the following alternatives as we considered various levels of base aid restoration:

If we didn't do anything, if we gave zero increase in base aid, the tuition would have increased $250. If we increased state aid by $80, the tuition would have increased $182, giving a total yield of $262, the 80 in state aid plus the 182 in the tuition increase, and if we had increased the state aid $125, the tuition would have increased by $146, giving a yield of $271.

So my point is that our community colleges are putting too much pressure on tuition and the most important aspect of our community colleges is access. These are the students who live in our community, who should

have the doors open to a post-secondary education, and that it is critical that the cost come into line with our ability to keep that access open, so that the students in our communities can continue to attend our community colleges.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President.

I think this is a very convoluted and ill-advised bill. It really shirks, I think, the obligation that we have and shirks facing up to the problem which Senator LaValle somewhat hinted at or may have even skirted.

The real problem is that community colleges have been underfunded. Now, what Senator LaValle does is says, well, if we bring up our state funding a little more, bring it back maybe to a level what is -- that it was, although I believe he doesn't even bring it back to the level that it once was, and this is not even accounting for inflation, then before we're

going to allow any increase in tuition, we're telling the community college, you've got to cut your expenses.

Well, Senator LaValle, you're right that access is important, but I submit that you will agree with me that the quality of education is important too, and I don't want to just say, as I know you don't because you've been a leader in higher education in this state for many years, you don't want to say, well, we're going to make community colleges available, but if you're going to go to classrooms or where there's not going to be any teachers or where there's not going to be hundreds of students and you're not going to get courses that you're going to need, but that's precisely what's going to happen as a result of your bill, because you mandate, you put them in an impossible situation. You put the community colleges between a rock and a hard place.

You say to them, you can't increase tuition and/or you cut costs and in some instances you're probably going to have to

do both. I would submit to you that the answer is that we ought to be doing the job that we haven't done here, not because of you, because I know you've been fighting for higher education.

I issued a report earlier this year that showed that higher education over the last five, six years, has been one of the rare funded institutions or areas of government. We've seen a dramatic decline when accounting for inflation, of the money that we put into CUNY, SUNY and the community colleges, and it's terrible public policy, just terrible public policy. All of us, I'm sure got up and talked how important it is to have a well educated society, well trained workers, we're competing with Japan and Germany, you got that whole litany, everything you like to get up and say is that, but here we have in this state an excellent or at least the foundations or the structure of an excellent higher education system, but we haven't been funding it.

Now, you come along with this bill, and you say, O.K., well, we're worried,

tuition has been going up, so before you can increase tuition you've got to reduce your expenditures. Well, what are the expenditures? There's staff, they're maintaining classrooms, their courses, and so on, so you're giving access if you're really achieving that but at the expense of the education that needs to be provided.

I would rather see a determination, a commitment here on the part of this legislative body to say that we've got to bring the expenditures of community colleges up to an appropriate level. That, I submit to you, is the answer, not this bill.

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: Those recorded in the negative on Calendar Number 909 are Senators

Espada, Galiber, Leichter, Paterson, Present and Waldon. Ayes 42, nays six.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present, that's the last bill. There are a couple of motions on the floor.

SENATOR PRESENT: Mr. President, recognize Senator Paterson, please.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Mr. President, with unanimous consent, I'd like to be recorded in the negative on Calendar Number 31.

ACTING PRESIDENT FARLEY: Senator Paterson will be in the negative on Calendar Number 31, without objection.

Senator Markowitz.

SENATOR MARKOWITZ: Like to have consent to be recorded in the negative on Calendar Number 909.

ACTING PRESIDENT FARLEY: 909, Senator Markowitz is in the negative.

Senator Libous.

SENATOR LIBOUS: Mr. President, on page 37, I offer the following amendments to Calendar Number 494, Senate Print Number 3517-A and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Bill is amended, bill will retain its place.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. On page 31, I offer the following amendments to Calendar Number 880, Senate Print 5221 and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Bill will retain its place.

SENATOR KUHL: Thank you.

ACTING PRESIDENT FARLEY: We have one substitution to read, Senator Present, if that's your pleasure. Secretary will read it.

THE SECRETARY: On page 11, Senator Hannon moves to discharge the Committee on Rules from Assembly Bill Number 6975 and

substitute it for the identical Calendar Number 471.

ACTING PRESIDENT FARLEY: Substitution is ordered.

Are there any other motions on the floor?

Senator Present.

SENATOR PRESENT: Mr. President, may I suggest we stand at ease for a few moments.

ACTING PRESIDENT FARLEY: The Senate will stand at ease for a moment or two.

(The Senate stood at ease.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: In behalf of Senator Marino, I ask that his privileged resolution title be read and may it be acted upon.

THE SECRETARY: Legislative

Resolution Number 1531, by Senator Marino, paying tribute to David Holmes Greenfield, in recognition of his contribution and accomplishments over a distinguished career in the financial services industry.

ACTING PRESIDENT FARLEY: All in favor of the resolution, say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move that we adjourn until tomorrow at 3:00 p.m.

ACTING PRESIDENT FARLEY: The Senate stands adjourned until tomorrow at the regular hour.

(Whereupon, at 4:11 p.m., the Senate adjourned.)