ALBANY, NEW YORK

June 9, 1993

12:40 p.m.

REGULAR SESSION

SENATOR FRANK PADAVAN, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT PADAVAN: Senate will come to order.

Please join me and rise for the Pledge of Allegiance.

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

In the absence of clergy, we will bow our heads for a brief moment of prayer.

(Whereupon, there was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 8. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Monday, June 7, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT PADAVAN: Hearing no objection, the Journal stands approved as read.

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.

Senator Johnson.

SENATOR JOHNSON: Mr. President, on page 19, I offer the following amendments to Calendar Number 799, Senate Print Number 4139, ask the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT PADAVAN: So ordered.

Senator Present.

SENATOR PRESENT: Mr. President, I wish to call up my bill, Print 2956, recalled from the Assembly which is now at the desk.

THE SECRETARY: By Senator Present, Senate Bill Number 2956, an act to amend the Tax Law.

SENATOR PRESENT: Mr. President, I now move to reconsider the vote by which this

bill was passed.

ACTING PRESIDENT PADAVAN: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT PADAVAN: The bill is before the house.

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

ACTING PRESIDENT PADAVAN: Amendments are received.

SENATOR PRESENT: Thank you.

ACTING PRESIDENT PADAVAN: Bill retains its place on the calendar.

Senator Levy.

SENATOR LEVY: Yes, Mr. President. I move to amend Senate Bill Number 4887A by striking out the amendments made on June 1st and restoring it to its original print number S. 4887.

ACTING PRESIDENT PADAVAN: The amendments are stricken. The bill now is

restored to its original print. Is that correct, Senator Levy?

(There was no response.)

Are there any other actions?

(There was no response.)

Substitutions.

THE SECRETARY: On page 28 of today's calendar, Senator Wright moves to discharge the Committee on Rules from Assembly Bill Number 6841 and substitute it for the identical Third Reading 1023.

On page 28, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 6101A and substitute it for the identical Third Reading 1029.

On page 29, Senator Trunzo moves to discharge the Committee on Rules from Assembly Bill Number 7704A and substitute it for the identical Third Reading 1035.

Also on page 29, Senator Holland moves to discharge the Committee on Mental Health and Developmental Disabilities from Assembly Bill Number 353 and substitute it for

the identical Third Reading 1039.

ACTING PRESIDENT PADAVAN: Substitutions ordered.

We'll proceed with the calendar, Senator Present. Shall we proceed with the non-controversial calendar?

SENATOR PRESENT: Mr. President, let's proceed with the non-controversial calendar, please.

THE SECRETARY: Calendar Number 229, on page 6, by Senator Stafford.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay it aside.

THE SECRETARY: Calendar Number 338, by Senator Sears.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT PADAVAN: Lay it aside for the day.

THE SECRETARY: Calendar Number 567, by Senator Seward, Senate Bill Number -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay it aside.

THE SECRETARY: Calendar Number 630, by Senator Cook, Senate Bill Number 2917A, an act to amend the General City 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.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 631, by Senator Cook, Senate Bill Number 3201A, an act to amend the General City Law, the Town Law and the Village 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.)

THE SECRETARY: Ayes 36.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 653, by Senator Tully, Senate Bill Number 2689A, an act to amend the Public Health 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.)

THE SECRETARY: Ayes 36.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 685, by Senator Lack, Senate Bill Number 4044.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay

the bill aside.

THE SECRETARY: Calendar Number 715, by Senator Velella, Senate Bill Number 4998A, an act to amend the Insurance 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.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 720, by member of the Assembly Vann, Assembly Bill Number 7098A, Not-for-Profit Corporation 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.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 729, by Senator Saland, Senate Bill Number 3105B, 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.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 770, by Senator Lack, Senate Bill Number 1639.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay the bill aside.

THE SECRETARY: Calendar Number 771, by Senator Lack, Senate Bill Number 1641B, Workers' Compensation Law, the Insurance Law and the State 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 36. Nays -

ACTING PRESIDENT PADAVAN: Results.

THE SECRETARY: Ayes 35, nays 2. Senators DeFrancisco and Wright recorded in the negative.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 842, by Senator Maltese, Senate Bill Number

4112A, an act to amend the Vehicle and Traffic 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 37.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 957, by Senator -

SENATOR GOLD: Lay it aside for Senator Halperin.

ACTING PRESIDENT PADAVAN: Lay it aside.

THE SECRETARY: Calendar Number 1003, by Senator -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay the bill aside.

THE SECRETARY: Calendar Number 1007, by Senator DeFrancisco, Senate Bill Number -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay the bill aside at the request of Senator Gold.

THE SECRETARY: Calendar Number 1012.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay it aside.

THE SECRETARY: Calendar Number 1013, by Senator Holland.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay it aside.

THE SECRETARY: Calendar Number 1014, by Senator Pataki.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay the bill aside.

THE SECRETARY: Calendar Number 1015, by Senator Tully.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay the bill aside.

THE SECRETARY: Calendar Number 1016, by Senator Kuhl, Senate Bill Number 2454.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay the bill aside.

THE SECRETARY: Calendar Number 1017, by Senator Saland.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay the bill aside.

THE SECRETARY: Calendar Number 1018, by Senator Cook, Senate Bill Number 2970, State Administrative Procedure Act.

SENATOR GOLD: Lay it aside for Senator Leichter.

ACTING PRESIDENT PADAVAN: Lay the bill aside.

THE SECRETARY: Calendar Number

1019, by Senator Waldon, Senate Bill Number 3330, an act to amend the Social Services 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 40.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 1020, by Senator Volker.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay it aside.

THE SECRETARY: Calendar Number 1021, by Senator Farley, Senate Bill Number 3610.

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 38, nays 2, Senators Gold and Leichter recorded in the negative.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 1022, by Senator Wright, Senate Bill Number 3806A, State Administrative Procedure Act.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT PADAVAN: Lay it aside.

THE SECRETARY: Calendar Number 1023, by member of the Assembly Seabrook, substituted earlier today, Assembly Bill Number 6841, State Administrative Procedure Act.

SENATOR 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 40.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 1024, by Senator Wright, Senate Bill Number 3810, State Administrative Procedure Act.

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 40.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 1025, by Senator Wright, Senate Bill Number 3813A, State Administrative Procedure Act.

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 40.

ACTING PRESIDENT PADAVAN: The bill is passed.

THE SECRETARY: Calendar Number 1027, by Senator Wright, Senate Bill Number 4107, an act to amend the State Administrative Procedure Act.

(Whereupon, Senator Volker was in the chair.)

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1028, by Senator Spano, Senate Bill Number 4229A, amends Chapter 409 of the Laws of 1991.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1029, substituted earlier today, by member of the Assembly Destito, Assembly Bill Number 6101A, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1030, by Senator Saland.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1032, by Senator Saland, Senate Bill Number 4866, an act to amend the Family Court Act.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1034, by Senator LaValle.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1035, substituted earlier today, by the Assembly Committee on Rules, Assembly Bill Number 7704A, an act to amend the Civil Service Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1037, by Senator Johnson, Senate Bill Number 5073.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1038, by Senator Padavan, Senate Bill Number 5090, Not-for-profit Corporation Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT VOLKER: The

bill is passed.

THE SECRETARY: Calendar Number 1039, substituted earlier today, by member of the Assembly Murtaugh, Assembly Bill Number 353, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1040, by Senator Saland, Senate Bill Number 5374, an act to amend the General City Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1041, by Senator Volker.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1042, by Senator Holland, Senate Bill Number 5421A, direct the Commissioner of Social Services to convene a work group.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1043, by Senator Spano, Senate Bill Number 5467A, amends Chapter 318 of the Laws of 1991, amending the Mental Hygiene Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1044, by Senator Wright.

SENATOR GOLD: Can we have one day on that, please?

SENATOR WRIGHT: One day, okay.

ACTING PRESIDENT VOLKER: Senator Wright agrees. Lay the bill aside for the day.

SENATOR LEICHTER: Mr. President. May I have unanimous consent to be recorded in the negative on Calendar 1024, please?

ACTING PRESIDENT VOLKER: Without objection, Senator Leichter in the negative on Calendar 1024.

THE SECRETARY: Calendar Number

1045, by Senator Wright, Senate Bill Number 5474, an act to amend the Executive Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1046, by Senator Spano, Senate Bill Number 5512A, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1047, by Senator Larkin.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1048, by Senator Trunzo, Senate Bill Number 5669, amends Chapter 738 of the Laws of 1988, amending the Administrative Code of the city of New York.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number

1049, by Senator Larkin.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1050, by Senator Spano.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1051, by Senator Sears.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1054, by Senator Masiello, Senate Bill Number 5775, an act to amend the General City Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1056, by Senator Present, Senate Bill Number -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay it aside.

THE SECRETARY: Calendar Number 1057, by Senator Libous, Senate Bill Number -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1058, by Senator Maltese, Senate Bill Number 5793, an act to amend the Administrative Code of the city of New York.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call

the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT VOLKER: The bill is passed.

Senator Present, that's the first time around.

SENATOR PRESENT: Mr. President, let's proceed with the controversial calendar, please.

ACTING PRESIDENT VOLKER: Clerk will read.

THE SECRETARY: On page 6, Calendar Number 229, by Senator Stafford, Senate Bill Number 2464A, authorize the Fort Ann Central School District to finance the accumulated deficit.

SENATOR GOLD: May we lay it aside until Monday.

SENATOR PRESENT: Temporarily lay it aside.

ACTING PRESIDENT VOLKER:

Temporarily lay it aside.

THE SECRETARY: Calendar Number 567, by Senator Seward, Senate Bill 4021A.

SENATOR GOLD: May we lay it aside until Monday, please?

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT VOLKER: Lay it aside for the day.

THE SECRETARY: Calendar Number 685, by Senator Lack, Senate Bill Number 4044, an act to amend the Public Authorities Law.

ACTING PRESIDENT VOLKER: Read the last section.

SENATOR GOLD: Hold on for one second. I think the train made it.

SENATOR LACK: Oh, the train made it? It's on time.

SENATOR GOLD: Senator Lack.

SENATOR LACK: Senator Gold.

SENATOR GOLD: Will you yield for a few questions?

ACTING PRESIDENT VOLKER: Senator

Lack yields.

SENATOR LACK: Senator, any time.

SENATOR GOLD: Senator, I have just been given a list of questions and a draft memo in opposition by the MTA, and I have a great respect for your time, and I really wouldn't want to get into a situation where, you know, I spend your time on the floor educating myself on this and wasting your time. You have been very gracious.

And my question is would you mind putting it over for a day? At that point we'll know what we're going to do.

SENATOR LACK: I understand we have both been left at the station, Senator Gold, and I have no problem putting this over until Monday. I have been waiting for years for electrification. I can wait until next Monday on this issue, as well.

SENATOR GOLD: Thank you.

ACTING PRESIDENT VOLKER: Lay it aside for the day for the late train.

THE SECRETARY: Calendar Number

770, by Senator Lack, Senate number 1639, an act to amend the Workers' Compensation Law.

SENATOR STACHOWSKI: May we have one day?

SENATOR LACK: At Senator Stachowski's request, we'll lay it aside for one day.

ACTING PRESIDENT VOLKER: Lay the bill aside for one day.

THE SECRETARY: Calendar Number 957, by Senator Levy, Senate Bill Number 5552B, an act to amend the Election Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT VOLKER: Explanation requested by Senator Leichter.

SENATOR LEVY: Mr. President, let me just say at the outset that over the past couple of weeks, I have had -- let me rephrase it. A couple of weeks ago, I had a conversation with Senator Halperin, and we agreed that there would be a chapter amendment to this bill that relates specifically to prospectively putting ballot questions in plain language to make those

ballot questions more understandable to the public that come to a polling place to vote in the general election and, historically, have had trouble understanding and knowing what the ballot question was about, and there has been a breakdown of communications that related to implementing that chapter amendment, and I take the responsibility for 99.9 percent of it, but we are going to pursue the concept that underlies what Senator Halperin wants to do in an amendment that he is going to offer.

I have spoken to Senator Nozzolio. He is supportive of the concept, and collectively we're going to work on that chapter amendment because it's something that we should do and put into law. I would say that as it relates to this chapter amendment when we work on it, I don't know whether we can have in place the local governmental part of the chapter amendment for this general election and be able to reach it. So I think if and when we work out an agreeable chapter amendment, the local governmental provisions should be after this

year's general election.

So, Senator Leichter, what this bill does is, the bill that is before us today it rectifies a mistake that we made on April the 4th and that mistake was to eliminate one of the two mandatory printings of ballot questions on election day in connection with the general election. The provisions of the Fair Campaign Code that we eliminated on April the 4th, that is not in this bill.

And let me just say for the record, Senator Leichter, that we have not published the Fair Campaign Practices Code since 1975 when the Court of Appeals declared almost all of that act unconstitutional. So, basically, all this bill does is to say that we're going back to the law the way it was on April the 3rd, which would require ballot questions to be printed twice, once each in the two weeks before the general election.

ACTING PRESIDENT VOLKER: Read the last section.

SENATOR LEICHTER: Mr.

President.

ACTING PRESIDENT VOLKER: Senator Leichter, on the bill.

SENATOR LEICHTER: Okay. Senator Levy, would you be so good as to yield?

SENATOR LEVY: Yes, certainly.

ACTING PRESIDENT VOLKER: Senator Levy will yield.

SENATOR LEICHTER: Senator, since you are substantially increasing the publication of these constitutional amendments or propositions, can you tell us what the costs will be to the state of New York?

SENATOR LEVY: Number one, we are not increasing -- we are not increasing what we have done in prior years. We are just rectifying the mistake that we made on April the 4th. The fiscal note is $81,000, but again, I continue to doubt that the amount is that high based upon the information that I have from the Board of Elections.

SENATOR LEICHTER: Senator, I'm sorry. I fail to understand your answer. You

say that you are not increasing the number of publications.

SENATOR LEVY: No, no, we are increasing the numbers. We are going back to what the law was on April the 3rd before we made a mistake and passed a law eliminating the second time printing of ballot questions, and the numbers that we have from the state Board of Elections are that the postage costs are a little bit in excess of $20,000, and we get a number that gives us an $81,000 cost based upon the services of existing personnel who continue to work for the state Board of Elections. I will accept the $81,000, but I certainly don't think that, in effect, that we're going to have an additional $81,000 as it's appropriated in the bill.

SENATOR LEICHTER: Senator, if you would be so good as to continue to yield. I don't accept your characterization that we made a mistake. I think it was -- part of the budget resolution was an effort to decrease the spending in this particular respect, and that's

what we did. Now you are saying you think it was a mistake. I don't even know whether you voted against it but that doesn't matter. You're certainly -

SENATOR LEVY: I voted for it.

SENATOR LEICHTER: Okay. You are certainly entitled now to say I think it's important to have that publication. But I can't understand the figure. If I read this correctly, you are going to require publication in two newspapers published in each county. Right?

SENATOR LEVY: That's what the law was on April the 3rd.

SENATOR LEICHTER: I understand. But what is the effect of having two newspapers in each of the 62 counties of the state rather than just having one?

SENATOR LEVY: The fiscal note is $80,000, but my evaluation of the statistical information and data we receive, and I had to abide by the fiscal note, I do not agree that it will be -- it will be $80,000, but I took the

information that was given to me and put it in the fiscal note.

SENATOR LEICHTER: Senator, where did you get that fiscal note? Was it from the Board of Elections?

SENATOR LEVY: And the Finance Committee where we regularly get our information from, Senator.

SENATOR LEICHTER: Senator, with all due respect, I cannot believe that that figure is correct. If you consider the cost of advertising in newspapers throughout the state and while you may not be required in every instance to -- well, I guess you are.

SENATOR LEVY: That's the information that we were given. It comes to us from the state Board of Elections and the Finance Committee, and we are told that the number reaches $80,000 because calculated into it are the services of existing state employees in doing this job. I can only tell you what I was given.

SENATOR LEICHTER: Senator, maybe

I'm missing something. When we publish or advertise, if you will, a constitutional proposition in the newspaper, do we pay for that?

SENATOR LEVY: Certainly, yes.

SENATOR LEICHTER: And you're telling me that I can double the number of newspapers throughout the state and it's only going to cost $88,000.

SENATOR LEVY: I'm telling you what I was told us, and that is the basis of the fiscal note.

SENATOR LEICHTER: Senator, I accept what you say as to how this came to be part of the bill. Just very briefly.

ACTING PRESIDENT VOLKER: Senator Leichter, on the bill.

SENATOR LEICHTER: I think all of us know what the cost of advertising is. For instance, in the city of New York if you are going to go to a paper of general circulation, as I assume you will -

SENATOR LEVY: Will Senator

yield?

SENATOR LEICHTER: Yes.

SENATOR LEVY: Senator Leichter, have you checked yourself? And are you in a position to tell me on this floor that you know as a matter of fact based on your inquiry that this note is not accurate, that it's going to cost more?

SENATOR LEICHTER: Senator, I'm so sure that that note is incorrect because I have some experience, as I assume many of the members here, with the cost of advertising. I occasionally become involved in the cost of putting a legal notice in the newspaper; and in New York City, it's exorbitant. It's outrageous, and the notices for constitutional propositions could be much greater; and if you put it in a newspaper of general circulation, there is no way, Senator Levy, that that is only going to cost you $88,000 when you are doubling the number of newspapers.

But, Mr. President, on the bill.

ACTING PRESIDENT VOLKER: Senator

Leichter.

SENATOR LEICHTER: I accept that you put it in in good faith; that was the information that was given to you; but I think when we have something that flies in the face of our knowledge and our experience, I think we're justified in disregarding it. I think the cost is going to be much greater.

Over and above that, my belief and my experience is that very few people read these propositions or constitutional amendments when they are put in newspapers. It's just not an effective way to reach the voters. I applaud the purpose and aim of this bill, which is, we want the most, well informed electorate that we possible can have.

But I don't think that this is a good way. Usually, the print is so small that I think an eagle would have a difficulty in reading it. I think the only aim and purpose of that frankly is to subsidize the newspapers of the state of New York; and while I grant that they serve a valuable purpose, on occasion, I

don't think this is how we ought to be spending public monies.

We don't have much public monies around. I don't think that this achieves a valuable beneficial purpose, Senator Levy. I would vote against it even if the sum was $88,000, but I submit to you it's going to be much more expensive than that.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT VOLKER: Senator Gold, on the bill.

SENATOR GOLD: Will Senator Leichter yield to a question?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT VOLKER: Senator Leichter yields.

SENATOR GOLD: I notice some of the newspapers around the state from time to time make editorial comments on various things which they think is in the public interest. Is there anything in the law today which would prohibit a newspaper from printing this material now as a public service and not getting paid for

it?

SENATOR LEICHTER: Absolutely nothing, Senator. And let me say while you point out the editorial policies, I know as I read the editorials throughout the state, they say reduce government spending, and I want to take them at their word as regards this bill, and I think we ought to heed the newspapers to that respect. And I'm glad, Senator Gold, you reminded us of their editorial policy. We may not agree with it all the time, but I think in this instance they are correct.

ACTING PRESIDENT VOLKER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. Mr. President, this bill really touches on an area that's been of some concern to me, and that is, in general, how we spend our money on election-related matters and how we fund the state Board of Elections, and the press is very quick to run off and criticize the various boards of elections and the state Board of Elections when they think that they are not

employing the most modern and technically up-to-date methods of administering the elections.

To that extent, the criticism is right, but it's not free. There is no free lunch. We don't fund the state Board of Elections adequately to do all the types of computerization and cross-checks and outreach that we say we like them to do.

Last fiscal year, they lost a couple of important positions because of budget deliberations made here and that halted their computerization process. Indeed, I have read editorials and talked to some people who were very suspicious of the motives of the legislative, collectively, and the Governor in not funding these programs that would allow sufficient personnel and equipment to cross check campaign contributions, to computerize, and so on.

I don't think that's the case. I think it's one of benign neglect. I think we tend to only pay attention to agencies like the

Board of Elections when an election is upon us. I think that's true with the executive, as well, and it's not just on the state level. I have seen the same phenomenon in New York City, where the city Board of Elections is, by and large, starved until the every four-year mayoral cycle comes around, and then all of a sudden, extra resources are found because, "Gee, we want to run a smooth election."

That's no way to run these agencies, and it's no way to run these agencies to insist on restoring antiquated, outmoded requirements. The original publication requirement is 154 years old, the predecessor to this. It was no mistake that the budget eliminated this $80,000 expenditure on the part of the state Board of Elections. It was done as a conscious deliberate saving.

I think if we're going to modernize the whole system, we have to put our money where our mouth is and give them the money to do the appropriate modern technology they need, and we have to stop forcing them to waste

money on doing things that made a lot of sense in New York 100 years or 150 years ago.

A prior version of this bill in fact talked about how you had to give the ad to both Democrat and Republican newspapers, as if newspapers are enrolled voters. That's the language that was recently deleted in the budget and the original version of Senator Levy's bill was going to restore; that it had to be placed in two papers in each county, the papers being of different political affiliation. Maybe there are newspapers that openly proclaim today in the state of New York that they are true blue Democrats or Republicans, but I doubt it.

It just gives you an idea of how antiquated this provision was. Once upon a time 150 years ago, of course, newspapers were partisan, and it's before really the development of modern so-called objective reporting, which at least in style is objective if not sometimes -- if sometimes people quibble about whether or not it's really so.

So I think this is a step

backward. Now who wants this? Oh, surprise. The New York Press Association and the New York Newspaper Publishers Association want this, and as I read the Press Association memo, it's very clear to me they are concerned in general with legal advertising. This I understand can be a big item, and I don't mean this kind of ad in this bill, but in general: Publication of summonses and so on, other sorts of notices about bidding, and so on and so forth.

Well, you know, those kind of notices are generally addressed to a specific audience. For example, bidding requests and so on, auction notices, and in fact people in those businesses to whom that's addressed often have clipping services or whatever to pick up on these things, and it does serve a useful purpose; but in this case, there are much better ways to reach voters with information about proposed amendments in language they can understand.

Some good government groups have done it. There has been an attempt to do it in

New York City with a voters manual. There are other modern appropriate ways to do this. Many members, indeed, will put a balanced pros and cons about amendments in their news letters.

I suggest that's a much more effective way of informing voters than small printed classified adds. I don't care who wants this bill, it is clear to me and I talked to people in the Assembly, it's a one-house bill. I have been told it's a one-house bill. Frankly, it's pork barrel for the press, and we all know on the other side, not the advertising sales side of the newspaper or the publisher business column, but when you get to the editorial side, generally the press in this state is highly suspect and critical in their editorials of pork barrel. Well, I guess one person's pork is somebody else's bacon, and here we see what I would describe as out and out budget busting because this $80,000 was not in the original budget.

It's pork barrel legislation, and I'm against it, Mr. President.

ACTING PRESIDENT VOLKER: Senator Dollinger.

SENATOR DOLLINGER: Mr. Chairman. Will the sponsor yield to a question?

SENATOR LEVY: Certainly.

ACTING PRESIDENT VOLKER: Senator Levy yields.

SENATOR DOLLINGER: Senator, I'm just reading the text of the bill and the prior drafts. I just have a question on what papers this would be published in. As I understand it, the current law provides that it would be published in one paper of general circulation? Is that correct? The current law provides that, and this bill would provide just two newspapers but drops the requirement there be general circulation. Is that correct?

SENATOR LEVY: Yes.

SENATOR DOLLINGER: Why is that provision of general circulation dropped from the new statute?

SENATOR LEVY: Senator, we

believe that with this legislation that the publishing of the notices should be in two newspapers, but, certainly, I don't know whether you were here when Senator Halperin and I - Senator Halperin actually listened and nodded his head. There's going to be a chapter amendment. We'll address that issue in the chapter amendment to the bill and go back to that provision of the earlier version that related to newspapers of general circulation.

SENATOR DOLLINGER: That was my concern that the purpose of this is to widely broadcast this and we dropped it.

SENATOR LEVY: It will be in the chapter amendment.

SENATOR DOLLINGER: I just have one comment on the bill, Mr. President. I'm going to vote in favor of this bill when we finally get the chapter amendment to work this out.

My only question is the question of election law reform, and I hope that this is the first bill that starts to march us down the

road that I hope will be a whole series of items that we'll see before the end of this session; that we'll look at campaign financing; that we'll look at ballot access; and that we'll see from the majority bills that will really effectuate true election reform; so that not only will we tell the people what they've got the option to vote on but we'll make it easier for them to vote, we'll make it easier for people to get into the political process, we'll make it easier for them to finance campaigns against incumbents or whomever, and that we will see a process that reflects the same democratic spirit, the same encouragement of the democratic spirit that this proposal moves in a direction of accomplishing, and I look forward to those hopefully before the end of this session.

ACTING PRESIDENT VOLKER: Senator Halperin.

SENATOR HALPERIN: Mr. President. Senator Levy alluded to the fact that after he made a statement, I nodded my head, so I felt I should do something more than

that, which I had intended to do before the other speakers rose.

Senator Levy and I just had a discussion shortly before the bill was brought up; and as he indicated, there was some misunderstandings between our staffs as to what we intend to do, and I think we now both agree that the approach we like to adopt in a chapter amendment is to require that somewhere, somehow when we pass a resolution providing for a ballot proposition that the abstract language, the language that will actually appear on the ballot, should be part of that legislation so that we understand when we vote what it is we are putting onto the ballot, and that that language be in clear, understandable, concise language.

The reason I say this is because all too often we vote for various propositions. If one is an attorney and were to read the proposition they might be able to understand what it said, but the average person going into the polling place and having a relatively short

period of time to read it, unless they happen to have read it ahead of time perhaps in a newspaper publication or elsewhere, really is at a great disadvantage in trying to understand the contorted language that somehow is often brought up as the alleged description of the proposition.

So this way we as legislators will take it upon ourselves to come up with language which we believe expresses properly to the public that which we are voting on, and with that understanding in mind, that we will be moving forward with that approach -- and now I see Senator Levy nodding his head -- I will be voting in favor of this legislation and withdrawing the amendment that I had filed at the desk.

ACTING PRESIDENT VOLKER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. Senator Halperin brings up a point that reminds me when we did a bill from Senator Farley which talked about the publication of

information about the effect of bond issues, and we were going to publicize the interest rate assumption of the total cost of the repayment cost, something similar to the mortgage disclosure documents that you have in private business transaction, we would do that as part of the disclosure of bond issues that require voter approval. The text of the amendment and the text of the calculation would all be included as part of that.

I think that spirit that creates nodding heads that suggest that we've got an amendment on the need to get more information out is the right direction to go. We did it with Senator Farley's bill. We had a discussion at that time.

I think the more information that we get out, the better off we are. As I said before, I hope this is the beginning step in a continuing process, look at the electoral process, making it more accessible and more understandable.

I'll nod my head in agreement as

well.

ACTING PRESIDENT VOLKER: Me, too. Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 957 are Senators Connor, Cook, DeFrancisco, Gold, Holland, Leichter, Libous, Ohrenstein and Wright, also Senator Galiber, also Senator Smith. Ayes - also Senator Daly in the negative, also Senator Saland. Ayes 42, nays 13.

ACTING PRESIDENT VOLKER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President. I would like to request unanimous consent to be voted in the negative on Senate 1641B, Calendar Number 771.

ACTING PRESIDENT VOLKER: Without

objection, Senator Bruno on 771 in the negative.

Senator Saland.

SENATOR SALAND: Mr. President. I too would like unanimous consent to be recorded in the negative on that same bill. Calendar 771, Senate 1641B.

ACTING PRESIDENT VOLKER: Without objection, Senator Saland in the negative on 771.

Senator Galiber.

SENATOR GALIBER: Yes, Mr. President. Can I have unanimous consent to be recorded in the negative on Calendar Number 1021.

SENATOR VOLKER: Senator Galiber without consent on 1021.

THE SECRETARY: Calendar Number 1003, by Senator Stafford, Senate Bill Number 4822, an act to amend the Town Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT VOLKER: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, I would like to request unanimous consent to be recorded in the negative on Senate Bill 1641B, Calendar 771.

ACTING PRESIDENT VOLKER: Without objection, Senator Larkin in the negative on 771.

Senator Cook.

SENATOR COOK: Same request, please.

ACTING PRESIDENT VOLKER: Senator Cook in the negative, without objection, on 771.

SENATOR HOLLAND: Same request.

ACTING PRESIDENT VOLKER: Senator Holland.

SENATOR HOLLAND: Same request,

please.

ACTING PRESIDENT VOLKER: Senator Holland, without objection, in the negative on 771.

Senator Sheffer.

SENATOR SHEFFER: Mr. President, same request, please.

ACTING PRESIDENT VOLKER: Senator Sheffer in the negative on Senate 771, without objection.

THE SECRETARY: Calendar Number 1007, by Senator DeFrancisco, Senate Bill Number 5758, amends chapter -

SENATOR GOLD: Can we have one day on that, please?

SENATOR DeFRANCISCO: Would Senator yield to a question?

SENATOR GOLD: Yes, I will be glad to.

SENATOR DeFRANCISCO: This was held for one day. I don't know, is there something controversial, confusing or some information that I should be gathering for this

particular bill?

SENATOR GOLD: Yes.

SENATOR DeFRANCISCO: What would that be?

SENATOR GOLD: Can we have one day?

SENATOR DeFRANCISCO: Would you please provide me with that before Monday?

SENATOR GOLD: Yes.

SENATOR DeFRANCISCO: Because I would be interested to see if a question can be framed about this bill.

SENATOR GOLD: Yes.

SENATOR DeFRANCISCO: Okay. Thank you.

ACTING PRESIDENT VOLKER: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 1012, by Senator Saland.

SENATOR GOLD: Can we have one day on this?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT VOLKER: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 1013, by Senator Holland, Senate Bill Number 736, an act to amend the Social Services Law.

SENATOR GOLD: May we have one day?

SENATOR HOLLAND: Lay it aside for the day.

ACTING PRESIDENT VOLKER: Lay the bill aside for the day at the request of the sponsor.

THE SECRETARY: Calendar 1014, by Senator Pataki, Senate Bill Number 2080, Real Property Tax Law.

SENATOR GOLD: Can we have one day on this?

SENATOR PATAKI: Yes.

ACTING PRESIDENT VOLKER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 1015, by Senator Tully, Senate Bill Number 2428, an act to amend the General Municipal Law.

SENATOR GOLD: Can I have one day on this, please, Senator Tully.

SENATOR TULLY: No objection.

SENATOR VOLKER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 1016, by Senator Kuhl, Senate Bill Number 2454, an act to amend the Executive Law.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1017, by Senator Saland, Senate Bill Number 2699A, an act to amend the Family Court Act, in relation to medical examination.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1018, by Senator Cook, Senate Bill Number 2970, State Administrative Procedure Act.

SENATOR LEICHTER: I have no problem.

SENATOR GOLD: Last section.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1020, by Senator Volker, Senate Bill Number 3573.

SENATOR GOLD: One day?

ACTING PRESIDENT VOLKER: Lay the

bill aside for the day.

THE SECRETARY: Calendar Number 1022, by Senator Wright, Senate Bill Number 3806A, State Administrative Procedure Act.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT VOLKER: Explanation requested by Senator Leichter.

SENATOR WRIGHT: Mr. President. The bill provides for the first time a petition procedure for changing the administrative rules that an agency establishes. By statute, we establish formal criteria to be questioned and a formal procedure by which to petition and a 45-day response period. It is our belief that this will remedy a number of issues that have been raised by the regulated community as they can go back and review the various rules and regulations, and it also will give us an opportunity to avoid costly litigation.

SENATOR LEICHTER: Mr. President. Will Senator Wright yield, please?

ACTING PRESIDENT VOLKER: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Mr. President.

SENATOR LEICHTER: Senator, I believe a similar bill passed last year, but I also believe that this bill has some new language in it. Am I correct? And I specifically refer to line 12, subdivision E.

SENATOR WRIGHT: That's correct. There have been amendments made to the bill as we have had discussions with the Assembly, and we have an agreed to version that the amendments reflected.

SENATOR LEICHTER: Well, what is your understanding or interpretation of the language that's been added, which is that you can request a repeal of rules if they are duplicative of or inconsistent with other state or federal rules?

SENATOR WRIGHT: That's a provision that was reflected in the original bill. The amendments speak to line 8 (b) where language was changed and 11 (e) where language was deleted.

As it reflects to the issues of duplication, the intent, again, is to be consistent, much as we discussed before with federal statutes that we talked about.

SENATOR LEICHTER: Senator, if you will continue to yield, please.

SENATOR WRIGHT: Certainly.

SENATOR LEICHTER: I thought we established that new language -- there may be other new language, but among the new language is subdivision E, which is that it's duplicative or inconsistent with other state or federal rules. And it was that language that I wanted explained, because I'm not sure what you are trying to accomplish or exactly what the parameters are when you say that it's duplicative? I mean if it's exactly the same, I don't know whether it much matters. But are you defining "duplicative" in a broader sense because it covers the same subject matter?

SENATOR WRIGHT: Well, as you can relate in reviewing the bill, there is not a specific definition as it relates to duplicative

or inconsistent. It was included in the original version of the bill, and it simply has been renumbered or relettered in the amended version.

But the intent is where there is inconsistency or there are duplications within agencies that we not increase the added burden on the regulated community; and, therefore, that regulated community has the opportunity to raise that issue by virtue of petition and contend that in fact there is duplication or it is inconsistent with requirements they are currently meeting.

SENATOR LEICHTER: Senator, let me just clarify what my concern is, and I'm not sure that it's grounds to vote against the bill. But if I understood you, the language that I'm concerned about you say was in the bill last year, but it had just been renumbered; or is this new language?

SENATOR WRIGHT: The language that we're discussing was included in the original bill that we filed this year. In the

subsequent version that has been amended that is before us today, it had been renumbered.

SENATOR LEICHTER: All right. I understand that. So you agree with the point I make, and this is for the benefit of our colleagues because, last year, a similar bill passed 57-nothing, and some people will say, "Well, it passed last year by that vote, why shouldn't I vote for it again?" Just to point out that there is additional or different language in there from last year's bill.

SENATOR WRIGHT: That is correct.

SENATOR LEICHTER: All right. Let me just, very briefly, if I may on the bill, and thank Senator Wright for his answer which is clear as always.

ACTING PRESIDENT VOLKER: Senator Leichter, on the bill.

SENATOR LEICHTER: But I am a bit concerned about the language that it's duplicative or inconsistent with other state or federal rules. I have no problem if it's inconsistent; obviously, it shouldn't be in

there. I am a little concerned about duplicative because as Senator Wright and I debated earlier in the year, we had a bill which limited the state's rulemaking power in areas where the federal government has already issued rules and regulations, and it seemed to me that there could very well be instances where New York's own viewpoint or New York's own needs needed to be reflected in rules and regulations.

I would be concerned if duplicative were interpreted in such a manner that it would mean, well, we've got some rules in this area by the federal government and, therefore, the state should not enact rules in this area. If it's duplicative in the sense that it's precisely the same, well, then I guess there is really no need for the state to have it. May not matter very much whether you have both state or federal.

So I'm going to vote for it as I did last year even with this new language, but I just want to say for whatever worth it is, and

it's probably worth nothing, my intent and my understanding is that duplicative would be very narrowly defined to mean that it is precisely the same.

Thank you.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1030, by Senator Saland, Senate Bill Number 4274, amends Chapter 271 of the Laws of 1987.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1034, by Senator LaValle, Senate Bill Number 4902A, amends Chapter 699 of the Laws of 1947.

SENATOR GOLD: One day?

SENATOR LAVALLE: Okay.

ACTING PRESIDENT VOLKER: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 1037, by Senator Johnson, Senate Bill Number 5073, Environmental Conservation Law.

SENATOR GOLD: Will Senator Johnson yield to a question?

SENATOR JOHNSON: Yes, Senator.

ACTING PRESIDENT VOLKER: Senator Johnson yields.

SENATOR GOLD: Senator, there had been a notation that DEC opposed this, and I had nothing on it, but I have just been given

something which says it's a draft -

Last section.

ACTING PRESIDENT VOLKER: Read the last section.

SENATOR GOLD: Senator Leichter would like it laid over for a day.

SENATOR JOHNSON: It's an innocuous bill. It's a name change. The only real change, Senator Leichter, if I can explain this to you is that presently three members are designated by the Majority Leader of this house and three by the Majority Leader of the other house. This changes that just two shall be named by the Majority Leader and one by the Minority Leader. That's a substantial change.

And also it provides that the chairman of Senate Finance, Senate Environmental Conservation, Assembly Ways and Means, Assembly Environmental Conservation, or their designees shall serve as ex officio nonvoting members.

Those are the only two substantial changes other than the name change, Senator.

SENATOR LEICHTER: If Senator will yield.

SENATOR JOHNSON: Yes.

ACTING PRESIDENT VOLKER: Senator Johnson yields.

SENATOR LEICHTER: Senator, I appreciate your comments. What concerns me somewhat is we're setting up here an advisory board which is really in part a legislative appointed board to oversee, or not really to oversee but to make recommendations, consult, perform advisory functions, on an executive function. I just have trouble mixing the legislative and executive functions in that way. I have no problem with the oversight and overview that your committee, the Environmental Conservation Committee, may give. But to take a particular function of DEC and say, in this instance, we're going to set up a body that's composed mainly of legislative appointees to oversee and to advise on that executive function just seems to be somewhat to go contrary to the grain of how we govern and the separation of

power.

SENATOR JOHNSON: Senator, I think you are aware that the Conservation Fund Advisory Council, the presently existing organization, has been in existence for almost a dozen years. They give advice essentially for the department on spending of the funds which are raised through the hunting and fishing license fees, which people they essentially represent.

They work very effectively as advocates for the department in seeking fee increases, when necessary, to see that the money is there to perform the administrative and operational functions of the Department of Fish and Game.

So they are really advocates for the department and for the proper management of the resources, and we're only changing the name and, as I say, putting some minority appointments in. Otherwise, there is really no change from the present operation, Senator.

I'm not trying to disarm you or

or cuckold you or anything. It's an accurate representation of what's being done here.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 1040, by Senator Saland, Senate Bill Number 5374, General City Law.

SENATOR GOLD: Can we have one day on this?

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT VOLKER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 1041, by Senator Volker, Senate Bill Number

5394.

SENATOR GOLD: Until Monday.

ACTING PRESIDENT VOLKER: You can have Monday. Lay it aside for the day.

THE SECRETARY: Calendar 1047, by Senator Larkin, Senate Bill Number 5546A, village of Walden to lease certain parklands.

SENATOR GOLD: One day.

SENATOR LARKIN: Lay it aside one day at the request of -

ACTING PRESIDENT VOLKER: Lay the bill aside for Senator Gold's Monday.

THE SECRETARY: Calendar Number 1049, by Senator Larkin, Senate Bill Number 5745, authorize the payment of transportation aid.

SENATOR GOLD: May we have one day?

SENATOR LARKIN: To the gentleman from Queens, I will hold it over until Monday.

ACTING PRESIDENT VOLKER: Lay the bill aside until Monday.

THE SECRETARY: Calendar Number

1050, by Senator Spano, Senate Bill Number 5750, Mental Hygiene Law.

SENATOR GOLD: Can we have one day on this?

SENATOR SPANO: Lay it aside for the day.

SENATOR GOLD: Thank you.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1051, by Senator Sears, Senate Bill Number 5754, in relation to the payment of a judgment.

ACTING PRESIDENT VOLKER: Senator Sears, explanation requested. Explanation of your bill 1051.

SENATOR SEARS: This is in relation to the payment of a judgment in the case of Jane Doe versus the state of New York. It provides that the termination upon death of plaintiff provisions of Article 50-B of the CPLR law shall not apply to a particular plaintiff.

The justification is this. A nurse who was a resident of Rome, New York,

became infected in 1988 with the HIV virus which causes AIDS. She became infected while working in Faxton Hospital in Utica, New York, after struggling with a dying state prison inmate. A needle dripping with the prisoner's HIV-positive blood jabbed her in the hand. The nurse who for obvious reasons wishes to remain anonymous is being referred to as Jane Doe.

She sued the state because the prison guards outside the inmate's hospital room refused to help in the struggle during which she was struck by the needle, and this refusal to give her assistance by the correction officers was done even after repeated pleas from herself and the doctors who were assisting her at the time she was jabbed with that needle.

The New York State Court of Claims awarded her $5.4 million last year for the negligent infliction of the HIV virus. Under Section 50-B of the CPLR law, Mrs. Doe's non-economic losses, specifically her future conscious pain and suffering, which was computed by the court to be $3.5 million for a projected

5.5 year's life span shortened because of the defendant's conduct must be paid out over 5.5 years. The Court of Claims judge who decided her case ruled that she would live that period of time.

However, because of her advancing condition with the HIV virus, it is highly likely that she will die before the 5.5 year period. Under Article 50-B of the CPLR law if Jane Doe dies before the five and a half year period set by the court, all payment for the conscious pain and suffering elements of the verdict will cease. The law does not allow payments to continue to her family which includes a husband, three children whose ages run from 11 to 19.

Since the verdict of the Court of Claims, her attorney has appealed the decision requiring the state to pay the full amount of the settlement rather than have the payment spread out. The Appellate Division in its findings increased the awards from $5.4 million to $6,079,550. This increased award of

$750,000 included wages lost by her premature death and the value of her services as a home maker. The Appellate Division also dismissed the state's appeal which claimed the award to Jane Doe was excessive. However, the Appellate Division did uphold the lower court ruling that the state could not be forced to pay the entire amount at once.

Her attorney indicates that her illness is progressing at a faster rate than previously thought. Under state law, awards of more than $250,000 may be paid in installments. Because of testimony at her trial in the Court of Claims, the court based the time period of payment to her until her projected death in 1997.

Unfortunately, since that trial last year, recent laboratory tests showed a marked decline in Jane Doe's immune system which caused the doctor who testified at her earlier trial to modify his prognosis and tragically predict Mrs. Doe's death in late 1995 or 1996. Based upon this prediction, Mrs. Doe's family

would be penalized by state statute.

Thus the stark reality is that the state's negligence could cause Mrs. Doe's premature death, and the statutory law of the state will then allow the negligent party to benefit from the negligence.

This bill would exempt this particular plaintiff from the provisions of Article 50-B of the CPLR law that terminates non-economic loss payments upon the death of the claimant. The Court of Claims already figured Mrs. Doe's non-economic loss for a shortened life span. To end the payment because she dies earlier than that, would have the defendant in this case saving money because of her earlier demise or, in effect, getting away with murder.

Mr. President, that's the explanation of the bill.

ACTING PRESIDENT VOLKER: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President. I happen to represent Jane Doe, and I'm very familiar with this case as is Senator

Sears and all of us who represent portions of the Mohawk Valley.

Unfortunately, people all over the United States are also familiar with this case because the state of New York has already been tried in the media. "60 Minutes" and other television programs -- I believe it was "60 Minutes" -- have done lengthy stories on this particular case, and I'm afraid the state of New York comes out looking like a very uncaring state government. And it troubles me that we have to go to this length to make some changes.

For the record, I would like to just mention that I did introduce a slightly different bill. The bill that I prepared would have structured the payments or rather allowed a judge in this unique situation to structure the payments taking into consideration both the anticipated life span of the individual affected as well as the state's ability to pay at the time. I wanted to leave maximum discretion in the judiciary branch. That bill, however, has not moved.

I am quite pleased to support this bill as the only choice before us today to rectify a terrible injustice. I think we would be sending an extremely important message and a message of kindness and compassion not only to Jane Doe but to everyone working in health professions across this state, specifically to everyone working in the health field who comes in contact with inmates who are now brought with an alarming frequency into area hospitals ill-equipped to treat every inmate as though he or she is HIV positive when, in fact, many of them are HIV positive.

We need to be sure that there is a caring and compassionate medical community out there able to deal with HIV- infected inmates.

To do anything less than this bill to compensate Jane Doe and her family for the terrible tragedy that has befallen them, I think, would be a sign of enormous callousness by this chamber.

So I would urge all of my colleagues to please think very hard about the

anguish experienced by Jane Doe and her family, and let's give Senator Sears' bill the respect that it deserves today.

SENATOR LEVY: Senator Halperin.

SENATOR HALPERIN: Mr. President. I listened very carefully to the statement that Senator Sears made on behalf of -- I thought it was his constituent, but I guess it's Senator Hoffmann's constituent, and the compelling arguments as to why the individual or in this case the entity, the state of New York, which was in fact responsible for causing this injury will now benefit from an earlier death because of the nature of the structured awards.

And Senator Sears referred to this as a stark reality that the perpetrator of this deed was now going to benefit, and Senator Hoffmann referred to this as a unique situation.

Well, I'm sure that every situation is unique in its own way, but the stark reality is that under the provisions of

this legislation which I believe was voted upon -- well, not believe -- I know was voted upon by a majority of the members of this house and the other house, that any individual who is injured and dies sooner rather than later will relieve the guilty party of the burden of paying additional monies. So in this regard there is nothing really that unique about in situation.

What this legislation is seeking to do and in a very compelling manner based upon the facts of this case, is to override a statute which applies to anyone else who might be injured by the state of New York in this entire state, and I guess my question is, Senator Sears, what about all of the other individuals, perhaps a 12-year-old boy who was run over by a truck driven by an intoxicated state employee having his central portion of his body crushed, his spinal cord severed, paralyzed, living in pain and agony, and he ends up dying sooner rather than later as was anticipated in the structured award? Who is there to look out for that individual? Who is there to look out for

every other individual that may be injured in this state? Are we going to be saying to individuals who fall under these circumstances that each and every time something happens and you are going to end up dying sooner rather than later that we go to the Legislature, who will second guess the courts?

I mean I have a problem with the structured award in the first place, and the irony is here that I don't think that the court should have been able to do this in the first place. But now that that is the case, how do you intend to distinguish between this case and many others that may be existing but are not known to us here in the Legislature?

SENATOR SEARS: If I may respond, Senator.

ACTING PRESIDENT VOLKER: Senator Sears.

SENATOR SEARS: I understand, I think, although I can't recall which house I was in when the structured award system was passed, but it is -- my understanding is that it's the

right of the defendant -- in this case it would be the Attorney General -- to call for a structured award. There is really no recourse it is my understanding for the person who was wronged in this case.

And I guess I would have to say this, that many, many times in our job as legislators, we find situations that may be in statute but there has been a wrong done, at least in our opinions. It may be a case of a person who has requested the assistance of one of us to straighten out a pension benefit that he might have been denied through no fault of his own. So we pass special legislation to solve that problem.

In this particular instance - and I know there are a lot of other cases as you mention where certain things could happen to certain individuals and you say who is going to look out for them? I think it would be the choice of any Senator who represents a given district to make that determination if a particular situation would warrant some special

legislation to solve a certain situation. We've done it before. I'm sure we will do it in the future.

In this case, I just feel that because of the nature of the negligence of the correction officers -- I don't know if they ever served any time or were ever penalized; but when they were asked I don't know how many times to "Come, please help us; we can't keep this prisoner under control," and they absolutely stood there and refused, that's one of the reasons the plaintiff in this case won the trial because there was no one there to give help under the law as they were required to do.

Because of the circumstances surrounding this individual's case, I think that special legislation in this case, which is not going to change the section of the law forever, it is one individual case, one individual law to affect one person -- I think in the future any situation similar would have to be based on the merits.

ACTING PRESIDENT VOLKER: Senator

Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. On the bill.

Mr. President, I support this measure, but ask this body to appreciate the broader issue which comes before it, and that's the issue of our correctional personnel, the men and women, the correction officers, the nurses, the other prison employees who must work on a daily basis under very stressful conditions, and those conditions are not only stressful as this measure points out, those conditions are life-threatening. As the issue of AIDS has escalated, as the issue of AIDS in prison has grown to crisis proportion, the issue of our prison employees receiving a death sentence because of the activities of inmates who are infected with HIV, who are infected with the AIDS virus, that our prison personnel are continually at risk.

And the response of this government has not been significant. It has not been significant enough to protect those who are

working behind the bars and walls; that this risk of our correctional personnel could be mitigated by a broader based testing and isolation of prison inmates and by severe or stricter precautions in favor of those correctional personnel.

I have had a bill in for a number of years in the Assembly -- I'm supporting it in the Senate -- that would make any inmate who attacks a prison personnel with their bodily fluids would in fact be guilty of attempted murder.

We have here not an attempted murder but a murder, a death that's resulted from this type of conduct. I hope that this is the last case that will be ever before this body of such a circumstance, but it won't be the last case unless adequate precautions are taken on behalf of protecting correctional officers, correctional personnel, including the tragedy of the nurse that took place here in this case.

I support the bill. I applaud its sponsors but hope that it will be a cause

for a broader call to protecting those who work behind the walls.

ACTING PRESIDENT VOLKER: Senator Gold.

SENATOR GOLD: Mr. President. This is a terrible, terrible, terrible case and that's why I assume the plaintiff won. I don't think that there is anybody who is raising questions about this procedure who is justifying anything the state did in terms of causing the injury, but I think we're getting lost.

And I just want to ask a couple of questions, Senator Sears, to find out whether or not we are lost or what's going on here.

I'm looking at your memo. I understand that the economic loss was not structured. Isn't that so? That the economic loss was paid. That the structure deals with the non-economic loss.

SENATOR SEARS: Deals with economic loss.

SENATOR GOLD: No, with the non. Senator, if you will yield to a question?

SENATOR SEARS: Yes.

ACTING PRESIDENT VOLKER: Senator yields.

SENATOR GOLD: Your memo says specifically "her future conscious pain and suffering." Now, I wish the woman would miraculously recover; but if she doesn't recover and she has, God forbid, only the one year -- on the other hand, she shouldn't have pain. It's a crazy dichotomy. But if she only has one year and she gets paid for the one year, she's basically been paid 100 cents on the dollar for all of her pain and suffering and for her economic loss; isn't that a fact?

SENATOR SEARS: That's true.

SENATOR GOLD: So, Senator, by following the statute and not passing your bill, the woman would get 100 cents on the dollar from the negligent party for all of the pain and suffering that was caused her. The only things that would result by your bill, I believe, is that if she died earlier, God forbid, there would be money for the heirs or whatever. And

isn't it a fact that our statute doesn't provide for awards for the family? You may get money from 17,000 different ways and leave it to your family. But isn't it a fact that we do not have a procedure here for giving awards to heirs?

SENATOR SEARS: That may be the case that we don't have. My bill would take care of that situation in this case, where we would be giving some monetary pain and suffering and loss of services of the housemaker, loss of a mother and so on. That's the reason for the bill.

SENATOR GOLD: Thank you, Senator.

Mr. President.

ACTING PRESIDENT VOLKER: Senator Gold, on the bill.

SENATOR GOLD: I know what's in the hearts and minds of many of the people here today. We start out with a very tragic case, and nobody wants a finger pointed at them that the state of New York has no heart as was very well pointed out by Senator Hoffmann; and,

certainly, as a member of the Legislature, I don't want people to say I have no heart.

But we really ought to understand what we are being asked to do in this bill. We are not being asked in this bill to compensate the woman for her pain and suffering, et cetera, et cetera. We're being asked to throw in a bonus which does not exist in the law.

A court has determined that she should get a certain amount of value for her "future pain and suffering," and if she lives these years, she gets compensated by the negligent party, the state of New York, for her pain and suffering. That's what the structured award does.

Now that it appears according to Senator Sears, and I have no reason to doubt him, that she might not live for that 5.5 years, this law seeks to protect a balloon for heirs.

Now, the heirs are not the ones suffering in that sense. Heirs suffer, but they suffer in every case where you have got negligence.

I know of a case where a youngster was hit by a car and is handicapped because of that, and it's the parents who day by day struggle to give that child a meaningful life; and if you give money to the child, yes, it's compensation but the parents get nothing. The family whose hearts go out every day get nothing.

So I think we ought to understand what we are doing. This is not a situation where we are being asked to give compensation, just compensation to someone who is the subject of a tragedy. The woman is the subject of the tragedy. The state is wrong. There is no justification. But the bottom line of this bill if we pass it is that we are going far beyond that, and it raises significant questions as pointed out by Senator Halperin as to how we handle anyone who has been injured by the state of New York.

I want to close by making one point. Senator Trunzo and I have been on the same side of an issue for about two or three

years now, in trying to convince the Assembly to pass legislation that would open an avenue to all people who have been injured in their pension plan because of negligence or whatever so that they can all be helped. We have been unsuccessful, and the result has been a bombardment of this Legislature with bills to correct each individual case.

I don't know if we were to pass this bill what now happens to our mail. Because every one of you must have somebody living in the district who is injured in some way with a structured settlement; and how do you answer that person when they tell you that we have given this woman not only a structured settlement but a balloon or the effects of that balloon, and we're not going to do it for anybody else? And you are going to open that door.

This is a toughie, believe me. Whenever you deal with someone in a tragic situation like this, your heart goes out. It's got to go out, but I don't know how responsibly

we act in this way, and I know a lot of people are saying, "My God, Manny's right, but I'm not going to be the one to vote no on this one," or what have you.

But I think in some respects we have to judge what we do and understand what doors we open up. I think that Senator Sears is to be commended. He's a good man with a good heart. There is no doubt about that. But I think that this is a very very dangerous precedent. If it's one we want to start, if it's a door we want to open, then just don't be surprised if it stays open.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT VOLKER: Senator Dollinger is next.

SENATOR DOLLINGER: I will yield to Senator Connor since he is up.

ACTING PRESIDENT VOLKER: Senator Dollinger yields to you, Senator Connor.

SENATOR CONNOR: Thank you, Senator.

Mr. President. As Senator Gold

pointed out, this is a difficult vote, and I was first told about this bill yesterday before the Rules Committee, and my reaction to the counsel who said this probably has constitutional problems and whatever was, "Forget it, I'm voting for it." You know.

I know the case. I read about the case. I think we all did. It was highly publicized but, you know, as I sat here I thought of several things.

I thought of a number of years ago. Many of you may not have been here, but once upon a time, some eight or nine years ago, there was a heart rending custody case on the front pages of a major daily newspaper. A woman who had been a foster parent for many, many years, the child was removed from her custody, put somewhere else. Senator Goodhue had hearings on it, confidential hearings, and a colleague of mine who then sat next to me who is no longer with us here put a bill in. Got a lot of press. The bill would have taken custody, which Family Court had awarded to some other

person, and reversed that judgment of all the court systems because there had been appeals and put it back in the hands of this wonderful, nice lady who had ninety dolls and who was sitting right up there, sitting right up there with her lawyer, with reporters. This was announced as the day -- the day that the Legislature was going to put this terrible situation right.

And I remember the Majority Leader at the time approaching the Minority and saying, Hey, we have to be responsible on this. That's why we have courts. We don't sit as the House of Lords to reverse court decisions we don't like. And, in fact, that bill was defeated not because people didn't feel for that woman, and that was a vote where you had to look her in the eye and vote.

I'm reminded of that because we do have laws that apply to everyone. I'm reminded of another situation.

There is a young man in my district who approached me about six months ago. I saw him again just two weeks ago when I

took my children to a park on the Lower East Side. He came over, "Senator," he hugged me, "can you help me?" The man limps; he was disfigured; he was horribly injured.

I have looked at his case through news clippings. It was a somewhat noteworthy negligence case in New York City, where he was awarded over $6 million for the combined negligence -- I think the tort feasors were the city and there was another tortfeasor who was a private individual. And he won his case.

Apparently, unbeknownst to him, somehow the judge reduced the verdict, and then there was a botched appeal, and then his lawyer didn't file some paper on the appeal on time, and it was dismissed, and he left without a farthing, and he still lives in single room occupancy on the Lower East Side.

He is a young man who you look at him you know he will never work again. And if you read the accounts of his injuries, he was not expected to live. He was hospitalized and suffered for years.

He came to me, "Senator, you know I've won. I won my malpractice suit against my lawyer, but it turns out he didn't have insurance and whatever and I can't get anything out of him," and the city and the other tortfeasors, they are getting off the hook because the appeal was botched. You know, I don't think I'm heartless, you know.

In fact, I may reverse. If you are all serious about doing this bill, I say reverse what I told him in that park which was what I had told him months before; and that was, we can't just take a bill like this and say let's say -- certainly for the city's liability or whatever say, "Let's give them the 3 million that's their half. Let's give him the $3 million."

That would be a gift. We are barred by our Constitution from giving gifts. Now, as Senator Gold pointed out, this particular woman in this very tragic case has been compensated for economic loss and will certainly be compensated for pain and suffering

for the length of time that regrettably she must endure that pain and suffering.

But anything above that is a bonus under the laws that you pushed and you passed and the Majority in this house with some support on this side. I opposed structured settlements. I have always said, You want to have tort reform, let's have tort reform. Let's not -- and many of you supported an absolute cap, a $100,000 cap on pain and suffering. I remember that bill coming out here.

Think of what she would get if that bill had passed. And now confronted with a real flesh and blood tragedy of one of these tort cases, where are your principles? Where is your tort limit caps? Where is your pain and suffering caps?

We are sticking to the structured settlement that you enacted in this house and that you finally got the other house to accept. Because for this heart rending story, there are thousands of other stories like it throughout the state of people who are victims of

negligence and wrongdoing, sometimes by the state, its agents, by localities, or by other tortfeasors.

And, you know, it's real easy to vote for this, you know. But it would be real easy to bring out bill after bill after bill, and I could get up and I would fill in all the details about the young man I just spoke about that I ran into in Tompkins Square Park a few weeks ago, you know.

The letter of the laws we've passed over the years and enacted really put the screws to him. He is really injured, he really suffered; and because of a technicality in the CPLR of when his lawyer should have filed appeal, and so on and so forth, he's out of the $6 million that a court found were his losses. Actually, they lowered it to $3.2 million. But he gets nothing now, nothing. Because of the laws we have on the books.

Now, if you pass this, I would like someone to tell me I can put a bill in for this young man and take some action on it in the

next couple of weeks.

ACTING PRESIDENT VOLKER: Excuse me, Senator.

Senator Mendez, why do you rise?

SENATOR MENDEZ: Just one question.

ACTING PRESIDENT VOLKER: Certainly, Senator.

SENATOR CONNOR: Yes.

ACTING PRESIDENT VOLKER: Senator Connor yields.

SENATOR MENDEZ: I would like to know. Did anything happen to that lawyer that botched the appeal and that deprived this man of his just compensation?

SENATOR CONNOR: He's been disbarred, Senator. That's what the disciplinary decision that he showed me in the park two weeks ago.

SENATOR MENDEZ: Thank you.

SENATOR CONNOR: He's been disbarred, but this young man doesn't have any money in his pocket. He doesn't have a nice

place to live. He can't afford his medical bills.

But, you know, are there hard cases under the laws we pass? Yes, there are.

And in this particular case, the person has been compensated for her economic losses and to be compensated for the pain and suffering that she endured regrettably.

You know, I don't understand, coming from the side of the aisle that wanted a $100,000 cap on all pain and suffering. Does that mean you will have a $100,000 cap until one of you has a constituent that's really in tragic circumstances, and then we'll have a bill. "Oh-oh, lookit, this is awful suffering. Let's give $2 million in suffering on this one." I don't understand it.

And if we start doing this, I guarantee you within our districts there are hundreds and hundreds if not thousands of cases of people who because of the letter of the law and the way it was applied will come to us and say, "But my situation is so tragic, it got

press, it provoked tears, real tears." Who wants to hear about these?

These are real every day tragedies of this life is made. And I suggest, Mr. President, that as well intentioned as this bill is and as appealing for a yes vote as this bill is -- I mean my first -- and up until I guess Senator Halperin said something, I was sitting here saying, "This bill isn't exactly right on the law; but, gee, who wants to vote against it?"

I just can't bring myself to vote against it. Let the people who wanted a hundred thousand dollar on pain and suffering vote for this and let them try and explain that next time we have a tort reform debate.

ACTING PRESIDENT VOLKER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Frankly, my colleagues both in this chamber and at the bar have spoken about what impact this bill would have on the tort law of this state, and I guess I have to join

Senator Connor, Senator Gold and Senator Halperin before me, in that old saw, that old adage about "Bad facts make bad law."

This is a case which, unfortunately, because of the dynamics of our municipal tort reform, our law that we passed because governments wanted it, because we were going to take away a mandate, because we were going to give governments the ability to not have to pay money after someone had died, we were going to save governments that money.

So the whole point as I understood municipal tort reform, although I wasn't a member of this chamber at the time it was passed, it was designed to protect local governments; that we were going to say to them if the plaintiff died prematurely, the local government would no longer have the obligation to pay for non-economic loss for pain and suffering since it had ended, since it was finite.

And it seems to me in the context of this case, we're in the business of another

one of the coordinated branches of government where we don't belong. This trial judge concluded that living 5.5 years with the HIV virus and with AIDS was worth $3.5 million in non-economic pain and suffering.

I query, had that number been instead of $5.5 million but instead 3.5 million or 2.5 million, which may be the actual fact, would that trial judge or Court of Claims judge also have awarded 3.5 million or would he have awarded some lesser sum.

But passing this bill, we're taking the trial judge's opinion and saying that 3.5 million over 5.5 years is the same as 3.5 million over some lesser number, which I submit is interfering with the judgment of a court gathered on all the facts, made after arguments by both sides, fully briefed I'm sure, and allowing the judicial process to make that judgment call.

If the facts were different, if there were a different life span, we might have a different number.

Senator Sears' bill seeks to take the 3.5 million for 5.5 years and say no matter how long the time period is 3.5 million is the right number to compensate that. I think that that demonstrates the great, great danger of this body getting involved in becoming another appellate court. That isn't where we belong. We don't belong in the judicial business. We belong in the legislative business.

And I will submit, Mr. President, to conclude that the danger that Senator Connor talked about, that Senator Gold talked about and Senator Halperin talked about, which is that this bill will create a huge gaping hole in the municipal tort reform that was passed by the other side of the aisle creates a grave danger that we will become a court of last resort; that our job will be to rectify every inequity in every statute that we impose no matter whether it has a basis of law or whether it has a basis in the public sympathy, and we will be in the position of being flooded with these requests for appellate review to clarify, to correct the

perceived injustice in statutes that we pass or that were passed by this body for what everybody who supported it thought was a laudable purpose; and that is, municipal tort reform to not have the government in the position of making an equivalent of a gift after the period of pain and suffering has ended.

So I ask all my colleagues, look at the danger that this bill poses. Look at the exceptions that you are making. I think that you are making an exception that will all but swallow the law; and, lo and behold, this body and this Legislature and this Governor are going to take over the business of the courts. We will become the court of last resort whenever there is any inequity under the broad status that we create. That is a mistake.

ACTING PRESIDENT VOLKER: Senator Solomon.

SENATOR GOLD: Can I?

ACTING PRESIDENT VOLKER: Oh, I'm sorry. Are you finished, Senator Dollinger?

SENATOR DOLLINGER: Yes.

SENATOR GOLD: Should I ask Senator Solomon the courtesy of asking one question of Senator Sears before he speaks?

ACTING PRESIDENT VOLKER: Senator Solomon yields to Senator Gold to ask a question of Senator Sears.

SENATOR GOLD: Senator Sears.

SENATOR SEARS: Yes.

SENATOR GOLD: As I have already said I mean there is no question but that everybody in the chamber admires your trying to do the right thing for this person.

But I would just like to point out something to you, and you may want to hold the bill, I don't know.

I think you have a major drafting problem. Your memorandum says that the bill makes it so that Section 50-B shall not apply, but that's not what the bill says. If I read the part of the bill that's the law, it says that upon the death of the person, the Comptroller is directed to compute the balance owed to her, quotes, "pursuant to the judgment rendered."

If the Comptroller issues a report that pursuant to the judgment there was nothing due to her because there was a structured settlement, the case is over and we haven't done for her what you think you are doing. There is no reference in any of your new language which says, Senator -- and I'm saying this respectfully, you know that there is nothing in your new language that says, quotes, "irrespective of Section 50-B." There's nothing in your new language that says, "The Comptroller shall take whatever money is paid from the amount of 5.5 and pay the balance."

In other words, I just want you to understand -- I don't agree with what you are doing, but I think we ought to at least as a body have it in a form where, if we decide to do it, we do it, and I'm just saying that respectfully. You may want to take another look.

SENATOR SEARS: I think you have a good point, Senator. I want to be fair about it. I want the bill, of course. I think your

recommendation would make a better bill.

I want the bill laid aside so we can amend it. We will put it back on the calendar.

SENATOR GOLD: Thank you, sir.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1056, by Senator Present, Senate Bill Number 5785, an act to amend the General Municipal Law.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT VOLKER: Lay it aside until Monday.

THE SECRETARY: Calendar Number 1057, by Senator Libous, Senate Bill Number 5791, Uniform Justice Court Act.

SENATOR GOLD: Can we lay it over a day?

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT VOLKER: Lay it

aside for the day.

Senator Present, that's all we have here, but I think we have some motions.

SENATOR PRESENT: Why don't you take care of the motions and other necessary housekeeping?

ACTING PRESIDENT VOLKER: Senator Sears first.

SENATOR SEARS: Mr. President, I move to recommit Senate Print 3740-A, Calendar Number 861, Third Reading, to the Committee on Codes with instructions to said committee to strike out the enacting clause.

ACTING PRESIDENT VOLKER: Without objection, Calendar 861, Senate 3740, recommitted.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Number 771, page 18.

ACTING PRESIDENT VOLKER: Without objection, Senator Kuhl in the negative.

Senator Johnson.

SENATOR JOHNSON: Mr. President, I also request unanimous consent to be recorded in the negative on Calendar 771.

ACTING PRESIDENT VOLKER: Senator Johnson, without objection, in the negative on 771.

Senator Seward.

SENATOR SEWARD: I likewise would ask unanimous consent to be recorded in the negative on Calendar 771.

ACTING PRESIDENT VOLKER: Senator Seward, without objection, in the negative on 771.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Hannon, would you please put a sponsor star on Calendar 61, Senate Print 280.

ACTING PRESIDENT VOLKER: Without objection, sponsor star.

Senator Present, we have two subs here at the desk, and then we have one more

motion, I believe, to make. Can we do the subs?

SENATOR PRESENT: Yes.

THE SECRETARY: On page 6 of today's calendar, Senator Stafford moves to discharge the Committee on Rules from Assembly Bill Number 4063A and substitute it for the identical Third Reading 229.

ACTING PRESIDENT VOLKER: Substitution ordered.

THE SECRETARY: Also, on page 23, Senator Johnson moves to discharge the Committee on Rules from Assembly Bill Number 7602B and substitute it for the identical Third Reading 677.

ACTING PRESIDENT VOLKER: Substitution ordered.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Stafford, I wish to call up his bill, Print 4237, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT VOLKER: Clerk will read.

THE SECRETARY: By Senator Stafford, Senate Bill Number 4237, an act relating to state aid to the North Warren Central School District.

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

ACTING PRESIDENT VOLKER: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT VOLKER: The bill is before the house.

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

ACTING PRESIDENT VOLKER: Bill is reconsidered and the amendments are received and adopted.

Senator Larkin.

SENATOR LARKIN: Mr. President, on behalf of Senator Levy, on page 39, I offer the following amendments to Calendar 890, Senate

Print 1003, and ask that the bill retain its place on third reading.

ACTING PRESIDENT VOLKER: Amendments are received and adopted.

SENATOR PRESENT: Mr. President. We're awaiting an amendment to a bill, so I move that we stand at ease, and we will reconvene to accept those amendments. And following that, I will adjourn until Monday.

ACTING PRESIDENT VOLKER: Senate will recess until an amendment is received and then we will adjourn until Monday at the regular time.

(Whereupon, at 2:33 p.m., Senate was at ease.)

(Whereupon, at 2:35 p.m., Senate reconvened.)

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT VOLKER: Senator Present.

SENATOR PRESENT: Would you recognize Senator Hannon, please?

ACTING PRESIDENT VOLKER:

Recognize Senator Hannon for a motion.

SENATOR HANNON: Yes, Mr. President. On page 15, I offer the following amendments to Calendar Number 689, which is Senate Print 3424, and I ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT VOLKER: Amendments are received and adopted.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT VOLKER: Senator Present.

SENATOR PRESENT: There being no further business, I move that we adjourn until Monday, June 14, at 2:30 p.m., intervening days being legislative days.

ACTING PRESIDENT VOLKER: Senate is adjourned until Monday, June 14, at the regular hour.

(Whereupon, at 2:36 p.m., Senate adjourned.)