ALBANY, NEW YORK

June 22, 1993

4:04 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

Please rise with me for the Pledge of Allegiance to the Flag.

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

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

(Whereupon, there was a moment of silence.)

Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, June 21. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. Prayer by the Reverend David Powers of Briarcliff Manor. The Journal of Sunday, June 20th, was read and approved. On motion, Senate adjourned.

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

The order of business.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Mega.

SENATOR MEGA: Mr. President, the Senate Judiciary Committee met this morning to consider the reappointment of five judges to the Court of Claims of the state of New York, and at this time I would like to take up the reappointment of these five judges.

From the Governor from the Executive Chamber dated April 8, 1993: "To the Senate: I hereby nominate as judge of the Court of Claims, Louis C. Benza of Glenmont, reappointed for a term expiring on March 13, year 2002." Signed Mario Cuomo, the Governor.

The full Judiciary Committee met and found Judge Benza extremely well qualified

to continue as a judge of the Court of Claims of the state of New York and unanimously recommended his reappointment to that position.

At this time, I would like to yield to Senator Velella on the confirmation.

ACTING PRESIDENT FARLEY: Senator Velella on the confirmation.

SENATOR VELELLA: Mr. President, I rise to proudly second the nomination of Judge Benza. I've known Judge Benza for thirty years. He's formerly a resident of the Bronx where he served in a capacity for his community in the Borough President's office under three different borough presidents. He served two United States Congressmen, and he served on his home local community school board. He's been an active participant in the community and at the same time has managed to be a distinguished member of the bar during his years of practice, where he was an outstanding trial lawyer in Bronx County, and as a member of the Court of Claims has had a distinguished record on that court.

The only mistake he ever made was

moving out of the Bronx, but he moved up here to the Albany area with his family in Glenmont, and we forgive him for that. He has been a very good supporter of his community back home even though he lives up here.

And I am proud to second his nomination.

ACTING PRESIDENT FARLEY: On the nomination of Judge Benza. All those in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The judge is confirmed.

I believe he is with us here in the gallery.

(Applause.)

On behalf of the New York State Senate, Judge Benza, we're very proud to appoint you to this important post, and thank you very, very much for being with us and for the service you have given us over the years.

SENATOR MEGA: Mr. President.

ACTING PRESIDENT FARLEY: Senator Mega.

SENATOR MEGA: Mr. President, from the Executive Chamber dated April 8, 1993:

"To the Senate: The Governor has hereby nominated as a Judge of the Court of Claims, Jerome F. Hanifin of Binghamton, reappointed for a term expiring on December 31 year 2001."

Mr. President, the Judiciary Committee, the full committee, considered the appointment, the reappointment of Judge Hanifin to the Court of Claims. As in all the cases before us and all the appointments before us, a complete investigation had been conducted. Judge Hanifin was found well qualified, and the committee unanimously recommends his reappointment to the Court of Claims.

I will at this point yield to Senator Libous.

ACTING PRESIDENT FARLEY: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President, and thank you, Chairman Mega.

I rise to second the nomination of Judge Hanifin. Since the day Judge Hanifin was first nominated by Governor Hugh Carey and confirmed by this body on May 24, 1977, he has proven to be an outstanding addition to the Court of Claims.

As a noted graduate of Cornell Law School and practicing attorney for seventeen years before coming to the bench, Judge Hanifin gained strong respect in Broome County and in our region for his experience as a litigator and his commitment to the community in which he serves, his commitment to his church, local school board, and of course the Broome County Bar Association.

After now serving on the Court of Claims for an additional seventeen years, he has strengthened his reputation for fairness and professionalism not only in our home town of Binghamton but among his colleagues on the bench and throughout the entire state of New York.

I commend Governor Cuomo on his appointment of this knowledgeable and

expeerienced jurist.

Mr. President, it is a great pleasure for me to stand today and second the nomination of Judge Jerry Hanifin.

ACTING PRESIDENT FARLEY: Thank you, Senator Libous.

Judge Hanifin is with us in the gallery also. On the nomination, all those in favor say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

Judge Hanifin is confirmed.

Judge, congratulations on behalf of the New York State Senate.

(Applause.)

Senator Mega.

SENATOR MEGA: Mr. President. From the Executive Chamber dated April 8, 1993, the Governor has nominated as a Judge of the Court of Claims, William C. Donnino of Syosset, reappointed for a term expiring on May 29th, year 2001.

Mr. President, the full Judiciary Committee met this morning to consider the reappointment and confirmation of Judge Donnino, and has unanimously voted his confirmation and reappointment.

I should like to speak and move the appointment of Judge Donnino and tell you of my personal knowledge of his expertise and experience not only as counsel to the Committee on Crime and Correction for two terms but on all that he's done up to this point to make him an outstanding judge.

For five years, he was an assistant district attorney in the New York County district attorney's office. For two years he was assistant counsel to the Governor of New York. For two years he was deputy commissioner and counsel of the New York State Department of Correctional Services. For six years he was chief of the Appeals Bureau in the Nassau County district attorney's office. For six years he was the executive and then chief assistant district attorney in the Kings County

district attorney's office. For two years he was attorney at law, private practice, and during that two-year period he was counsel to the standing Committee on Crime and Correction, the committee which I chaired during that period.

For the last four years, Judge Donnino has been a member of the Court of Claims and has been doing an outstanding job in that capacity. Just let me mention some of the comments that were made about Judge Donnino, from the people who work with him on a daily basis, the people that work with him in the court system, the attorneys that try cases and other judges:

I have highest and greatest respect for Judge Donnino.

I give him the highest possible recommendation.

I had a seven-week trial before him last year; it was great pleasure.

He's an excellent judge. He is one of the best that we've got.

He is fair, hard working, and he is balanced between the prosecution and the defense.

It's an honor to have him serving as a judge.

He is a very good judge. He is always prepared and knowledgeable on the law, and he's fair to both sides and keeps good control of a courtroom.

Professional writings, Mr. President: Practice Commentaries, McKinney's, New York Court of Appeals on Criminal Law, "Sentencing Outline" co-author; "Circumstances for Warranties and Home Arrests", co-author; The Agency Defense in Drug Cases.

Judge Donnino is an out standing judge. He is someone who is respected not only by the attorneys that appeared before him but other judges that serve with him. The system works. It works well.

I congratulate the Governor on his reappointment. I congratulate Judge Donnino for the outstanding job that he is doing and he

will continue to do. I wish him well, and I move his confirmation.

ACTING PRESIDENT FARLEY: All in favor of the confirmation of Judge Donnino, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The judge is confirmed.

And Judge Donnino is with us in the gallery. Congratulations on behalf of the state of New York State Senate.

(Applause.)

SENATOR MEGA: Mr. President.

ACTING PRESIDENT FARLEY: Senator Mega.

SENATOR MEGA: Mr. President, from the Executive Chamber dated April 8, 1993, from the Governor: "I hereby nominate as Judge of the Court of Claims, Edward M. Davidowitz of Scarsdale, reappointed for a term expiring April 20, the year 2001."

The committee has indicated -

met in full session, reviewed all the information presented to the committee in reference to the investigation of the abilities of Judge Davidowitz and found him extremely well qualified to continue as a judge of the Court of Claims. A unanimous vote was taken and his confirmation was recommended by the committee.

And at this point, I would yield to Senator Gold.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Thank you, Mr. President. Mr. President, I take this job very seriously, and I know I've got to be very truthful when I deal with this. So let's start from scratch. The judge was nominated because the Governor found out his wife was not a lawyer and couldn't appoint Ellen, so he appointed Eddy. That's where it started.

I've known Ed and Ellen Davidowitz for many, many years. I had the pleasure of meeting Ed Davidowitz in law school, and having to go out drinking many nights alone

because he was studying something about the law. It could be useful in future years. I never understood that because I've got counsel all around. I knew I would be here.

After law school, at Cornell, of course, Judge Davidowitz joined the district attorney's office in New York County, which as you may recall under Frank Hogan was one of the great offices. It's still a great office.

He went into private practice for a period of time, but then returned to public service in the office of the Special Prosecutor where he was the Bronx Bureau Chief for a period of time, then the executive assistant, and then the chief assistant in that office.

We had the pleasure of confirming this nomination back in 1986, and we all ought to be very proud of that.

SENATOR MEGA: Mr. President.

ACTING PRESIDENT FARLEY: Yes.

SENATOR MEGA: Could we have some order, please?

ACTING PRESIDENT FARLEY: Yes.

The Senate will please be in order. Thank you.

Senator Gold.

SENATOR GOLD: Thank you.

We should be really very proud of it. To me, one of the most significant determining factors in who and what a person is is what their colleagues say about him behind his back, and I think if Judge Davidowitz were a fly on the wall he would be very proud, because I know many of the judges on the court where he sits and there is not but great admiration for him from his own colleagues at the bench. I also know lawyers who have had the opportunity to practice in front of the judge; and while his background was mostly prosecutorial, I can tell you that he is a person of not only intellect and compassion and concern but a judge who is very, very even-handed in the courtroom.

It is a delight to know him and his family and it certainly is something from which I thrill to look back at his career and see how he has grown not only as a lawyer but as one of our really very fine jurists. The only

caution I give the house is that I find it very hard to believe that he would actually say he's a 24 handicap and take money out of people's pockets based upon that fabrication.

But getting back off the golf course, Mr. President. It is certainly a delight to have this nomination before us and an honor on my part to offer this nomination to the house, and I ask that Judge Davidowitz be confirmed.

ACTING PRESIDENT FARLEY: On the nomination of Judge Davidowitz.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Oppenheimer, then Senator Galiber.

SENATOR OPPENHEIMER: Thank you, Mr. President. I would like to take a moment to say that Judge Davidowitz lives in my district, and he is a very respected and honored member of the Scarsdale community.

My colleague spoke about his reputation on the bench for compassion and

intelligence, and I can just assure you that in his home community he is looked upon with fondness and great respect also. I'm very proud to be able to second the nomination.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: Yes, thank you, Mr. President.

I take this opportunity which is a good day, it's a rare day in the legislative process when we can find so many clones of excellence and fairness and justice, and I was not here to speak for my good friends Judge Benza and Judge Donnino, but the quality of judges this morning as we confirm them is just outstanding, and I want to congratulate the Governor for sending the reappointments up and we want to send the message down to the Governor that he's got a few more down there that he is holding back, and we have persons who have the same degree of quality in excellence and fairness, if you will.

There are those who argued,

disagreed with Governor Rockefeller when he took this opportunity to create the Court of Claims judges, and some suggested that he was circumventing the Constitution, getting around, if you will -- same thing -- in order to appoint some judges because of the Rockefeller laws.

And at that time, there was some doubt; but, again, I reiterate over and over again that the qualities of the judges and the balance here. In the old days if you were exposed to the prosecution, you became prosecution minded, and we have judges this morning who come from that background and have the intellect and the ability to deal with it the way it should be, and that's with fairness and justice and compassion and understanding, and they do just that.

So I'm proud, Mr. President, to add my voice to not only one of the Court of Claims judges but all that we interviewed this morning because they all are very fine, very qualified and very excellent gentlemen, and they do an excellent job.

Thank you.

ACTING PRESIDENT FARLEY: On the confirmation of Judge Davidowitz, all in favor say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The judge is confirmed.

And he is with us here in the gallery. Congratulations and best wishes.

(Applause.)

Senator Mega.

SENATOR MEGA: Mr. President. From the Executive Chamber, dated April 8, 1993, from the Governor, "I hereby nominate as a judge of the Court of Claims, Julian F. Kubiniec of Buffalo, reappointed for a term expiring on April 28, year 2001."

Full committee met, reviewed the investigation and the qualifications of Judge Kubiniec and found him extremely well qualified. The committee voted and unanimously recommended the confirmation if Julian F.

Kubiniec as a judge of the Court of Claims.

I, at this time, would yield to Senator Volker.

ACTING PRESIDENT FARLEY: Senator Volker.

SENATOR VOLKER: Mr. President, I would like to offer up the name of Julian Kubiniec.

And let me just follow up on what Senator Galiber said and Senator Mega in behalf of some of the other candidates. I think that of course in this day and age when the press is so cynical about the Legislature and everything to do in government, one of the things I think it has not realized about the Senate is that one of our, I think, most important functions that goes on while everything else is going on is the confirmation of judges.

And I complimented Senator Mega today at the Judiciary Committee meeting, and very sincerely, because Senator Mega is one of the people that believes as I believe that even renominations are so important that we should

have the people in who have -- although they have been in office and have been performing the functions, to review what their colleagues say about them, what they have to say, and to make sure that the people that are serving us, for instance, in the Court of Claims, are the people that we think are the best people for those jobs and who still should be reconfirmed.

I must say that the five people that we had today are probably some of the best that I have ever seen in the many years that I have been here.

Bill Donnino, as was mentioned, the only thing we kind of maybe would put against him is he used to work for Senator Mega; but aside from that, he is one of the best judges around. And, very honestly, the other judges, as Senator Galiber and I mentioned, it's really starting to make us feel old since they are coming back to us again and being reconfirmed and we remember when they were confirmed in the first place.

But Julian Kubiniec from Buffalo

-- who I don't believe is here. The reason he is not here is that he fell over the week end and had a badly sprained ankle and asked if he could be excused from being here. But I do want to say that he is a fine judge, a fair judge, and anyone who has dealt with him knows that he is also one of those people who deserves to be called a first class decision maker. In fact, I don't believe I've ever heard any real criticism of Judge Kubiniec in all the years that he's been a judge, not only in the Court of Claims but in City Court in Buffalo.

So I want to say not only do I - would I like to move Julian Kubiniec's confirmation but I also want to reiterate what Senator Gold and Senator Mega and Senator Galiber have said about all five of the gentlemen that we have today, is that these are extremely competent people, and we can be proud that we are reconfirming these people today.

ACTING PRESIDENT FARLEY: On the confirmation of Judge Kubiniec, all those in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The judge is confirmed.

(Applause.)

Senator Mega.

SENATOR MEGA: Mr. President. I would like to take this opportunity to thank all the members of the Judiciary Committee for participating in the process. My ranking Minority member, Frank Leichter, and all the other members, and I don't want to start naming them because I'm going to forget some. The process doesn't work unless they are involved, and they were involved in it from the beginning to the end, and I believe it has worked well today and it will continue to work that way as long as we continue to get the kind of support that we've gotten.

So I want to thank the entire committee for making it work.

And to all the judges, again, wish you luck.

And to just remind the body and being somewhat repetitive, the one thing that runs true to the five judges that we confirmed today is that they know the law, they understand the law, they know how to apply it, they know people, they have good judicial temperament, they like what they are doing, and they all do a great job.

And reappointment sometimes is more important than the original appointment because now we have something to look at. We have a record to look at. We have people to talk about, how they act and what they do as a judge. And all of the appointees today, all these judges that we confirmed today, passed with flying colors.

So again congratulations and thank you.

ACTING PRESIDENT FARLEY: Continuing on the order of business.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

We have a lot of them.

Senator Present, I will recognize you first.

SENATOR PRESENT: Mr. President, on behalf of Senator Maltese, he'd like the sponsor star removed from Calendar 164 and 165.

ACTING PRESIDENT FARLEY: The stars are removed.

SENATOR PRESENT: In behalf of Senator Velella, on page 39, he offers the following amendments to Calendar 259.

ACTING PRESIDENT FARLEY: Amendments received. The bill will retain its place on the Third Reading Calendar.

SENATOR PRESENT: On behalf of Senator Levy, Mr. President, I wish to call up his bill, Senate Print 1001, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT FARLEY: The Secretary will read Senator Levy's bill.

THE SECRETARY: By Senator Levy, Senate Bill 1001, an act to amend the Education

Law.

SENATOR PRESENT: Mr. President, I now move to reconsider the vote by which this bill was passed and ask that the bill be restored to third reading.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is before the house.

SENATOR PRESENT: Mr. President, I now move to discharge the Committee on Rules from Print 2630 and substitute it for this identical bill.

ACTING PRESIDENT FARLEY: Substitution is ordered.

SENATOR PRESENT: May I now ask the substituted bill have its third reading.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Unanimous.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: On behalf of Senator Marino, on page 23, I offer the following amendments to Calendar 972, Senate Print 5710, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments received. The bill will retain its place on the Third Reading Calendar.

SENATOR PRESENT: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Thank you, Senator Present.

Senator Spano.

SENATOR SPANO: Mr. President, I wish to call up my bill, Print Number 1987A, recalled from the Assembly, which is now at the

desk.

ACTING PRESIDENT FARLEY: Secretary will read Senator Spano's bill.

THE SECRETARY: By Senator Spano, Senate Bill Number 1014A, an act to amend the Insurance Law.

SENATOR SPANO: Now move to reconsider the vote by which the bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Spano.

SENATOR SPANO: I offer the following amendments.

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

SENATOR SPANO: Mr. President.

ACTING PRESIDENT FARLEY: Senator Spano.

SENATOR SPANO: I wish to call up Calendar 598, Assembly Print 1335A.

ACTING PRESIDENT FARLEY: Secretary will read it. Give us that number again.

SENATOR SPANO: Calendar Number 598, Assembly Print Number 1335A.

THE SECRETARY: By Senator Spano, Senate Bill Number 1014A, an act to amend the Insurance Law.

ACTING PRESIDENT FARLEY: Senator Spano.

SENATOR SPANO: Now move to reconsider the vote by which the Assembly bill was substituted for the Senate Print Number 1014A on May 18.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Spano.

SENATOR SPANO: Now move that the Assembly bill, Number 1335A, be recommitted to the Committee on Rules and my Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR SPANO: I now offer the following amendments.

ACTING PRESIDENT FARLEY: Okay. Now come the amendments. The amendments are received.

Senator DeFrancisco, you have a motion.

SENATOR DeFRANCISCO: Yes. I wish to call up my bill, Print Number 3513, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator

DeFrancisco, Senate Bill 3513, an act to amend the Real Property Tax Law, in relation to veterans' exemption.

ACTING PRESIDENT FARLEY: Senator DeFrancisco.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator DeFrancisco.

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

THE SECRETARY: Amendments received. The bill will retain its place.

Senator Marchi.

SENATOR MARCHI: Mr. President.

On behalf of Senator Farley, Hugh Farley, that is, place a sponsor star on Calendar Number 1215, Senate 4950.

ACTING PRESIDENT FARLEY: The bill is starred.

SENATOR MARCHI: And, Mr. President, remove a star on Calendar Number 885, Senate 2792.

ACTING PRESIDENT FARLEY: Star is removed. Thank you, Senator Marchi.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President. I wish to call up my Print Number 2135A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read Senator Padavan's bill.

THE SECRETARY: By Senator Padavan, Senate Bill Number 2135A, an act to amend the Vehicle and Traffic Law.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Padavan.

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

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

Senator Holland.

SENATOR HOLLAND: Mr. President, amendments are offered to the following Third Reading Calendar bills.

First, by Senator Padavan, on page 26, Calendar 1074, Senate Print 3185.

Senator Spano, page 26, 1075 Calendar Number, and Senate Print 3276.

By Senator Kuhl, page 33, Calendar 1200, Senate Print 3415.

By Senator Farley, page 44, Calendar 885, Senate Print 2792.

And, by Senator Cook, page 44, Calendar 954, Senate Print 5311.

ACTING PRESIDENT FARLEY: Without objection.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Stafford, I ask that the sponsor star be removed from Calendar 43, Senate Print 435.

ACTING PRESIDENT FARLEY: Without objection, the star is removed.

SENATOR PRESENT: Mr. President, I would like to announce an immediate meeting of the Rules Committee in Room 332.

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

ACTING PRESIDENT FARLEY: Senator Maltese.

SENATOR MALTESE: Mr. President, on page number 27, I offer the following

amendments to Calendar Number 1115, Assembly Print Number 323... Senate Print Number 3265, and ask that said bill retain its place on the Third Reading Calendar.

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

Are there any other motions on the floor?

(There was no response.)

Senator Kuhl, we have some substitutions.

SENATOR KUHL: On the Resolution Calendar.

ACTING PRESIDENT FARLEY: Well, we have some substitutions, and then we'll do some resolutions.

SENATOR KUHL: Let's do the substitutions first.

ACTING PRESIDENT FARLEY: Okay.

THE SECRETARY: On page 6 of today's calendar, Senator Mega moves to discharge the Committee on Rules from Assembly

Bill Number 7742 and substitute it for the identical Third Reading 308.

On page 8, Senator Hannon moves to discharge the Committee on Rules from Assembly Bill Number 1829A and substitute it for the identical Third Reading 470.

On page 11, Senator Cook moves to discharge the Committee on Rules from Assembly Bill Number 5476B and substitute it for the identical Third Reading 633.

On page 16, Senator Sheffer moves to discharge the Committee on Rules from Assembly Bill Number 5546A and substitute it for the identical Third Reading 753.

On page 16, Senator Levy moves to discharge the Committee on Rules from Assembly Bill Number 682A and substitute it for the identical Third Reading 760.

On page 32, Senator Gold moves to discharge the Committee on Rules from Assembly Bill Number 3815 and substitute it for the identical Third Reading 1194.

On page 32, Senator Waldon moves

to discharge the Committee on Cities from Assembly Bill Number 1341 and substitute it for the identical Third Reading 1196.

On page 33, Senator Seward moves to discharge the Committee on Rules from Assembly Bill Number 5882 and substitute it for the identical Third Reading 1203.

On page 33, Senator Wright moves to discharge the Committee on Rules from Assembly Bill Number 6810 and substitute it for the identical Third Reading 1207.

On page 35, Senator Johnson moves to discharge the Committee on Rules from Assembly Bill Number 5102A and substitute it for the identical Third Reading 1219.

On page 35, Senator LaValle moves to discharge the Committee on Rules from Assembly Bill Number 7873 and substitute it for the identical Third Reading 1223.

On page 36, Senator Trunzo moves to discharge the Committee on Rules from Assembly Bill Number 7891 and substitute it for the identical Third Reading 1230.

ACTING PRESIDENT FARLEY: Without objection, those substitutions are ordered.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I move we now adopt the Resolution Calendar with the exception of Resolution Number 1775.

ACTING PRESIDENT FARLEY: All in favor of adopting the Resolution Calendar, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The Resolution Calendar is adopted with exception.

SENATOR KUHL: Now, Mr. President, would you recognize Senator Daly.

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR DALY: Mr. President, on one of the resolutions, I stand before you, my colleagues, as you can easily see, a paradigm of sartorial elegance. I might add to that that I

notice my hero in such cases, Senator Galiber, even looked upon me with envy today.

Now, why would an unpretentious and humble man such as myself make such a statement? Well, I want you to know that on behalf of the resolution which will designate "Help Yourself, Buy America" -- or I should say, designate Labor Day as "Help Yourself, Buy American Day", I want you to know that my coat, the jacket, suit, was made in Rochester; shirt, made in Medina; tie, made in the USA; socks, made in USA; shoes, made in the USA, and you'll have to take my word for it, but my under garments were made in the USA too.

Last year, if you remember, we started this program. We in the Senate initiated the proposal that Labor Day be designated as "Help Yourself, Buy American Day." At that time we sent the resolution to all the states in the United States and truly had an exceptional acceptance of this resolution, so that the same resolution we passed here in New York State was passed in

twenty other states, and proclamations made in each of those states that Labor Day be designated as "Help Yourself, Buy American Day."

I know we have talked about - we have been talking about "Buy American" for many years. Maybe it's finally starting to catch hold. I note from a New York Newsday article on January 7, 1993, which indicated a "Buy American" sentiment played a role in helping the Ford Taurus become the best selling car in the United States last year. In addition, the April 23rd edition of The Kiplinger Washington Letter noted that people want to buy American products.

Now, we passed this last year; why would we want to do it again? My colleagues, I think we should do this every year and try to create even -- make it bigger and better, and we're working now with the Governor's office to try to make Labor Day something special as far as reminding people - that's the key word -- reminding people that it's in their best interest if they give

preference in the purchase of -- to buy, or I should say, in buying American-made products, because nothing truly can help this economy better or more. Think of the impact we would have on the economy if we can improve the purchase of American cars by about 10 percent. We would have an amazing and very effective impact on the economy.

So what do we have to do? I think we have to keep reminding the people of the state and of this nation that they should give preference to the purchase of American-made products and that when they go out and they buy, they look and ask for American-made products.

I remember about two weeks ago - I mentioned my shoes. I bought them locally and I noticed there was a sale out in the mall, so I went out, and it was Bostonian. I hadn't bought any Bostonian shoes before, but it said, "Made in America," so I walked in and I sat down. I said, "I'd like to see some shoes, please." And the proprietor brought out four pairs of shoes. I looked at the bottom, "Made

in Italy." Not that I have anything against Italy, but I said, "I came here to buy American made shoes. Now bring me some American-made shoes." Lo and behold, he disappeared for about ten seconds and came out with some more shoes all made in America, and I made a purchase.

If we would all think about giving preference to American-made products, my colleagues, we could have an impact on this economy. I think we will all agree to that, and that's why the resolution is before you today. And, hopefully, as I said, this Labor Day we will make it bigger and better, and other states will pick it up and we'll continue to make the American people aware that they should give preference to products made in this country.

The purpose of the resolution - I'm sure you will agree with me that it is a good resolution. I look forward to your support today and let's all work to make Labor Day even more important as far as reminding the people of this state and the people of this country that it's in their best interest -- it

certainly is in the best interest of our country -- if we give preference to American-made products.

Thank you, Mr. President.

On the resolution.

SENATOR KUHL: That was already adopted.

ACTING PRESIDENT FARLEY: That was already adopted, that resolution.

Senator Kuhl.

SENATOR KUHL: Yes. Mr. President, on behalf of Senator Hannon, I wish to call his bill up, Senate Print Number 279, recalled from the Assembly which is at the desk.

ACTING PRESIDENT FARLEY: Secretary will read Senator Hannon's bill.

THE SECRETARY: By Senator Hannon, Senate Bill Number 279, authorize payments in lieu of taxes by the county of Nassau.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is before the house.

SENATOR KUHL: Offer up the following amendments.

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

SENATOR KUHL: Mr. President, would you recognize Senator Lack, please.

ACTING PRESIDENT FARLEY: Senator Lack.

SENATOR KUHL: Call up Resolution 1775.

ACTING PRESIDENT FARLEY: 1775, the Secretary will read the title of Senator Lack's resolution.

THE SECRETARY: Legislative Resolution 1775, by Senator Lack and others,

urging the honorable Senators from New York to support the maintenance of the current 80 percent deductibility of business meals and entertainment expenses.

ACTING PRESIDENT FARLEY: Senator Lack.

SENATOR LACK: Thank you, Mr. President. It is estimated that in the state of New York, as a result of the proposed change in federal deductibility from 80 percent to 50 percent for business meals and business expense luncheons, that there will be a loss in income, sales in the state of a quarter of a billion dollars and a loss of 11,392 jobs in the state.

As chair of the Senate Labor Committee, I have been contacted by several organizations and several unions, which is why, I'm sure, that this resolution is sponsored not only by myself and a rather eclectic group as far as the Senate goes. Senator Daly, Senator Larkin, Senator Marchi, Senator Markowitz, Senator Nolan, Senator Santiago, Senator Smith, and Senator Volker,

truly a cross-section of the Senate representing what could happen to this state if this type of deductibility change takes place. If these 11,392 jobs, it's estimated, can be lost in this state, in many respects it's those in the lower income classifications and those in the food service and restaurant industry who would suffer as a result of these deductibility changes.

For that reason, Mr. President, I submitted this resolution, calling upon our United States Senators, Senators Moynihan and D'Amato, to consider the effect upon the economy of New York if we lose a quarter of a billion dollars in restaurant sales in this state and 11,000 more jobs in an already perilous economy in this state.

ACTING PRESIDENT FARLEY: Is the resolution open to other members?

SENATOR LACK: Circulate it to every member of this house and is open for co-sponsor ship.

ACTING PRESIDENT FARLEY: Raise your hand if you want to be on the resolution.

Incidentally, all of those people were not circled, but I'm sure they want to be on it.

All in favor of adopting Senator Lack's resolution, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

SENATOR LACK: Thank you very much.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Will you call up the non-controversial calendar, please?

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

THE SECRETARY: On page 7, Calendar Number 395, by Senator Kuhl.

SENATOR STACHOWSKI: Lay it aside.

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

ACTING PRESIDENT FARLEY: Lay it

aside for today.

THE SECRETARY: Calendar Number 438, by Senator Johnson, Senate Bill Number 3534A, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 462, by Senator Volker, Senate Bill Number 3907, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Senator DeFrancisco.

SENATOR DeFRANCISCO: May I explain my vote?

ACTING PRESIDENT FARLEY: Yes. Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I brought this point up at the Codes Committee meeting and I'm going to vote in favor of this bill but with strong reservations, and I hope it gets corrected in the process.

The purpose of the bill is to provide for increased penalties and also an extended period for the statute of limitations for child abuse situations, both in criminal cases and in civil cases. The criminal law statute of limitations is no problem. It's basically three years from the date the child becomes 18 years of age or the report -- it's reported to the appropriate authorities, whichever comes first.

The problem that I have despite the fact that the Trial -- New York State Trial Lawyers Association thinks this is a good idea, the problem I have is with the civil statute of

limitations, and it's almost an unlimited statute of limitations. It provides that you can bring the lawsuit within three years from the time of the discovery by the injured party or both the -- of both the injury and the causal connection between the injury and the abuse. In other words, it's when the person realizes the injury is caused by something that happened some time past in their lifetime and there's a causal connection established. The three years starts to run at that point in time.

I think as a practical matter it would be relatively easy for one to get a psychologist to determine that the causal connection was just discovered today, maybe 30 years after the incident occurred, and I think it's too open-ended to allow civil proceedings and not have an effective statute of limitations.

So I'm going to vote yes. I think it's an important bill, but I hope that particular provision be looked at very carefully before it's signed into law.

ACTING PRESIDENT FARLEY: Results.

Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 471.

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 633, by member of the Assembly Bennett, substituted earlier today, Assembly Bill Number 5476B, an act to amend the General City Law, the Town Law and the Village Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 729, by Senator Saland, Senate Bill Number -

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 794, by Senator Daly, Senate Bill Number 109...

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 869, by Senator Hannon.

SENATOR STACHOWSKI: Lay it

aside.

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 870.

SENATOR KUHL: Lay it aside.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 871.

SENATOR STACHOWSKI: Lay it aside.

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 872.

SENATOR STACHOWSKI: Lay it aside.

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 890, by Senator levy, Senate Bill Number 1003A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 971, by the Senate Committee on Rules, Senate Bill Number 5709.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number

979, by Senator Spano, Senate Bill Number 5738, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This -

ACTING PRESIDENT FARLEY: Oh, I'm sorry. There's a home rule message at the desk. Now you can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1000, by Senator Wright, Senate Bill Number 4277.

SENATOR WRIGHT: Lay it aside for today, please.

SENATOR KUHL: Lay it aside for

the day, please.

ACTING PRESIDENT FARLEY: Lay it aside for today.

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

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1069, by Senator Cook, Senate Bill -

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1081, by Senator Skelos, Senate Bill Number 4040A, authorize the town of Hempstead to lease certain park lands.

ACTING PRESIDENT FARLEY: There is a home rule message here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1088, by Senator Stafford, Senate Bill Number 4853, Environmental Conservation Law.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1107, by Senator Levy -

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1120, by Senator Sears, Senate Bill Number 3837B, amends Chapter 711 of the Laws of 1992.

ACTING PRESIDENT FARLEY: Read

the last section. Oh, wait a second. There's a home rule?

There's a home rule message here at the desk.

If you'll read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1126, by Senator Johnson -

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1127, by Senator -

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Lay

that bill aside.

THE SECRETARY: Calendar Number 1137, by Senator -

SENATOR KUHL: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1150, by Senator Velella, Senate -

SENATOR KUHL: Lay it aside.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1155, by member of the Assembly Wright, Assembly Bill Number 4219, authorize the city of New York to reconvey its interest in certain real property.

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

You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1165, by Senator Velella, Senate Bill Number 3126, an act to amend the Executive Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Read the last -- lay it aside.

THE SECRETARY: Calendar Number 1166, by Senator Velella, Senate Bill Number 3188.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1172, by Senator Wright, Senate Bill Number 4230B, amends Chapter 266 of the Laws of 1854.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1181, by Senator Hannon, Senate Bill Number 4991, an act to amend the Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1182, by Senator Hannon, Senate Bill Number 5017, to allow Douglas Robins of Levittown

retroactive membership in the retirement system.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1183, by Senator Hannon, Senate Bill Number 5332, amends Chapter 750 of the Laws of 1871.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1185 -

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1191, by Senator Bruno, Senate Bill Number 5870, authorize the town of Clifton Park, Saratoga County, to employ town constables.

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

You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1192, by Senator Seward, Senate Bill Number 5883, an act to amend the Town Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1194, substituted earlier today, by member of the Assembly Hevesi, Assembly Bill Number 3815, authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT FARLEY: Senator Gold has a home rule message here at the desk.

You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1195, by Senator Stafford, Senate Bill Number

443 -

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1196, substituted earlier today, by member of the Assembly Jenkins, Assembly Bill Number 1341, authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT FARLEY: Senator Waldon has a home rule message here at the desk.

Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1197, by Senator Spano, Senate Bill Number

2225A, an act to amend the Family Court Act.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1198, by Senator DeFrancisco, Senate Bill Number 2341, an act to amend the Highway Law, assist in certain roads in the village of Camillus.

ACTING PRESIDENT FARLEY: Senator DeFrancisco has a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1199, by Senator Pataki, Senate Bill Number 2876A, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1201, by Senator Volker, Senate Bill Number 3825B, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1202, by Senator Present, Senate Bill Number 3859, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1203, substituted earlier today, by member of the Assembly Tonko, Assembly Bill Number 5882, an act to amend the Public Service Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator Johnson, Senate Bill Number 3991, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1205, by Senator Kuhl, Senate Bill Number 4087, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1206, by Senator Nozzolio, Senate Bill Number 4154, an act to -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1267, substituted earlier today, by member of the Assembly North, Assembly Bill Number 6810, an act to provide for non-partisan primaries in elections.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1208, by Senator Johnson, Senate Bill Number 4375A, to allow -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1209, by Senator Gonzalez, Senate Bill Number 4470, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53, nays one, Senator Pataki voted in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1210, by Senator Present, Senate Bill Number 4491, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1211, by Senator Mega, Senate Bill Number 4580, Criminal Procedure Law.

SENATOR PRESENT: Lay it aside for today.

ACTING PRESIDENT FARLEY: Lay that bill aside for the day.

THE SECRETARY: Calendar Number 1212, by Senator Sheffer, Senate Bill Number 4638, authorize the New York State Canal Corporation to abandon certain canal lands.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1213, by Senator Padavan.

SENATOR PADAVAN: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 1214, by Senator Stafford, Senate Bill Number 4810, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar 1216, by Senator Saland, Senate Bill Number 4969A, Public Authorities Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Excuse me. Ayes 53, nays 1. Senator Pataki recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1217, by Senator Hannon.

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

ACTING PRESIDENT FARLEY: Senator

Hannon? Senator Kuhl.

SENATOR KUHL: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1218, by Senator Lack, Senate Bill Number 4994A, authorizing the sale of certain state-owned lands.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1219, substituted earlier today, by member of the Assembly DiNapoli, Assembly Bill Number 5102A, an act to amend the General Municipal

Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1220, by Senator Holland, Senate Bill Number 5147, an act to amend the Public Authorities Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1221, by Senator Sheffer, Senate Bill Number 5186, an acted to amend the Religious Corporations Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

SENATOR OPPENHEIMER: I just stepped out for a moment. I would like unanimous consent to be recorded in the negative

on Number 1220.

ACTING PRESIDENT FARLEY: 1220.

SENATOR OPPENHEIMER: 1-2-2-0. It just passed a few moments ago.

ACTING PRESIDENT FARLEY: Senator Oppenheimer will be in the negative on 1220, without objection.

THE SECRETARY: Calendar Number 1223, substituted earlier today, by the Assembly Committee on Rules, Assembly Bill Number 7073, an act to dedicate the David A. Sarnoff Pine Barrens and the Rocky Point Resources Management Area.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1224, by Senator Farley, Senate Bill Number 5410, Surrogate's Court Procedure Act.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53, nays 1, Senator Pataki recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1225, by Senator LaValle, Senate Bill Number 5428, an act to amend the Education Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1226, by Senator Levy, Senate Bill Number 5433, an act to amend the Transportation Law and the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53, nays 1. Senator Kuhl recorded in the negative.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 1227, by Senator Levy.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay

that bill aside.

THE SECRETARY: Calendar Number 1228, by Senator Daly.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1229, by Senator Padavan, Senate Bill Number 5571, Public Authorities Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53, nays 1. Senator Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 1230, substituted earlier today, by the Assembly Committee on Rules, Assembly Bill Number 7891,

amends Chapter 901 of the Laws of 1990, amending the Environmental Conservation Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1231, by Senator Sears, Senate Bill Number 5681, an act to amend the Tax Law and Chapter 644 of the Laws of 1984.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1232, by Senator Levy.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 1233, by Senator Saland, Senate Bill Number 5766, an act to amend the Public Authorities Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Withdraw the roll call. Lay the bill aside.

THE SECRETARY: Calendar Number 1234, by Senator Seward, Senate Bill Number 5808, an act to amend the Public Service Law.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for today.

THE SECRETARY: Calendar Number 1235, by Senator Saland, Senate Bill Number 5860, an act to amend the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1236, by Senator Stafford, Senate Bill Number 5866.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Mr.

President. By mistake, I laid aside Calendar 1233. I have no objection to that bill if you want to call it.

ACTING PRESIDENT FARLEY: Would the Secretary call up 1233 again.

THE SECRETARY: Calendar Number 1233, by Senator Saland, Senate Bill Number 5766, an act to amend the Public Authorities Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 1237, by Senator Trunzo, Senate Bill Number 5834, amends Chapter 422 of the Laws of 1991.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1238, by Senator Present, Senate Bill Number 5887, authorizing the county of Cattaraugus to elect and make an optional 20-year retirement plan.

ACTING PRESIDENT FARLEY: Senator Present has a home rule message here at the desk.

You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: That bill is passed, and that is our last bill. The first time around, Senator Present.

SENATOR PRESENT: Mr. President, can we return to reports of standing committees.

ACTING PRESIDENT FARLEY: Yes, we

may.

The Secretary will read a report of a standing committee. But first let's have a little order here.

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

Senate Bill Number 1132, by Senator Stachowski, authorize the city of Buffalo to discontinue the use of park land.

2095, by Senator Espada, authorizing the city of New York to reconvey its interest in certain real property.

2429, by Senator Tully, an act to amend the Executive Law.

2475, by Senator Johnson, an act to amend the Banking Law.

3012A, by Senator Spano, Civil Service Law.

3104, by Senator Present, State Administrative Procedure Act.

3180, by Senator Cook, Real Property Tax Law.

3560, by Senator Farley, allowing Alexandra J. Burns retroactive membership in the retirement system.

3674, by Senator Present, Real Property Tax Law.

3930, by Senator Goodman, Vehicle and Traffic Law.

4220, by Senator Cook, Real Property Tax Law.

4897, by Senator Hannon, Administrative Code of the city of New York.

5263, by Senator Lack, an act to amend the Labor Law.

5362, by Senator Masiello, Local Finance Law.

5411A, by Senator Farley, General Municipal Law.

5626A, by Senator Holland, Social Services Law.

5678, by Senator Holland, Social Services Law.

5687, by Senator Holland, Social Services Law.

5805, by Senator Bruno, Public Authorities Law.

5821, by Senator Wright, State Administrative Procedure Act.

5852, by Senator Volker, county of Livingston to acquire sites.

5853, by Senate Committee on Rules, General Municipal Law.

5881, by Senator Saland, Family Court Act.

5900, by Senator Johnson, Environmental Conservation Law.

5929, by Senator Johnson, Environmental Conservation Law.

5931, by Senator Trunzo, Administrative Code of the city of New York.

5961, by Senator Trunzo, an act to amend the Executive Law.

All bills reported directly for third reading.

ACTING PRESIDENT FARLEY: All bills are reported direct to third reading.

Senator Present.

SENATOR PRESENT: Will you recognize Senator Hannon, please.

ACTING PRESIDENT FARLEY: Senator Hannon? There he is.

Senator Hannon.

SENATOR HANNON: Yes, Mr. President. I have two amendments to offer up.

On page number 22, I offer the following amendments to Calendar 871, Print Number 4930, and I would ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR HANNON: On the same page, that is page 22, I would also offer the following amendments to Calendar 872, Print Number 5163, and I would ask that the bill retain its place on the Third Reading Calendar.

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

Senator Mega.

SENATOR MEGA: Mr. President. On the starred calendar, on page 38, on behalf of

Senator Stafford, earlier today he had requested that the star be removed from Calendar 43. He now requests that the star remain on Calendar 43.

ACTING PRESIDENT FARLEY: The star is put back on.

SENATOR MEGA: Thank you.

ACTING PRESIDENT FARLEY: Senator Saland.

SENATOR SALAND: Mr. President, I would like to remove the star from Calendar 456, Senate 3286.

ACTING PRESIDENT FARLEY: 456, the star is removed at the request of the sponsor.

SENATOR SALAND: Also, Mr. President, on page 35, Calendar Number 1224, bill S. 5410, I would like unanimous consent to be recorded in the negative.

ACTING PRESIDENT FARLEY: Without objection. Let's get that Calendar Number again.

SENATOR SALAND: Calendar 1224.

ACTING PRESIDENT FARLEY: That's my bill.

Senator Present.

SENATOR PRESENT: Mr. President. I believe we are ready for the controversial calendar.

ACTING PRESIDENT FARLEY: Yes, we are, sir. Secretary will read controversial.

THE SECRETARY: On page 9, Calendar Number 471, by member of the Assembly Wright.

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

ACTING PRESIDENT FARLEY: Lay that bill aside for today.

THE SECRETARY: Calendar Number 729, by Senator Saland, Senate Bill Number 3105C, an act to amend the General Business Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

Senator Saland.

SENATOR SALAND: Mr. President,

could I request this be laid aside for the day, please?

ACTING PRESIDENT FARLEY: Lay the bill aside for today.

THE SECRETARY: Calendar Number 794, by Senator Daly, Senate Bill Number 1099, an act to amend the Environmental Conservation Law.

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 869, by Senator Hannon, Senate Bill Number 4898A.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 870, by Senator Hannon.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it

aside.

SENATOR PRESENT: Call up 794, please.

ACTING PRESIDENT FARLEY: 794.

THE SECRETARY: Calendar Number 794, by Senator Daly, Senate Bill Number 1899, an act to amend the Environmental Conservation Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Daly.

SENATOR DALY: Yes, Mr. President. Under the existing law, state beverage containers must be photodegradable or biodegradable to be used.

This would change the law to allow recycled and recyclable materials to be used also. Basically, it gives manufacturers opportunities to use materials that can be recycled, and the material -- the product they make must be made partially of recycled materials themselves. So you are dealing with a product that, first of all, is using recycled

materials and yet can be recyclable also.

SENATOR GOLD: Can you hold on one second.

SENATOR DALY: Sure. Mr. President. I might add, too, while we're waiting that this bill is endorsed and supported by the Department of Environmental Conservation. We have a typical DEC memorandum where they list the bills that are supported, and Senate 1099, this particular bill, is supported.

SENATOR GOLD: Will Senator yield to a question?

SENATOR DALY: Certainly.

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR GOLD: Senator, there is a memorandum that I'm looking at where it says on your bill that they have some concerns, but nothing else. Did you receive something after this from them?

SENATOR DALY: This says here, Senator -- I note that on the memorandum which I

have -- I'll show it to you. It says, "S. 1099, beverage container, in support (revised)."

SENATOR GOLD: I see.

SENATOR DALY: This is dated - sorry, Senator, it doesn't have a date, but I know it's -- oh, wait. May 25, 1993.

SENATOR GOLD: Will the Senator yield to one more question?

SENATOR DALY: Certainly.

SENATOR GOLD: Is this the same as the 1992 bill?

SENATOR DALY: Yes, it is.

SENATOR GOLD: All right. I yield to Senator Leichter.

ACTING PRESIDENT FARLEY: Senator Leichter. Would you yield, Senator Daly, to a few questions?

SENATOR LEICHTER: Mr. President, isn't it a fact, Senator, that the effect of this bill would be that those companies that package or market their product in these plastic containers or holders would continue to do so, and that you would be, in effect, furthering the

use of plastics?

SENATOR DALY: Actually, all it does, Mr. President, is gives these companies an option to use either materials that are photodegradable or biodegradable or materials that are both recycled and recyclable.

SENATOR LEICHTER: Yes, but, Senator, as I recollect the debate on this bill last year, one of our concerns was that we had told the whole industry we want to get away from plastics and that, based on that, companies had made adjustments to the way that they packaged their products.

Now -- I gather this is for the benefit of one or two companies and so on -- you are permitting the use of plastics, although it is your claim and your justification that these are biodegradable.

SENATOR DALY: Mr. President. I don't know -- I believe that what we've told companies who make plastic is that we want plastics which can either be used again -

SENATOR LEICHTER: Excuse me. I

can't hear you, Senator, I'm sorry.

SENATOR DALY: I don't believe the state ever made a policy of decreasing plastics, per se, but rather decreasing the use of plastics that are not biodegradable, photodegradable or recyclable and recycled, and basically what this bill does is it allows companies to use another option.

In other words, if you are using plastics right now which are photodegradable you can in their place -- and frankly, Senator, we believe this is a better material to use because when you say that a plastic is either biodegradable or photodegradable, the question is, "How long does it take for that to happen?" and this particular material, this newly developed material is material that, first of all, is made from -- a certain percentage of the finished product has to be made from previously used plastics; in other words, recycled plastics, and also this material itself can be recyclable, so it can be reused again.

And what we're doing is you're

using that material. First of all, you are taking plastics that have already been used, reusing them, and that final product in itself can be reused. So you are decreasing the amount of plastic that goes into our waste chain, and you will note also the bill includes specifications which would protect wild animals or pets so that they could not be entangled in the finished product, would not create a danger to wild life.

SENATOR LEICHTER: Senator, some of the debates and the issues of last year are coming back, because both Senator Gold and I were a little unsure why a number of us voted against it. I guess in addition to the reasons that I raised about the furtherance of plastic, I guess there is a memorandum of opposition which says, "The state's native brewers strongly oppose this bill." That was issued on behalf of the Genesee Brewing Company, Rochester, and the F. X. Matt Brewing Company, Utica, New York, and states, "This bill provides for the use of a certain six-pack plastic retaining device that

offers no new economic or environmental benefits. The 'new' device is constructed of rigid plastic having defined edges and two round unbreakable holes or openings that are non stretchable. The six-pack plastic holding device now used by the above brewers, however, is both photodegradable and recyclable. It is a thoroughly tested product and has properly addressed concerns relevant to litter control, solid waste reduction and recycling."

So I gather the effect of your bill, Senator, would be economically harmful to our local brewers.

SENATOR DALY: Mr. President, I know the memorandum in opposition that the Senator refers to. However, I will tell you that I was somewhat surprised to read that memo. First of all, it does not add to their costs, because it does not require them to stop using their existing material which is a photodegradable material.

What this bill does is give them an option. If those three breweries want to

continue using the material they are presently using, they can use it. We're not discontinuing the use of that plastic. We're adding one.

So I take strong exception to that particular memorandum, because I thought it was very hyperbolic to be frank with you. And if they want to argue about what's better, I can stand here and say, well, this particular product covers the top of the can; the other product doesn't, so it makes it more sanitary. But that is something I don't think belongs on this floor with the questions that are being raised.

Just let me finish my statement. Senator, by saying that this bill does not - does not do any harm to those companies. They can continue using exactly the same material, the same process. They don't have to make one penny change to their present operation. It just allows this other material, which as I said can be 100 percent recycled, be also used.

SENATOR LEICHTER: Senator, is that under Subsection A of your bill? I just

want to make sure that their present device would not be precluded.

SENATOR DALY: Mr. President. Senator, let me say if there is any way this bill prevents those companies from continuing their existing manufacturing processing, from continuing using the same materials, to impact on their production process in one way, I guarantee you the bill will be changed and will be changed.

SENATOR LEICHTER: Well, by that time, Senator, it may be law. I think you're right, Senator, and I happen to agree with you as I read the bill. I just wanted you to confirm it that perhaps under that Subdivision A which says, "Such plastic holding device decomposes," which is what these brewers use.

SENATOR DALY: That's right.

SENATOR LEICHTER: I gather then their argument is that they feel they have a certain advantage now in the packaging, and you're going to take that advantage away by giving the out-of-state brewers an ability to

use a plastic device which they don't have, which maybe will make the marketing of beer easier.

I can see that maybe economically, from their viewpoint, it's not to their advantage, but I think you make a good argument. I don't think you can certainly oppose it on environmental grounds.

Senator, you have convinced me.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR DALY: May I say one more thing, Mr. President?

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR DALY: This will not impact on them. Other out-of-state breweries are using the same materials, so it won't impact on them one bit.

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT FARLEY: Senator Gold. Senator Daly, will you yield?

SENATOR DALY: Yes.

SENATOR GOLD: Senator, I just want to understand one thing. They have the choice of using something that is either degradable or recyclable?

SENATOR DALY: Yes.

SENATOR GOLD: Will you yield to one other question?

SENATOR DALY: Certainly.

SENATOR GOLD: Supposing, Senator, that they use something that is recyclable, but somebody throws it in the garbage can, and now it's part of the trash and it's not degradable.

SENATOR DALY: Good question. You got me stuck for a minute. We have the same problem, Senator, in anything we do as far as recycled and recyclable materials and, basically, what we'll try to do with this, again, have it taken out of the waste stream.

Now, the problem we have, Senator, too is with what is supposedly photo degradable and biodegradable is questionable

also, because that is not recycled at any time -- doesn't have to be -- and if you tell me how long it will take for a certain product under certain conditions to disappear, I would like to hear it.

SENATOR GOLD: Is that a question?

SENATOR DALY: Rhetorical.

SENATOR GOLD: An hour and a half. Will the Senator yield for another question?

ACTING PRESIDENT FARLEY: Senator Daly, will you yield for another question?

SENATOR DALY: Yes.

SENATOR GOLD: Senator Daly, first of all, I appreciate, and I know Senator Leichter does, too, the frankness and the level of the debate, because we are concerned.

Last year there were seventeen people including at least one Republican who did vote opposed, against this, and I know that certainly one of the questions was the impact on domestic breweries particularly in these

economic times.

But, Senator, this is my question. If you have items which are recyclable and you have a program by which they are recycled, you've got a chance.

SENATOR DALY: Yes.

SENATOR GOLD: So, for example, if newspapers are collected separately, you got a chance. Somebody may throw a newspaper with other kinds of garbage and, therefore, we haven't gained anything. If you have bottles and we circulate and we recycle -- fine. My question is, Senator, if they use something that's "recyclable", but there is no mechanism to recycle it and it just goes into the garbage, then we haven't really done anything, because if there is no program to take advantage of that, then it really is not being recycled. Does that make sense, Senator?

SENATOR DALY: That makes sense. And I would submit, Mr. President, that more and more communities are going to recycling programs. It's growing and, as you know, at a

rapid pace. And very frankly, to me, it seems it would be better to take a material which can be reused instead of material that has to go back into the waste -- that will go back into the waste stream, and we are encouraging recycling, as you know that, throughout the state. And this is another way of doing it.

SENATOR GOLD: Mr. President. On the bill.

ACTING PRESIDENT FARLEY: On the bill. Senator Gold.

SENATOR GOLD: I understand the comments made by Senator Daly; and while I can't raise my voice at you, Senator, and shout and scream, I am a little bit concerned about the legislation. I think that we're putting the cart before the horse, Senator Daly. I think that, really, solid waste disposal and everything is very urgent. Recycling is a major avenue to help society, but if we are not right now, Senator, doing the recycling, it seems to me that today we are better off with things that are degradable. If, Senator, we have the

recycling programs, then I certainly would agree with you I'd rather have things recycled. But, right now, I'm afraid the effect of the legislation is going to be to cause some consternation with the people who are our brewers, Genesee Brewing, Rochester, F. X. Matt Brewing Company, give them some agida, and take a situation where we have no guarantees. Matter of fact, it's stronger than that, Senator Daly. Not only are there no guarantees as to the recyclability of the program, but there is no program at least none that's going to take these items. And I can see people taking off the plastic, not understanding that there is any program and throwing it in the garbage so that it is, I think, to some extent a step backwards.

So I assume on that little bit of reasoning is why so many of us last year -- as I said, seventeen of us did vote against it. Your program is probably a good idea if we had the second part in place, but without having the second part in place, I think it's premature.

SENATOR DALY: Mr. President.

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR DALY: I would like to make two points. First of all, as far as the breweries, again, they will not -- they are not impacted in any way, shape and form. They can continue to use their present process, the present material.

Don't ask me why they are opposed to this bill. They must have a -- if they have an agenda, I can't find it. So I want to cast that aside. I think we should. But there is a legitimate point that was raised by Senators Leichter and Gold, and that is, will this material really be recycled?

Well, there is one other point that we must be aware of, and that is, the question of photodegradability. There is a problem in that you have products that are classified as photodegradable that take a long, long time before they dissolve or disappear, and that you must consider when you compare that product to the recycled product.

And again Senator Gold is right. We have to -- we have to increase the number of products that we make and use that can be recycled. This product can be recycled. And, by the way, it's made -- the original product is made of recycled materials. So you get it at both ends.

And I submit I would rather deal with a situation where I know that what the effect of that product is going to be rather than one such as the present material where we have a real question as to how effective photo degradability is.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

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

SENATOR LEICHTER: To explain my

vote.

ACTING PRESIDENT FARLEY: Senator Leichter to explain his vote.

SENATOR LEICHTER: I thought Senator Daly was very persuasive, and he had me, but Senator Gold was even more persuasive, and so if I can flip-flop a little more, and maybe if somebody else got up they'd make me change my mind again.

But I think that Senator Gold does make a good point. Without having really, the recyclable system and structure in place, this bill does have a problem. And aside from the fact that it's a disadvantage of local brewers, I think that it doesn't really help the environment.

I'm going to vote in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 794 are Senators DeFrancisco, Espada, Galiber, Gold, Jones, Leichter, Masiello, Mendez, Montgomery, Ohrenstein, Onorato, Oppenheimer, Smith,

Solomon, Stachowski and Stavisky. Ayes 40, nays 16.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 971, by the Senate Committee on Rules, Senate Bill Number 5709, re-opening of the optional 20-year retirement plan.

SENATOR GOLD: Hold on one second.

SENATOR LACK: Mr. President.

ACTING PRESIDENT FARLEY: Explanation, whoever's got it.

Senator Lack.

SENATOR LACK: Thank you, Mr. President. This bill opens the optional 20-year police retirement plan for one Jeffrey Schondebare, a police officer on the village of Huntington Bay Police Department, a department that has a collective bargaining agreement with its police officers. And pursuant to Section 384 (d) of the retirement plan, Officer Schondebare timely filed a

notarized application within one year of his employment to be part of the 384 (d) optional 20-year retirement plan. Through no fault of his own, somehow that notarized application was never received by the retirement system.

SENATOR GOLD: Last section.

SENATOR LACK: And the police and fire retirement system, of course, has no retroactive authority, and his only remedy having filed a timely application, not being received by the administration of the retirement system, is to seek special legislation; hence, Calendar 971.

SENATOR GOLD: Last section.

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

Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53, nays 3,

Senators Galiber, Gold and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator Wright, Senate Bill Number 3810A, State Administrative Procedure Act.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY: Explanation.

Senator Wright.

SENATOR WRIGHT: The bill deals with the cost estimates of rulemaking and has been recalled and amended to conform with the Assembly companion version.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Hold on.

Senator Leichter.

SENATOR LEICHTER: Mr. President. If Senator Wright would be so good

as to yield. As I understand this bill is that where the agency in its EIS or its assessment comes out with a project cost which differs from cost estimates that were made in comments, it must explain why it has not accepted the cost estimate and the comments. Is that correct?

SENATOR WRIGHT: That's correct.

SENATOR LEICHTER: Senator, I must tell you I have difficulty in seeing how the bill would work or really seeing its neces sity. One of the difficulties I have maybe that you could comment on, you say that such assess ment must be made where the comments provided a figure which "differed significantly." What's "differed significantly"?

SENATOR WRIGHT: Well, I think, Senator, when one takes a look at a number of the cost estimates that have been made historically, there are significant differences in those cost estimates, that they are widely diverse or widely limited in terms of their projected impacts, particularly from the perspective of the regulated community.

This affords them the opportunity to be involved in that process, to offer their methodology, to offer their approach to costing it out and having the agency review and comment on that.

SENATOR LEICHTER: But, Senator, I'm sorry to say that you haven't dealt with - what I'm having some trouble with among other things is I don't know what's "differed significantly." Suppose the agency comes out and says it's going to cost a million dollars, and somebody in local government says, "No, I think it's going to cost $1,100,000." Is that significant?

SENATOR WRIGHT: Well, Senator, I think the difference that you are looking for is in terms of the regulated -- at least the difference I'm looking for is the significance on the part of the regulated community and their concern and they are advancing the cost estimates that they want considered by the agencies.

SENATOR LEICHTER: All right.

Mr. President. Just briefly on the bill.

ACTING PRESIDENT FARLEY: Senator Leichter, on the bill.

SENATOR LEICHTER: I hope I've demonstrated at least one of the problems that I see with this bill, is that it has an extremely vague definition. It says, "differed significantly." I don't know what that means.

Now, under this bill, the agency in its assessment must deal specifically with every comment that differs significantly, whatever that is, with what the agency's own assessment is. I think that's just such a loose and vague guide that the result of this is going to be, if anybody pays much attention to it, that you are going to have more litigation.

The problems that I have with so many of Senator Wright's proposals are that they really instead of making the process easier make it more cumbersome. One of the ways it makes it more cumbersome is that, as I read this bill, even if you overcome this problem of what is a significant difference -- is it $100,000? Is it

$100? Is it $50? Is it $5 million? Is it 50 percent of the agency's assessment? Is it 5 percent? Do you look at it in terms of actual dollars or percentages and so on? None of that is really dealt with. But even if you overcome that particular obstacle, you are going to require such extremely lengthy and burdensome assessments. Somebody may come in and say this is going to cost $100 million. The agency says absurd; it's going to cost a million. Somebody else says 50 million.

Under this bill, the agency is going to have to respond to each one of these. As it is, the assessment must already provide some basis for what the agency determines to be the cost. So why say that they've got to also specifically respond to everyone who differs? You are just making it more cumbersome.

I don't know what you achieve. I know that you know what you intend to achieve. And I know it's a good faith effort to -- as you think, to make the regulatory system simpler and less onerous. I think the effect, very often, is

just the opposite.

And I think that in some respects there is a gentle hostility to regulation itself. You would like to have a simpler, easier world as maybe it existed in our parents' days or even in our early days, but we need regulation, Senator. We ought to see that they are fairly done, intelligently done, but you don't further that process of getting good regulations or even limiting regulations by just adding on, adding on, adding on, what needs to be dealt with in assessments. And that's what, among other things, this bill does besides having rather loose definitions.

I'm going to vote in the negative.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1069, by Senator Cook, Senate Bill Number 2275, Real Property Tax Law.

SENATOR GOLD: Explanation.

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

SENATOR COOK: Mr. President. Probably the easiest way to explain this bill is to compare it to the situation we have in the city of New York and Nassau County.

SENATOR GOLD: Will the Senator yield to one question?

SENATOR COOK: Yes.

ACTING PRESIDENT FARLEY: Senator Cook, will you yield to a question from Senator Gold?

SENATOR GOLD: Is this the same bill as last year, Senator?

SENATOR COOK: Yes.

SENATOR GOLD: -- where Senators Babbush and Connor and Gold, Halperin and Markowitz and Mendez and Montgomery and Nolan and Ohrenstein and Onorato, Oppenheimer, Smith, Solomon, Stavisky, Waldon, Goodman, Mega, Padavan and Velella voted against it?

SENATOR COOK: Yes.

SENATOR GOLD: Last section.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1069 are Senators Connor, Espada, Gold, Gonzalez, Goodman, Leichter, Mega, Mendez, Montgomery, Ohrenstein, Onorato, Santiago, Smith, Solomon, Stavisky, Velella and Waldon. Ayes 40, nays 17.

ACTING PRESIDENT FARLEY: The

bill is passed. Senator Oppenheimer also.

THE SECRETARY: Also Senator Oppenheimer recorded in the negative.

Calendar Number 1088, by Senator Stafford, Senate Bill Number 4853, Environmental Conservation Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Stafford.

SENATOR STAFFORD: Mr. President.

Mr. President. As far as having the Division of Law Enforcement, the Commissioner by regulation or by his own power has set up the division with law enforcement, but, frankly, it sets up law enforcement agencies, in effect, in all of the various like regions of the state. And what this bill would do, would set up a Division of Law Enforcement. It would be well thought -- it is well thought out.

There would be a person in charge, and you would know who is in charge here in Albany. You would know who is in charge in

each region, and it would go from there.

And we think this bill is a good bill. It has passed a number of times, and I suggest that it's a step in the right direction.

ACTING PRESIDENT FARLEY: Read the last section.

Wait a minute. Senator Leichter.

SENATOR LEICHTER: Yes. Just briefly in opposition to the bill. This is opposed by DEC.

I think the problem with the bill is that we're dealing with the administration within the agency and telling the agency, well, you ought to be organized in this particular way. I think this is a bit of micromanagement by the Legislature.

The DEC has certain enforcement powers, has determined how those powers ought to be carried out. I don't know what you gain by setting up this law enforcement division within it, except that there may be some loss of control by the Commissioner, by people that we

want to hold responsible.

I think in some way what Senator Stafford has in mind -- it isn't all that clear -- but I think is sort of within each area you would have your own law enforcement division, and, in that way, maybe legislators or the Legislature would have more control over the enforcement within areas of concern to them.

I don't think that's really what we ought to be about. I think we have an agency. I think it has a responsibility of enforcing the environmental law. It has a structure which I think makes sense. In any event, it's a structure that it's responsible for.

And I can well see that the Commissioner wants to maintain and retain the maximum control, and he is going to be held accountable. He is responsible for it. You should not impose this sort of administrative fiat upon the agency.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT FARLEY: Senator

Stafford.

SENATOR STAFFORD: I very seldom stand up a second time, but I have to tell my summer Senator -- and I use the word "tell" advisedly -- I'm not talking about any of us being involved in law enforcement where professional decisions have to be made. I think if you're alluding to something which would be along that line which is not proper, I'm glad I can correct any thought you have.

We are always saying this. Obviously, the head of the law enforcement division would be responsible to the Commissioner just like the Superintendent of State Police is responsible to the Governor, but we would have a law enforcement division which would be run professionally. We would know exactly what the chain of command is. Council 82 supports it. We do think it's a step in the right direction and, as I say, we've passed it a number of times.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Padavan.

SENATOR PADAVAN: Mr. President, if I may by unanimous consent be recorded in the negative on Calendar Number 1069.

ACTING PRESIDENT FARLEY: 1069, Senator Padavan will be in the negative.

THE SECRETARY: Calendar Number 1107, by Senator Levy, Senate Bill Number 1313, an act to amend the Penal Law.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay that bill aside temporarily.

THE SECRETARY: Calendar Number

1126, by Senator Johnson, Senate Bill Number 4630, provide retirement credit to Anthony A. Tafuri.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY: Senator Leichter wants an explanation.

Senator Johnson.

SENATOR JOHNSON: Mr. President. This bill provides that Anthony Tafuri can buy back in the pension system the years that he served as a village justice in one of the villages on Long Island, and he is going to pay the amount involved here, $24,000. There is no -- let me see. There's a -- I don't think this required a home rule message, did it, Mr. President?

ACTING PRESIDENT FARLEY: You've got one here at the desk.

SENATOR JOHNSON: You got one. Okay. I have a home rule message. So there is no objection to this bill. He is going to pay the full cost, and it's introduced at his request.

SENATOR LEICHTER: Read the last section.

ACTING PRESIDENT FARLEY: You can read the last section of the bill.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55, nays 2, Senators Gold and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: I think I did say there was a home rule message here at the desk prior to reading it. The bill is passed.

1127.

THE SECRETARY: Calendar Number 1127, by Senator Levy.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 1137, by Senator Saland, Senate Bill Number 5499A, an act to amend the Social Services Law.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

SENATOR PRESENT: For the day.

ACTING PRESIDENT FARLEY: For the day.

THE SECRETARY: Calendar Number 1150, by Senator Velella, Senate Bill Number 5832, an act to amend the insurance law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Senator Velella, an explanation has been asked for on 1150, Calendar 1150.

SENATOR VELELLA: Excuse me. I just wanted to make sure I had the right bill here.

This bill is an omnibus approach to medical malpractice issues that need to be resolved by the Legislature this year.

First, it extends the Superintendent's authority to set primary medical malpractice rates, allows Medical Malpractice Insurance Association to write current policies as is the case with private insurance currently, and puts the MMIA on a tri-annual basis for examinations rather than annual basis.

The bill also extends for one year the excess medical malpractice insurance program with several significant reforms.

First, the measure opens up the excess program to allow the physicians the right to choose and pick which excess medical malpractice carrier they want. It is envisioned that they will retain their primary insurer for the purposes of excess coverage, although this is not necessary.

The bill does not require a private insurer who already insures, covers a

physician to provide the excess coverage as well.

The bill also removes the exposure of physicians and dentists from ultimate liability for shortfalls in the hospital excess medical liability pool. Instead, the ultimate liability lies with the insurance companies that choose to engage in the excess medical malpractice insurance market.

The bill has been given support by the New York State Medical Society and the New York State Trial Lawyers, and any time you can get the two of them to agree to something, you must be doing something right.

SENATOR SOLOMON: Thank you.

ACTING PRESIDENT FARLEY: Senator Solomon.

SENATOR SOLOMON: Thank you, Mr. President. This is the old PRI chest nut, just a different version of it.

Mr. President. Will Senator Velella yield, please?

SENATOR VELELLA: Yes.

SENATOR SOLOMON: Senator, last year, Chapter 277 of the Laws of 1992, didn't we require the Superintendent of Insurance and the Commissioner of Health to conduct a joint study to determine whether it would be in the public interest to permit additional insurers to offer excess medical malpractice?

SENATOR VELELLA: Senator, I remember we required them to conduct that study. I don't know if the citation of the laws is correct as to what chapter it is.

SENATOR SOLOMON: All right. Thank you. In that study, which I have in front of me, dated April 1, '93, the interesting result is that in the case of opening the program for new insurers, they basically recommend that we continue the status quo, and we do not open the excess liability program to new insurers.

On the bill, Mr. President.

(Whereupon, Senator Mega was in the chair.)

ACTING PRESIDENT MEGA: Senator

Solomon on the bill.

SENATOR SOLOMON: If we set aside -- the most interesting point on page 26 of the report, and I urge everyone here in the Legislature to listen to this: If we set aside the interests of the insurers who are selling and who desire to sell the excess coverage and turn in instead to the parties who are most affected by the sale of the excess coverage, hospitals, physicians, patients and attorneys, there was basically no interest in changing from the present two-carrier system.

I think we've got a couple of problems that this bill raises, including the fact that there are some questions of what would happen to the fund if some of these companies couldn't pay and couldn't carry their costs, whether or not there would be several policies and the security fund would be liable for multi millions of dollars because of the way the policies were written.

There are a lot of other issues and, frankly, this plays havoc with the excess

liability system that our hospitals are necessary to operate under. And what was not mentioned was that the Hospital Association of New York is against this bill because it could have a severe impact on what happened when we tried to resolve the problem of excess liability coverage.

Again, it's the same chestnut that's come up before us for several years, with a new twist to help a few small private insurers get into business to take the cream off the top and leave the hospitals and non-profit insurers with the problems that would be resulted. Just to help a few physicians and a few private insurers and, in fact, this plays havoc with the system and I recommend a no vote.

There's going to be a slow roll call on this bill.

Thank you, Mr. President.

ACTING PRESIDENT MEGA: Any further debate?

Senator Gold.

SENATOR GOLD: Yes. Before you

have a slow roll call, Senator Solomon has made some excellent points, and that's why we had twenty-three people last year against it including some distinguished members on the other side of the aisle.

I don't have to remind everybody. I even see some predecessors of current people who also thought this was a terrible idea, so why don't we just have a slow roll call and get the misery over with.

ACTING PRESIDENT MEGA: Slow roll call requested. Ring the bell. Get the members into the house. Call the roll.

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

Senator Babbush.

(There was no response.)

Senator Bruno.

(There was no response.)

ACTING PRESIDENT MEGA: Is the sergeant-at-arms present? Sergeant-at-arms have the members in the chamber. Ring the bell. Bring the members in so we can call the roll and

take a vote.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

SENATOR DALY: No.

THE SECRETARY: Senator DeFrancisco.

(There was no response.)

Senator Dollinger.

(There was no response.)

Senator Espada.

(There was no response.)

Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Galiber.

SENATOR GALIBER: (Indicating no.)

THE SECRETARY: No. Senator Gold.

SENATOR GOLD: No.

THE SECRETARY: Senator

Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Halperin.

(There was no response.)

Senator Hannon.

(There was no response.)

Senator Hoffmann.

(There was no response.)

Senator Holland.

(Senator Holland nods head.)

THE SECRETARY: Yes? Yes.

Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Jones.

SENATOR JONES: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

(There was no response.)

Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: Yes.
THE SECRETARY: Senator Levy.
(There was no response.)
Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
(There was no response.)
Senator Maltese.
(There was no response.)
Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Marino.
(There was no audible response.)
THE SECRETARY: Aye.
Senator Markowitz.
(There was no response.)
Senator Masiello.
SENATOR MASIELLO: No. No.
THE SECRETARY: No. Senator

Mega.

SENATOR MEGA: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nolan.

(There was no response.)

Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Ohrenstein.

(Negative indication.)

THE SECRETARY: No.

Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Yes.
THE SECRETARY: Senator Paterson.
(There was no response.)
Senator Paterson excused.
Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
(There was no response.)
Senator Sears.
SENATOR SEARS: Yes.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Yes.
THE SECRETARY: Senator Sheffer.
SENATOR SHEFFER: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Like to ask permission to abstain.
ACTING PRESIDENT MEGA: Without objection, Senator Skelos abstains.

THE SECRETARY: Senator Smith.
(There was no response.)
Senator Solomon.
SENATOR SOLOMON: No.
THE SECRETARY: Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Nope.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: No.
THE SECRETARY: Senator Trunzo.
(There was no response.)
Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Mr. President, to explain my vote.
ACTING PRESIDENT MEGA: Senator

Velella to explain his vote.

SENATOR VELELLA: Mr. President, during Senator Solomon's comments, he made al lusion to the fact that the state Insurance Department, the Superintendent and Commissioner of Health had issued a report. I think, if you read the report, you'll find that their conclusion was that they ought to open this up; however, the final conclusion that they stated, while the facts support opening up the program, they did not state that they would support that, but reversed the whole argument that they made and came up with the -

I certainly will suffer an interruption.

ACTING PRESIDENT MEGA: (Inaudible-microphone not turned on) Senator Velella.

SENATOR VELELLA: For that reason, I urge my colleagues to support the bill.

ACTING PRESIDENT MEGA: Senator Velella votes yes.

Continue the roll call.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT MEGA: Call the absentees.

THE SECRETARY: Senator Babbush excused.

Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

(There was no response.)

Senator Espada.

(There was no response.)

Senator Gonzalez.

(There was no response.)

Senator Goodman.
SENATOR GOODMAN: Yes.
THE SECRETARY: Senator Halperin.
(There was no response.)
Senator Hoffmann.
SENATOR HOFFMANN: Yes.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Markowitz excused.
Senator Nolan.
(There was no response.)
Senator Santiago.
(There was no response.)
Senator Smith.
(Negative indication.)
THE SECRETARY: No.
Senator Trunzo.

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MEGA: Results.

THE SECRETARY: Ayes 36, nays 15.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 1165, by Senator Velella, Senate Bill Number 3126, an act to amend the Executive Law.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Wait a minute; wait a minute.

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

SENATOR LEICHTER: I'd like to have an explanation.

ACTING PRESIDENT MEGA: Withdraw

the roll call, request an explanation.

SENATOR LEICHTER: Ask Senator Velella to yield.

ACTING PRESIDENT MEGA: Senator Velella, will you yield?

SENATOR VELELLA: What bill?

ACTING PRESIDENT MEGA: 1166. Calendar Number 1165, Senator Velella, Senator Leichter has requested that you yield. Do you yield?

SENATOR VELELLA: Yes. I'm sorry.

ACTING PRESIDENT MEGA: Senator Leichter.

SENATOR LEICHTER: Senator, is this the same bill that was passed last year which would authorize police officers in the city of New York, maybe in some other localities too, to carry automatic weapons?

SENATOR VELELLA: Yes, Senator, it's the same bill. It was passed here by either unanimous vote or by one vote against it.

SENATOR LEICHTER: Senator, I assure you, it was not unanimous. I think the vote was 51 to three, I think it was Leichter, Paterson and one other person against it, and then Senator Galiber.

SENATOR VELELLA: I stand corrected. It was 51 to 3. You're correct, Senator.

SENATOR LEICHTER: Senator, let me just ask you. It was my understanding that after your bill passed the Senate and the Assembly said that they might consider it and an agreement was entered into between the police department and the PBA and that I think it was a thousand police officers were to be armed with 9 millimeter automatic guns, and there was to be a test period; is that correct?

SENATOR VELELLA: Yes, Senator, that's what they told us they would do.

SENATOR LEICHTER: O.K. Has that agreement been carried out?

SENATOR VELELLA: No, Senator, it has not.

SENATOR LEICHTER: Do you know why it has not?

SENATOR VELELLA: Well, Senator, I have a letter from the police commissioner. I asked him to give me an update on the status of the pilot program and, based on his update, we have 406 of those weapons that have been issued since the time that the agreement was reached that one thousand would be issued. 350 were put in 75 police precincts; 20 were issued to highway patrol units, 17 to task force units, four to the street crime unit where they're most needed, 11 to emergency service units and four to mounted units.

SENATOR LEICHTER: All right. So, as I understand what you have said -

SENATOR VELELLA: Comes to 406.

SENATOR LEICHTER: -- based on the information you got from the police commissioner, there has been an effort to carry out that agreement and there is a test now under way; is that correct?

SENATOR VELELLA: Well, Senator,

you categorize it as an effort, I would categorize it as less than a half-hearted effort. There are 406 out there out of a thousand that were promised; it's less than a half-hearted effort.

SENATOR LEICHTER: And has there been any report as to the results of giving these police officers the 9 millimeter guns?

SENATOR VELELLA: No, Senator, other than the fact that I have contended that I can tell you that there have been no instances reported of shootings that might have been the result of altercations, just a no conclusion drawn. They just have decided, just based on this sampling of 406, that they are better or they are worse, they're still evaluating it but there has been no drastic example that these 406 guns have caused any problem at this point.

SENATOR LEICHTER: Mr. President, on the bill, please.

ACTING PRESIDENT MEGA: Senator Leichter on the bill.

SENATOR LEICHTER: At least we

have one improvement over last year in that we don't find the guns being brandished about this chamber as we had last year. But the bill, unfortunately, has not improved at all. I must say in all my years here, I think this is one of the worse bills that I've seen. Makes my list, Senator, of 10, 15, 20 worst bills, and let me tell you why.

SENATOR VELELLA: If I read the last paragraph that might -- might just be of importance to you. I don't want to mislead you. Five police officers participating in this project have been involved in five separate shooting instances resulting in the discharge of 25 rounds. That's the total experience.

SENATOR LEICHTER: O.K. Thank you. This is really an improper and unwarranted interference by the Legislature into the police department of the city of New York. As I look around here, I don't see anybody who's a law enforcement expert except possibly Senator Volker, who did serve as a police officer.

SENATOR WALDON: Mr. President,

Mr. President.

SENATOR LEICHTER: And -

ACTING PRESIDENT MEGA: Senator Waldon.

SENATOR WALDON: Would the Senator yield for a point of information?

SENATOR LEICHTER: Before I yield, I want to correct what I said and, of course, Senator Waldon who is a very distinguished and important member of the New York City Police Department.

ACTING PRESIDENT MEGA: Senator Waldon, you've made your point, and we'll listen to Senator Leichter.

SENATOR LEICHTER: And I'm glad I was corrected.

ACTING PRESIDENT MEGA: Senator Leichter.

SENATOR LEICHTER: But for this Legislature to tell the police commissioner of the city of New York or any other police commissioner what armament police officers under his jurisdiction and supervision are to use, I

think, is a grave mistake. It's a raw interference in the affairs of the city of New York, a raw effort to micromanage the New York City Police Department.

Let me just tell you what happened in my district. I think it was in a - in October or maybe November. There was a hostage taking. There was an attempted robbery or maybe a hold-up of a bank. The police came upon the perpetrator, and he grabbed the hostage. He took that hostage down the street, it was at 95th Street and Riverside Drive. He was pursued not only by the police officers, but also some Transit Authority police officers, that do now have permission to use 9 millimeter guns. For some reason, and it's not quite sure why, people started firing, and they were - there was a discharge by the Transit Authority police of maybe 30, 40 rounds of that -- of their 9 millimeter guns. The hostage was killed in that shoot-out.

There was no blame, by the way, to be attributed to the police officers and I

can not say that, if the Transit Authority police didn't have the 9 millimeter guns, that that hostage would not have been killed anyhow. But the whole point is that, in the congested, crowded conditions that pertain in New York, the use of a 9 millimeter gun can be dangerous. It's a rapid firing weapon. It also requires special expertise in how to use that weapon and the police commissioner -- and he's an excellent police commissioner, and the previous police commissioner was an excellent police commissioner -- and they decided that they thought it was unwise, although I believe the previous police commissioner said, Let me have a very controlled pilot program, and I believe the 9 millimeter guns were given to a few police officers.

Last year, under the pressure of this bill, the police commissioner decided that he would expand that test program and, as Senator Velella pointed out, indeed, there has been expansion, although -- and I accept Senator Velella's statement that there has not been the

full involvement of the thousand police officers that at least it was reported the police department said that they would use for their test program.

But there is a test program going on to try to meet the concerns of legislators such as Senator Velella and Senator Gold who feel that police officers would be better armed and would be better able to protect themselves and carry out their duties if they had semi automatic weapons.

That program or test has not been completed. We certainly ought to get the results of that before we proceed with this bill. But I think, in any event, whatever the test shows -- and I think it ought to be up to the discretion and the sole discretion of the police commissioner to say after that test, "I think it makes sense" or "I think it doesn't make sense."

We're dealing here with the safety of people in the city of New York as well as the safety of police officers, and I dare

anybody here to say that Police Commissioner Kelly is not as concerned about the safety of the men and women in that police department as anyone in this chamber, and he makes a determination, what is best for the safety of his officers. He makes the determination what is best for the safety of the people of the city of New York.

Certainly, we can understand some of the concerns that he has raised and Commissioner Brown before him, why it is unwise in the city of New York, a densely populated city where shoot-outs with semi-automatic weapons could very readily lead to innocent people being killed, to say, "I think it is not wise to use it." He has also expressed concerns about the training requirement and there have been almost no instances, maybe one reported instance, where a police officer, if he -- if he had a 9 millimeter or some other semi-automatic weapon might have been able to protect themselves because he had run out of bullets and the weapon that is presently being used requires

reloading after discharge of a few bullets.

Really, we should not be doing this. I think it would appear that this is sort of a craven submission by this Legislature to the dictates of the police union, and I dare say that they are obviously concerned about their men and women, but they don't have the greater perspective that the police commissioner has. You know, we talk about home rule and, of course, there's many examples where we blithely ignore it, but I don't know an instance as raw, as blatant, as -- as direct as this, where this Legislature and great as our capacity and our ability may be to legislate on broad public policy issues, we certainly do not have the experience, the expertise, the responsibility or the accountability to the people of New York City to determine how they will best be protected by their police officers and whether that protection should include semi-automatic weapons.

The mayor has said no, based on what the police commissioner has determined,

this Legislature has really no moral right - you may have the right, but we have no moral right to interfere in this fashion in this decision.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

It is not always comfortable to disagree with my distinguished colleague from Manhattan, but in this particular issue, I must do it because I really believe that he is wrong.

I understand his dealing with the governmental philosophy, and that is fine, but every one of us in this chamber deals with home rule, the way they want to deal with it and there are some days when we love home rule and some days we stomp all over it.

I'm concerned about one issue, and that is safety in the streets, and I happen to believe that a safe cop makes safe streets. You don't start by making safe streets by having

police officers who are underarmed and who themselves are in an unsafe position.

Now, this is unfortunately, to some extent, Senator Leichter, a political issue, but people make political issues. You know, you said very, very well on a number of occasions, Senator Leichter, that the print shop of the Senate becomes a political issue, because they won't open the books, et cetera, et cetera. They did it, the issue goes.

Well, the mayor of the city of New York, who I happen to think is terrific and a wonderful gentleman, will not end this political issue by getting the tests done, by getting these guns. He doesn't believe in the gun, and I respect his right to feel that way.

But, Senator, let me say something. The police commissioner is appointed by the mayor. He is a good police commissioner. I'm glad they made Ray Kelly the police commissioner. He's got to answer to his mayor. I understand that. I've seen commissioner after commissioner stand up for budgets they didn't

believe in up here because they're loyal to their Governor. I understand that.

Senator Leichter, the woman who was killed as a hostage was not killed because the bullet came from a 9 millimeter gun. There were questions as to the whole incident, but it wasn't because it was a 9 millimeter gun. It was a gun that fired a bullet and, as everybody knows, the minute the bullet leaves, it has no mind.

Well, unfortunately, Senator Leichter, the bullets that go spraying through our streets from semi-automatic weapons are not coming from police officers. They're coming from hoodlums, from drug dealers, who drive through our streets. They transact drug transactions on the streets and then they - they wildly go through and women and children in apartments get killed, and it's not police officers that are doing that, Senator Leichter.

Today, on the front page of NEWSDAY is a photograph or picture, a rendering of a so-called Tek-9 which is manufactured in

Florida. This gun is one of those which I haven't purchased, $180, and you have a gun that can fire off 34 or more 9 millimeter shots without reloading, and then in literally a second or so, you reload it, and they're shooting up the subways with that. They're shooting up the streets with that. And you want to send a police officer out in the street with six rounds.

Well, you know, Senator, there was at least one instance of a police -- of a Queens police officer who was not killed, Senator. He was executed, executed on the streets of our city while he was reloading a weapon. Well, I got to tell you, I don't consider a police officer today as having a six shooter. I consider that he has a five shooter because a police officer has to be nuts to fire that last shot and leave himself in a position to be executed like that one officer.

Unfortunately, police officers aren't nuts, but they're dedicated, and they're out there, Senator, and when it comes to

protecting the public, they are going to let go of that sixth shot.

I held a hearing. I -- when I first got involved in this issue. I didn't want to run around like a cowboy on this issue. I held a hearing, and the police department came to that hearing and, hopefully, they were going to answer all my questions, and then that would be the end of the issue, and, Senator, we have it on tape. I invite you to listen to it. Their answers were embarrassing. Embarrassing. It's dangerous; bullets can ricochet.

Senator, if there's one place it can ricochet, it's in the subways of the city of New York, more than out in the streets, and the Transit Police Department has 9 millimeters. No one's made an effort to take it away from them and we don't read stories every day of -- of passengers in a subway system being slaughtered by ricocheting bullets all over the place. It doesn't happen, and you go from one argument to the other.

Senator Leichter, I was out at

the police range one day after, I want you to know, we took the vote last year, and I was firing a 9 millimeter Smith & Wesson, and the gun jammed and all of a sudden I got very upset. Had I gotten sucked up into this issue to the point of not understanding it? And the State Police firearms instructor, with a little grin on his face, said, "Senator, don't get upset. I can see you're upset." He said, "Nobody said that there shouldn't be training," and he took the gun away from me and he went through the whole process, jammed the gun and unjammed the gun in less than a second.

You want to know what's involved in reloading a six-shooter .38 with speed loading? You can't do it, Senator. So the answer is, yes, it requires training. I'm not suggesting we put anyone in the street without training but, Senator Leichter, let me remind you of something. We take people without giving them mental examinations. We make them soldiers, and we teach them how to use very sophisticated weapons. These are police

officers. We test them. They are, you can imagine, as a general rule, a little better educated. People have to learn to use and respect a weapon.

But, Senator, I'm not doing this for the police union or because there's a policeman out there that wants to be more macho than someone else. The bottom line is that police officers themselves should be safe so that they're in a position to protect us.

This is not a liberal issue. It's not a conservative issue. It's an issue of simply, I believe, Senator Leichter, common sense, on what is best.

You make an argument which I respect. Who is Manny Gold versus the mayor or the police commissioner to know that respect? But I'm urging upon you, Senator, that Manny Gold is the same person that everybody else is who, on every issue that we discuss, has to become educated.

Who is any one of us to determine these complicated solid waste programs and

environmental programs? We are people who read and educate ourselves and try to put ourselves in such a position, and I -- and I submit to this distinguished body that if we really studied all ourselves, there is no reason -- in one minute -- there is no reason to withhold it, and the final argument I would give you on that is that I don't know of one police department in America which has gone to semi-automatic weapons and went backwards.

There have been police depart ments that had a Glock in, like the Glock, and changed it or they changed something to a Glock, but there is not one I know of that went backwards. It's a weapon that's good enough for the State Police in New York. It's good enough for the F.B.I. It's good enough for the Transit Authority, the Newark Police Department, et cetera, et cetera, et cetera.

So I don't think I'm trouncing home rule at all. I think this is something that is -- that is -- that there is an urgency about it, and I don't think that the mayor and

the police commissioner have taken that urgency to heart.

You want me to yield, Senator?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT FARLEY: Yes. Senator Gold, would you yield to a question?

SENATOR LEICHTER: Yes. You asked a question, and you asked it rhetorically. You said, who is Manny Gold? I think he's a terrific legislator, and I appreciate the obligation that we have in this Legislature to educate ourselves on things that we have jurisdiction or we try to act on. But are you telling me that you read and educated yourself to the point that you know as much as Ray Kelly about police work, about what police officers need for their safety, about what is best for the public safety?

SENATOR GOLD: Senator, it's a wonderful question, and I want everyone to understand I didn't plant that question, O.K.?

SENATOR LEICHTER: O.K.

SENATOR GOLD: Senator, I don't

know as much as Ray Kelly knows about the total gamut of police work. I can tell you this, though, on the one issue that I'm dealing with today, on the use of 9 millimeter weapons versus .38s in this situation, I think that I've done a lot of home work and I wouldn't become -- I wouldn't come here as an arrogant person to tell you that I know as much about anything as Ray Kelly. But on the issue that we're dealing today, I think I've done my home work and I think that it's in the best interests of the people.

SENATOR LEICHTER: Well, Senator, you didn't plant the question and, frankly, it -- if you had planted it, you might have answered it a little differently than.

SENATOR GOLD: No, I might have answered it better.

SENATOR LEICHTER: It was obvious you didn't plant the question in view of your answer, but I'm sure you've read and you've learned a lot, but with all due respect, as much as I follow your lead on a lot of issues, when

it comes to police work I'm going to look to Ray Kelly.

But let me ask you, let me just ask you this other question because I think you said something, and I don't think you meant a wrong inference.

ACTING PRESIDENT FARLEY: Would you yield for another question?

SENATOR GOLD: Yes, right.

SENATOR LEICHTER: You said, well, Ray Kelly works for the mayor and Lee Brown works for the mayor, sort of implying that this is a mayoral decision, and that the position of Ray Kelly or Lee Brown before him was not a genuine, sincere, independent position on their part but imposed by the mayor. Is that what you were trying to say?

SENATOR GOLD: I'll say this to you, Senator. I would not be presumptuous enough to tell you that I can read anybody's mind. I have the impression -- I have the impression that the mayor of the city of New York does not believe, and that -- and sincerely

does not believe that the weapon is in the best interests of the City, whether it's for whatever reasons, and I don't have to go into his reasons.

I think that, if that is his conclusion, as he believes that it could be a political problem for him or whatever, they might have conversations with his commission ers. I think that that is a reality of government. I will tell you that I've served here under Republican governors and Democratic governors. I'm not ashamed to tell you, Senator, that I believe that there have been Democratic commissioners who have come before the Finance Committee and supported a Democratic governor on budgets that perhaps the commissioner didn't agree with every part of, but the commissioner as part of a team supports his budget to the Bureau of the Budget. They come back and tell him how to amend it. He amends it, and now he or she as a commissioner have to defend a budget that they may totally not agree with.

I believe that the police commissioner of the city of New York is well aware that he works for a mayor, and I don't think that he wants to create a problem with his mayor, and this is an issue which may or may not have political implications. I'm sorry it's gotten to that point. I really do. I don't think that this would hurt the mayor of the city of New York at all. I'm sorry it's come to this point. I'm telling you that as someone who supports the mayor for reelection. It does not mean I have to agree with him on every issue and there's going to be a couple issues this year where I do not agree with him. Do I think he is a far better choice for the people than the unannounced Republican candidate? Of course, but that doesn't mean I have to buy his position on every issue.

SENATOR LEICHTER: Senator.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Waldon, why do you rise?

SENATOR WALDON: I'm not sure

procedurally I'm correct, but would Senator Leichter -- could Senator Leichter, even though Senator Gold has the floor, yield for a question?

SENATOR GOLD: Procedurally.

SENATOR LEICHTER: I'm not going to yield at this time, because I'm asking questions of Senator Gold.

ACTING PRESIDENT FARLEY: Well, Senator Gold has the floor. I think you were asking him some questions.

SENATOR LEICHTER: And I'd like to continue.

SENATOR WALDON: Yes, Mr. President, and I -

ACTING PRESIDENT FARLEY: Hold on just a minute. Senator Gold, do you wish to yield to Senator Waldon?

SENATOR GOLD: I would like to do anything that makes everyone comfortable.

SENATOR WALDON: Thank you very much, Mr. President. I would like -

ACTING PRESIDENT FARLEY: Just a

minute.

SENATOR LEICHTER: Mr. President.

SENATOR GALIBER: Point of order, Mr. President. Is that a yes or no?

ACTING PRESIDENT FARLEY: I thought Senator Gold was ready to yield to Senator Waldon. Senator Gold has the floor.

SENATOR GOLD: Yes, Mr. President, if I may, everybody wants to be polite and -

ACTING PRESIDENT FARLEY: That's what we want to do.

SENATOR GOLD: Senator Leichter wanted to ask me some questions, and I think if he wants to continue, I think my hands are tied to that extent.

SENATOR LEICHTER: Thank you, Senator Gold, and we're right in the middle of this. Senator, I've talked to Lee Brown about this issue. I've not talked to Commissioner Kelly, and there is no question in my mind that Commissioner Lee Brown sincerely, genuinely,

even passionately believed independently of what the mayor believed, that it was a mistake to arm police officers with 9 millimeter guns, with semi-automatic weapons. He had a lot of doubts and questions about it.

Now, if you have any other information which -

ACTING PRESIDENT FARLEY: Will you yield?

Senator Leichter.

SENATOR LEICHTER: Yes.

SENATOR VELELLA: Would you yield?

SENATOR LEICHTER: You know.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: With all due respect, Mr. President, I think we -- I think we do have some procedures here.

ACTING PRESIDENT FARLEY: Yes. Senator Gold has the floor, and you're in the midst of asking a question.

SENATOR GOLD: Yes, I think so.

SENATOR LEICHTER: The question was, it was clear to me -

SENATOR GOLD: I understand.

SENATOR LEICHTER: -- that Commissioner Brown genuinely believed this. I think there is no question in my mind that Commissioner Kelly genuinely and sincerely believes that, at least the test program or the pilot program, ought to continue, that this is interference in his jurisdiction.

Now, I'd like Senator Gold to tell us, because you seem to continue to imply, well, it's not really a genuine or sincere position. Can you give us any factual information, Senator, outside of the speculation which would lead you to say or infer that this is not a genuinely held position by the authorities in this field; that is, the police commissioners of the city of New York?

SENATOR GOLD: Yeah. Senator.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yeah, I believe

that Lee Brown did not like the 9 millimeter gun, independent of the mayor. I do believe that. I also understand that Lee Brown came from a police department where the 9 millimeter gun was brought in and he may even have opposed it when it came in, and it came in -- Senator Waldon may have a better answer. I don't know whether he wanted it or not, but the point is it went in, and it was successful.

As far as Commissioner Kelly is concerned, I can not tell you that Commissioner Kelly believes anything other than he says because that would be an injustice to the man. It is not for Manny Gold to say that Ray Kelly doesn't tell the truth. I wouldn't do that. I -- I can have my own feelings, Senator Leichter, but I -- you're asking me to go past a line which I don't want to go.

SENATOR LEICHTER: Thank you.

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

SENATOR STACHOWSKI: Senator Gold yield for a question?

ACTING PRESIDENT FARLEY: Senator Stachowski asks if you will yield for a question.

SENATOR STACHOWSKI: Are there members of the New York City Police Department who have 9 millimeter weapons now?

SENATOR GOLD: Well, I understand there are some, such as bodyguards to the mayor and bodyguards to the police commissioner and some other people. Also part of the test program was to give them to sergeants, and I must tell you, if you talk to the average cop on the beat, they will -- not for quoting, but they'll look at you and laugh, but they'll tell you the last guy at the scene of the crime is the sergeant. What does he need the gun for?

If you want to put a test program out, you give it to the guy that's stuck out on the street when, unfortunately, that incident arises.

ACTING PRESIDENT FARLEY: Senator Waldon, did you have a question for Senator Gold.

SENATOR WALDON: Thank you very much. I would just like to briefly speak on the bill.

Senator, I do not believe that anyone as astute as those who have come through the political morass and emerged as Senators would really, in their heart of hearts, believe that a police commissioner would not be sensitive to the guy who appointed him, in this instance to a 110-plus thousand dollar job, perhaps the most prestigious police job in the nation, and I don't think it is necessary for the mayor to say absolutely, unequivocally, directly that "I oppose the Glock." He may hint at it, or he may allow the report that was generated by those who are subordinate to him to be shared with the police commissioner, and that's how that deal goes down.

But the Glock was in the Houston Police Department and Police Commissioner Lee Patrick Brown did not oppose it there. It was in the Atlanta Police Department. He did not oppose it there, and I happen to believe from

all of the contacts I have with the National Organization of Black Law Enforcement Executives -- I'm a founding member of the Guardians, all the black cops in this state -- that Lee Patrick Brown is as astute a political animal as is Al Waldon, and I think that Ray Kelly is also a consummate astute political animal, so I disagree with the argument that you presented to us, Senator Leichter, but I can tell you from the perspective of the guys that I see at the meetings and the cocktail parties and the barbecue, black and white, that they feel very much underarmed when they have to go into a parade with a six-shot revolver of any nature, speed loader or otherwise, and that we do them a disservice to force them to carry that weapon, and this is the police commissioner's decision independent of the mayor.

It is the wrong decision and, therefore, we as the ultimate conscience of the state have a right to correct his wrong.

So I support this bill. I

especially support the one following it, and I would encourage all of us to recognize that we can not have safe streets and safe cities unless the police officers who are the front line of defense feel safe in carrying out their duties.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55, nays 2, Senators Galiber and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1166, by Senator Velella, Senate Bill Number 3188, an act to amend the Executive Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

SENATOR LEICHTER: Mr. President, if I could just briefly explain my vote. This is really the same as the last bill except it applies to the New York City Housing Authority. I guess you could make an argument that it's even worse to have it for the Housing Authority although I heard Senator Waldon who speaks very passionately on this, and I have great respect for him as a Senator and he was an outstanding police officer and brings a lot more experience to this than I do.

But I could certainly understand why Housing Authority police who patrol in corridors, in buildings or elevators and so on, why their supervising officer would say, "I don't want them to have a semi-automatic weapon."

I say again, and I plead with you that, while I may find logic in what Senator Velella and Senator Gold and Senator Waldon

said, we are not the police commissioner of the city of New York. We're not the mayor of the city of New York. You can disagree with the mayor as I do on a number of issues, but that doesn't mean that we have the right to go in and meddle in the affairs of the city of New York.

And to speak, Senator Waldon, that we are the ultimate conscience, well, you carry that to the point where we can do anything in this state, interfere in any locality, goodbye to home rule. And Senator Gold, and he's always candid and he's always honest, he's always said, home rule, you know, if it serves your argument you're in favor of home rule, if it doesn't, you know, you forget about it. That's, of course, what's happening here, but I think it's important that we do recognize that we do have local elected officials. They bear responsibility; they're held accountable. They appoint people to positions of responsibility and, even if we were right on the issue, and I don't know whether we are or are not, but my point is that this is rank, blatant, wrongful

interference.

Mr. President, I vote in the negative.

ACTING PRESIDENT FARLEY: Results. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55, nays 2, Senators Galiber and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, call up 1107, please.

ACTING PRESIDENT FARLEY: 1107, is that right?

THE SECRETARY: Calendar Number 1107, by Senator Levy, Senate Bill Number 1313, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative -- those recorded in the negative on Calendar Number 1107 are Senators DeFrancis co, Galiber, Gold, Leichter, Montgomery, Mendez and Saland. Ayes 50, nays 7.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Galiber.

SENATOR GALIBER: Yes. Mr. President, can I have unanimous consent to be recorded in the negative on Calendar Number 1126?

ACTING PRESIDENT FARLEY: 1126, Senator Galiber will be in the negative.

Senator Present.

SENATOR PRESENT: Mr. President, can we call up 1127, please?

ACTING PRESIDENT FARLEY: 1127.

THE SECRETARY: Calendar Number 1127, by Senator Levy, Senate Bill Number 4684,

an act in relation to affording retirement credit to certain employees of the village of Massapequa Park.

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

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54, nays 3, Senators Galiber, Gold and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1182, by Senator Hannon, Senate Bill Number 5017, to allow Douglas Robins, an employee of the Union Free School District Number 5 in Levittown to transfer certain service credits.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54, nays 3, Senators Galiber, Gold and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1185, by Senator Masiello.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT FARLEY: Lay that bill aside.

SENATOR MASIELLO: Yes.

THE SECRETARY: Calendar Number 1195, by Senator Stafford, Senate Bill Number 443, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

SENATOR GOLD: Yeah.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Yeah, I understand we've had some debates on these, but Senator Connor and myself and Senator Halperin, Leichter, Masiello and Mendez, Montgomery, Ohrenstein, Onorato, Oppenheimer, Solomon, Stachowski, Weinstein, Senator Daly, Senator Sheffer have voted against this in the past. The DEC is strongly opposed.

Last section.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1195 are Senat ors Connor, Espada, Galiber, Gold, Leichter, Masiello, Mendez, Montgomery, Ohrenstein, Onorato, Oppenheimer, Pataki, Sheffer, Solomon, and Stachowski. Ayes 42, nays -

ACTING PRESIDENT FARLEY:

Present.

THE SECRETARY: Also Senator Present. Ayes -- ayes 41, nays 16.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 1206, by Senator Nozzolio, Senate Bill Number 4154, an act to amend the Social Services Law.

SENATOR GOLD: Yeah, Senator yield for a question?

ACTING PRESIDENT FARLEY: Senator Nozzolio, would you yield to a question from Senator Gold?

SENATOR NOZZOLIO: Mr. President, would you star the bill.

ACTING PRESIDENT FARLEY: Star the bill.

THE SECRETARY: Calendar Number 1208, by Senator Johnson, Senate Bill Number 4375-A, to allow Paul D'Aversa to file a request for retroactive service credit.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY:

Explanation has been asked for.

Senator Johnson.

SENATOR JOHNSON: Mr. President, this bill provides that the individual named, formerly a New York City police officer who was laid off in 1975, who secured employment in 1977 as a Suffolk County police officer, be eligible to buy those two years of service in the -- in the retirement system.

I might remind you that in 1982, a bill was passed saying others who worked for New York City who had been laid off, but secured other City employment prior to 1982, could buy those years back or the time back that they were out of the system, so this is merely equitable for him.

The county has sent a home rule message, and Mr. D'Aversa has agreed to pay the $49,000 that would have been contributed plus the earnings during the period he was unemployed. Seems like he's put in an awful lot of his own money into it and it seems equitable and fair we should pass this bill.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yeah. Mr. President, I'll just make my comments since Senator Johnson and I have already discussed this.

This, I think, is even a different situation than some of the other bills that we've had. We have had bills where Jane Roe, through no fault of her own, filed papers and three cats at the county office ate them up and we never find them again, but it was no fault of her own.

This is a situation where a gentleman, through no fault of his own, was laid off. He worked some place else for two years or got unemployment or whatever and then he went back to work. Now, we're being asked to give him retirement benefits not only counting years that he worked, but years that he didn't work. I mean this is incredible. As I said to Senator Johnson, the next thing we will see -- I mean I know that there is at least one member on your

side; I don't want to embarrass the gentleman by mentioning his name, who wanted to be the governor for four years. We should give him a pension based upon what the governor's salary is because it's through no fault of his own that he didn't work as governor.

I mean the logic here is crazy. We're now giving pension credit for years that people didn't work? Now, I'm sorry he was laid off, and we all understand that, but to start counting years in the pension system when somebody didn't work, is really a big stretch.

Now, Senator Johnson says that this gentleman has got to put in something like 49,000 of his own money or whatever. I assume that the individual having been a police officer is not stupid. He's putting in 49,000 because he'll get out a half a million or whatever. I mean I don't know what the numbers are; I really don't. I remember last year we had a bill where somebody was offering to put in around 80,000 and when we came up with the numbers, that 80,000 was worth about a million. I mean these

people aren't stupid.

I don't -- I don't blame the guy for -- for wanting the credit and I don't blame him for putting up the 49,000, but I mean it is really silly. We are getting involved in situations which make us the laughing stock. We are not -- we have no right to be giving these kind of gifts.

Senator Trunzo, I come in here every day waiting for your report that we're going to get some satisfaction in the Assembly. I don't know, maybe the Assembly is right and our bill is no good or maybe you're not fighting hard enough, but this process really ought to stop. It gets worse and worse and worse.

We have a member of this house who has developed a new bill that yesterday, thankfully, in the middle of the debate was withdrawn, but I know people are going to be trying to get that bill going, and I'm telling you that's going to be next year's flood of private bills and private legislation, and I think we really ought to have to do something

about it.

ACTING PRESIDENT FARLEY: Senator Padavan.

SENATOR PADAVAN: Senator Gold, I'd just like to remind you that back in the mid-'70s there were literally a thousand more police, fire and sanitation workers who were laid off in the city of New York during the fiscal crisis. After that crisis abated, I forget the specific time frame, year or whatever it was, we passed legislation in this house and I'm sure you supported it, that allowed those members of those City agencies to buy back their lost credit time. So that precedent has been set. We did it in the city of New York and, if I understand this situation correctly, this individual was laid off through no fault of his own either. How many others, I don't know, but certainly we can not say with all good conscience that this particular consideration has not been provided to other similarly laid off individuals.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Who was asking? Senator Gold?

SENATOR GOLD: Yes. I would just like to respond. I appreciate Senator Padavan's comments and the sincerity of those comments. But, Senator, if we have had situations and we have in bulk, through the municipalities, the bargaining system and whatever, taken care of them, that's one thing.

I don't think that's a precedent for private bills. I think the process of private bills is a bad process. If there was a bill, general bill, Senator Padavan, that said that if people get laid off by municipalities or by the state for short periods of time and they come back, and we should allow them to buy back, if that's going to be the state policy, then that's something the Legislature can do on a policy basis.

That's different than picking and choosing and have individuals who get these benefits. I think that process is a bad process.

SENATOR JOHNSON: Mr. President, I'd just like to expound for a moment -

ACTING PRESIDENT FARLEY: Senator Johnson.

SENATOR JOHNSON: -- on this. I think Senator Gold is making a point that has some validity, but I don't see the fairness, quite frankly, that if he had been called back by the city of New York, he would have been able to buy back those two years, but because he didn't get called back by the City and chose to be employed as a police officer by Suffolk County, he's not allowed to buy back those two years. Something is inequitable about that, and I'd say, Senator, and I'd say a similar bill to this was signed into law two years ago for similar situations. I think it's equitable. He would have gone back to the City if they called him back; he didn't get called back. He got work in another department. He's buying back the time that would have been allowed if the City had called him back, and I don't feel that this is special legislation. This is a career

police officer who wants to be in the same status he would have been if he hadn't been laid off or, indeed, if he had been called back by the City.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: There is a home rule message with this legislation.

THE SECRETARY: Ayes 54, nays 3, Senators Galiber, Gold and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1217, by Senator Hannon, Senate Bill Number 4972, making an appropriation to the Department of Transportation.

SENATOR LEICHTER: Explanation.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 1227, by Senator Levy, Senate Bill Number 5487 A, in relation to authorizing a review of current drug-impaired driving education.

SENATOR LEICHTER: Lay that bill aside.

ACTING PRESIDENT FARLEY: Lay that bill aside for the day.

THE SECRETARY: Calendar 1228, by Senator Daly.

SENATOR DALY: Lay aside until tomorrow.

ACTING PRESIDENT FARLEY: Lay that bill aside for the day.

THE SECRETARY: Calendar Number 1230, substituted earlier today, by the Assembly Committee on Rules, Assembly Bill 7891, amends Chapter 901 of the Laws of 1990.

ACTING PRESIDENT FARLEY: Read

the last section.

SENATOR LEICHTER: Could we have an explanation?

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

SENATOR TRUNZO: Mr. President, this bill permits Nassau and Suffolk County to continue to bring actions to enforce violations of SPDES programs for the county and they're during this, they've done it for the past couple of years and it's worked out well, and the thing is to continue it, because the DEC out in the county does not have the -- they're not staffed. They're understaffed, and they can not even prosecute some of those violators of the SPDES permits, and the two counties have been working at it, doing well. They share the profits and the money with the state and the counties involved, and, as a result, they're asking for an extender of two more years of the program.

SENATOR LEICHTER: Senator, if

you would yield just for a question.

SENATOR TRUNZO: Sure.

SENATOR LEICHTER: Sounds like a good bill. Just to steal Senator Gold's line, do you know what the objection of DEC is to the bill?

SENATOR TRUNZO: No idea, except I know they objected to it two years ago and they didn't put out a memo.

SENATOR LEICHTER: I don't either, and I apologize, Senator Gold, for plagiarizing his line. He's busy.

SENATOR TRUNZO: Read the last section.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 1236, by Senator Stafford.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Laid aside temporarily.

THE SECRETARY: Calendar Number 1237, by Senator Trunzo, amends Chapter 422 of the Laws of 1991.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays one, Senator Gold recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR GOLD: Can you hold on for one second?

ACTING PRESIDENT FARLEY: Yes, the results again on that bill. Results.

THE SECRETARY: Results on Calendar Number 1237 are ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed again.

Senator Present, could we recognize Senator Libous for a motion?

SENATOR PRESENT: Sure.

ACTING PRESIDENT FARLEY: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President, and on behalf of Senator Bruno, I wish to call up his bill, Print Number 2354, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read Senator Bruno's bill.

THE SECRETARY: By Senator Bruno, Senate Bill Number 2354, Economic Development Law.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

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

ACTING PRESIDENT FARLEY: The amendments are received. The bill will retain its place on the Third Reading Calendar.

Thank you, Senator Bruno.

Senator Daly.

SENATOR DALY: Could I be voted in the negative on Calendar Number 1195, Print Number 443?

ACTING PRESIDENT FARLEY: 1195, Senator Daly will be in the negative.

Senator Present.

SENATOR PRESENT: Mr. President, do you have any housekeeping to take place?

ACTING PRESIDENT FARLEY: Looks like the housekeeping is taken care of.

SENATOR PRESENT: There being no further business, I move that we adjourn until tomorrow at 1:30.

ACTING PRESIDENT FARLEY: Senate will stand adjourned until tomorrow at 1:30.

(Whereupon, at 7:04 p.m., the Senate adjourned.)