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ALBANY, NEW YORK

January 31, 1994

3:01 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT FARLEY: The
3 Senate will come to order, Senators will find
4 their places. Will you please rise with me for
5 the Pledge of Allegiance to the Flag.

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

8 Today, in the absence of visiting
9 clergy, we'll bow our heads for a moment of
10 silence.

11 (A moment of silence was
12 observed.)

13 ACTING PRESIDENT FARLEY: The
14 Secretary will begin by reading the Journal.

15 THE SECRETARY: In Senate,
16 Sunday, January 30th. The Senate met pursuant
17 to adjournment, Senator Farley in the Chair upon
18 designation of the Temporary President. The
19 Journal of Saturday, January 29th, was read and
20 approved. On motion, Senate adjourned.

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

1 Presentation of petitions.
2 Messages from the Assembly.
3 Messages from the Governor.
4 Reports of standing committees.
5 Reports of select committees.
6 Communications and reports from
7 state officers.

8 Motions and resolutions.

9 Senator Present.

10 SENATOR PRESENT: Mr. President,
11 in behalf of Senator Libous, on page 12, I offer
12 the following amendments to Calendar 104, Senate
13 Print 6490-A, and ask that said bill retain its
14 place on the Third Reading Calendar.

15 ACTING PRESIDENT FARLEY: The
16 bill is amended. The bill will retain its
17 place.

18 Senator Present.

19 SENATOR PRESENT: Mr. President,
20 I'd like to call an immediate meeting of the
21 Rules Committee in Room 332.

22 ACTING PRESIDENT FARLEY: There
23 will be an immediate meeting of the Rules

1 Committee in Room 332.

2 SENATOR PRESENT: And I ask that
3 the Senate stand at ease.

4 ACTING PRESIDENT FARLEY: The
5 Senate will stand at ease pending the Rules
6 Committee report.

7 (The Senate stood at ease from
8 3:04 p.m. until 3:24 p.m.)

9 ACTING PRESIDENT KUHL: The
10 Senate will come to order.

11 Senator Present.

12 SENATOR PRESENT: I believe we
13 have a report of a standing committee, please.

14 ACTING PRESIDENT KUHL: Clerk
15 will read a report of a standing committee.

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

19 Assembly Bill Number 9071-A -
20 excuse me, Assembly Bill Number 9071-A, Senate
21 Reprint Number 21006, an act -- the Omnibus
22 Consumer Protection and Banking Deregulation Act
23 of 1994.

1 Also Senator Skelos, from the
2 Committee on Aging, reports the following bills
3 directly for third reading: Senate Bill Number
4 6548, by Senator Skelos, an act to amend Chapter
5 208 of the Laws of 1992, relating to
6 establishing the Alzheimer's Disease task
7 force.

8 Both bills reported directly to
9 third reading.

10 ACTING PRESIDENT KUHL: Without
11 objection, third reading.

12 Senator Present.

13 SENATOR PRESENT: Mr. President,
14 can we return to motions and resolutions.

15 ACTING PRESIDENT KUHL: Senator
16 Farley.

17 SENATOR FARLEY: Thank you, Mr.
18 President.

19 On behalf of Senator Cook, on
20 page 10, Calendar Number 92, Senate Print 3026,
21 I ask -- I offer the following amendments, and I
22 ask that it retain its place.

23 ACTING PRESIDENT KUHL: So

1 ordered.

2 SENATOR FARLEY: On behalf of
3 Senator Cook -- Johnson, I'm sorry, on behalf of
4 Senator Johnson, on page 10, Calendar Number 91,
5 Senate Print 2999, I offer the following
6 amendments, and I ask the bill retain its
7 place.

8 On behalf of Senator Cook, on
9 page 5, Calendar 37, Senate Print 2640, I offer
10 the following amendments and ask that the bill
11 retain its place.

12 On behalf of Senator Levy, on
13 page 7, I offer the following amendments to
14 Calendar 73, Senate Print 324, and I ask that
15 that bill retain its place.

16 On behalf of Senator Skelos, on
17 page 8, I offer the following amendments to
18 Calendar 76, Senate Print 1605, and I ask that
19 that bill retain its place.

20 On behalf of Senator Johnson, on
21 page 8, I offer the following amendments to
22 Calendar Number 80, Senate Print 2802, and I ask
23 that that bill retain its place.

1 On behalf of Senator Velella, on
2 page 6, I offer the following amendments to
3 Calendar 59, Senate Print 2599-A, and I ask that
4 that bill retain its place.

5 On behalf of Senator Farley, on
6 page 9, I offer the following amendments to
7 Calendar 85, Senate Print 6183, and I ask that
8 that bill retain its place.

9 On behalf of Senator Johnson, Mr.
10 President, I move that the following bills be
11 discharged from their respective committees and
12 recommitted with instructions to strike the
13 enacting clause: Senate Print 909, Senate Print
14 1189, 5541, and 5654.

15 ACTING PRESIDENT KUHL: Without
16 objection, so ordered.

17 Senator Present.

18 SENATOR PRESENT: Mr. President,
19 I move that the following bill be discharged
20 from its respective committee and be recommitted
21 with instructions to strike the enacting
22 clause: Senate Print 1892-A.

23 ACTING PRESIDENT KUHL: Without

1 objection, so ordered.

2 THE SECRETARY: On page 11 of
3 today's calendar, Senator Farley moves to
4 discharge the Committee on Banks from Assembly
5 Bill Number 7782-A and substitute it for the
6 identical Third Reading 100.

7 ACTING PRESIDENT KUHL:
8 Substitution is ordered.

9 Senator Present.

10 SENATOR PRESENT: Mr. President,
11 I'd like to call up Senate Reprint 21006.

12 ACTING PRESIDENT KUHL: Clerk
13 will read.

14 THE SECRETARY: Calendar Number
15 110, by the Assembly Committee on Rules,
16 Assembly Bill Number 9071-A, with a Senate
17 Reprint Number of 21,006, an act to enact the
18 Omnibus Consumer Credit Disclosure and
19 Deregulation Act of 1994, to amend the Banking
20 Law.

21 SENATOR GOLD: Yeah, excuse me.

22 ACTING PRESIDENT KUHL: Last
23 section.

1 SENATOR GOLD: No. No. Will
2 Senator Farley yield to a question?

3 SENATOR FARLEY: Yes.

4 ACTING PRESIDENT KUHL: Senator
5 Farley.

6 SENATOR GOLD: Senator Farley, it
7 seems that as much as we try, we wind up with
8 this same silly predicament year after year.
9 Now, today is the last day, I believe, for this
10 issue to be resolved. It's my understanding
11 from what you said in the Rules Committee
12 meeting, that there is not as yet three-way
13 agreement on a bill. It's 3:30 in the
14 afternoon. What -- why at this point are we
15 passing a non-agreed upon bill?

16 SENATOR FARLEY: Let me give an
17 explanation of the bill, and then I think you'll
18 understand why we're passing this bill.

19 This is the omnibus banking bill
20 and consumer protection bill, one that we have
21 had under negotiation for over a year, and I
22 mean active negotiation. It is basically the
23 Governor's bill. It is 98.6 agreed to. There's

1 one point that is not agreed to by one house. I
2 believe the Governor agrees with us on this. I
3 don't want to speak for him, but that's what he
4 told me.

5 Let me just explain what this
6 bill does and what it is. Incidentally, when
7 you talk about a banking deregulation bill, it's
8 really a misnomer because it's the entire
9 Banking Law for the state of New York. We have
10 put it on a sunset and every now and then it
11 keeps expiring and we keep coming back.

12 This year we're trying to make it
13 permanent. Everybody wants to make it perman
14 ent, all two houses and the Governor, but in
15 order to make it permanent, we have put a lot of
16 things in it, and let me tell you some of the
17 things that are in it that have been -- all of
18 these things are agreed to. I'll tell you the
19 one thing that is not agreed to.

20 It prohibits geographic
21 restrictions. It prevents banks from refusing
22 to open a deposit account simply because the
23 depositor does not live in the same city or

1 county which is ever larger.

2 It has lifeline checking. It
3 requires banks to offer lower -- lower cost
4 checking accounts. The account will provide for
5 eight monthly checks or other withdrawal
6 transaction. The maximum monthly fee, the
7 minimum balance and deposit required will be set
8 by the Banking Board.

9 Small -- incidentally, on that, I
10 would suspect that they may follow this -- the
11 New Jersey lifeline checking rules and regs
12 which have been quite successful.

13 It also provides for credit card
14 information program. It establishes a toll-free
15 telephone number for the Banking Department for
16 consumer -- where consumers can compare the in
17 formation on credit cards. It requires current
18 issuers to provide notice to their customers of
19 this service. Notice will be provided on appli
20 cations, solicitation and monthly billing.

21 It also provides small business
22 loan figures. It collects and makes readily
23 available to the public information on aggregate

1 numbers and amounts of small business and small
2 farm loans being made by New York State
3 institutions.

4 It gives credit card parity. It
5 revises New York State's credit card laws to
6 provide New York issuers with greater parity for
7 competing with the out-of-state issuers who are
8 dominant in this market.

9 These four restrictions provide
10 specific authority for credit card introductory
11 rates and rate sales, authorizes certain limited
12 fees, provides flexibility in mailing
13 arrangements in order to prevent credit card
14 theft and fraud, and it strengthens New York's
15 law to ensure that the provisions of the New
16 York law can be exported to customers in other
17 states.

18 It also contains a provision
19 which the press has written much about, and
20 there's agreement on it, motor vehicle leasing.
21 It enacts -- what that has to do with banking
22 always befuddles me, but it is in here. It
23 enacts the Motor Vehicle Leasing Act which

1 provides provision for increased disclosures,
2 prompt refunds, a process for determining
3 liability for early termination and a process
4 for resolving any disputes over excess wear and
5 damages.

6 It also provides, which is a very
7 significant part of the bill, for small business
8 investment companies. It establishes two small
9 business investment companies, one general for
10 every small business in this state, for every
11 one, and one that is specialized for certain
12 disadvantaged persons. The banking industry,
13 over time, will contribute up to \$23 million to
14 this. These funds will, in turn, leverage over
15 70 million, for a total of 93 million, to
16 provide loans and equity capital to the needs of
17 small businesses.

18 We're talking about two different
19 companies -- companies. One company, the Small
20 Business Investment Company, again, is open to
21 everyone. That is all agreed to. The one
22 disagreement in the bill is as to the New York
23 Specialized Small Business Investment Company.

1 That's where we have a disagreement.

2 The Governor, in his proposal,
3 said that -- used the federal language which
4 said -- let me find this here. Said that "***
5 federal law provides that they may only invest
6 in small businesses owned by persons whose par
7 ticipation in the free enterprise system is
8 hampered because of social or economic
9 disadvantages. Although economically and
10 socially disadvantaged is not specifically
11 defined, federal guidance documents note that
12 consideration should be given to minorities,
13 handicapped persons, persons in economically
14 deprived areas and persons of *** income or
15 limited education."

16 The Governor's program bill,
17 which this bill is still the Governor -- at the
18 request of the Governor, was received early in
19 January, provided for the purposes of this
20 company they shall serve the needs of socially
21 and economically disadvantaged persons pursuant
22 to Section 301 (d) including minority-owned
23 business enterprises and small businesses

1 located in the neighborhood-based alliance
2 communities, economic development zones and
3 highly distressed areas, individuals with
4 disabilities, persons unable to compete
5 effectively in a marketplace because of
6 prevailing restrictive practices.

7 The Assembly bill, and this is
8 our area of disagreement, would provide only for
9 minorities, businesses, persons in highly
10 distressed areas and persons who reside in a
11 neighborhood-based alliance.

12 The Senate preferred the
13 Governor's language. However, we took the
14 Assembly list to broaden it -- that's what's in
15 this bill -- to include -- just broadened it,
16 used their language to include persons eligible
17 for the income tax credit, the working poor.

18 It's that simple. 90 percent of
19 the geography of this state is excluded from
20 participation in this company unless they are
21 minority under the Assembly language.

22 I think this is reasonable. I
23 think it's something that we can work out. The

1 Governor has proposed three different -- I don't
2 want to get into the negotiations too much here,
3 but he's proposed three different additions,
4 addendums to the language here, instead of
5 making it just for minority businesses.

6 You have to realize that minority
7 businesses have no means test, no means test at
8 all. He would like to include it and so would
9 we, to either the earned income tax credit being
10 added on there or the economic opportunity zone
11 added in there, one or any of them, or to use
12 his original language, which I prefer.

13 Let me share with you, I had
14 concern about their language, whether it would
15 meet the test of the federal legislation. My
16 director of the Banks Committee called the
17 deputy counsel. He said, "No way would we
18 approve that language. There would be
19 nothing." We told that to the Assembly in
20 negotiations. The next day a whole load of
21 calls were made. Guess what? Somebody said,
22 "We'll approve it."

23 I'm worried that we may be

1 jeopardizing the whole program. What we're
2 trying to do is to make it a little bit more
3 inclusive for the rest of New York State. That
4 simple. It's a bill that is 98 or 99 percent
5 agreed to. Yes, we are still in disagreement.
6 The Assembly, it's my understanding, has just
7 put out a three-year extender. I don't want an
8 extender. "Denny" Farrell has said to me a
9 thousand times he doesn't want an extender. The
10 Governor told me not more than two hours ago, No
11 way will I sign an extender. We should be doing
12 this; we should have done it a long time ago.

13 Let me say that we've had
14 agreement on scores of occasions and every time
15 something new pops onto the table from the other
16 house. They had to have the Comptroller on the
17 board. They had to have the Comptroller on the
18 board. Finally somebody said, "Has anybody
19 asked the Comptroller?" So they asked the
20 Comptroller. He says, "I don't want to be on
21 the board."

22 Then, well, they wanted one thing
23 after another, but let me say this and it was

1 concern too -- Senator Ohrenstein and the other
2 side and to the Minority, we have put in this
3 legislation giving the Minority of both houses
4 appointments on all the boards. That's a first,
5 something that I support and everybody. I know
6 that there was concern expressed in the Banking
7 Committee, and Senator Ohrenstein will have an
8 appointment on this board, on all the boards,
9 all three of them.

10 ACTING PRESIDENT KUHL: Senator
11 Gold, you still have the floor.

12 SENATOR GOLD: Senator -

13 SENATOR FARLEY: Yes, sir.

14 SENATOR GOLD: Is there a memo on
15 this bill, Senator Farley?

16 SENATOR FARLEY: Yes, there is.

17 SENATOR GOLD: The -- I realize
18 it's reported out of committee a few minutes ago
19 and limited to only 54 pages, but I thought it
20 would be interesting to see if there was a
21 memo.

22 SENATOR FARLEY: There certainly
23 is. Let me hand deliver a memo to the Acting

1 Minority Leader.

2 SENATOR GOLD: If the record
3 would reflect that we each walked halfway and he
4 hand delivered the message.

5 ACTING PRESIDENT KUHL: I thought
6 Senator Farley went three-quarters of the way
7 there, Senator Gold.

8 SENATOR FARLEY: I've gone 90
9 percent of the way on this.

10 SENATOR GOLD: Based upon the
11 merits of the bill, he should have gone 90
12 percent of the way.

13 Senator Farley, I appreciate
14 your giving me the memoranda and there
15 may be some other questions by other people, but
16 maybe we can cut through a little of it. You
17 say the bill deals with low cost checking.
18 How do you define "low cost checking"? You said
19 eight transactions or something?

20 How do you define "low cost
21 checking"?

22 SENATOR FARLEY: The Banking
23 Board will set the fees. Incidentally, in their

1 bill that we had to correct -

2 SENATOR GOLD: In other words,
3 low cost checking means where the Banking Board
4 sets the fees?

5 SENATOR FARLEY: That's correct.

6 SENATOR GOLD: So, in other
7 words, wherever they set the fees.

8 SENATOR FARLEY: You want to set
9 the fee in statute?

10 SENATOR GOLD: No, no, I'm asking
11 you what "low cost checking" is. You say that's
12 checking that the Banking Board -

13 SENATOR FARLEY: We have directed
14 the Banking Board to -

15 SENATOR GOLD: Can you get it
16 when we're both talking at the same time?

17 ACTING PRESIDENT KUHL:
18 Gentlemen, just so that we keep this so the
19 stenographer can take this all down, I'd ask
20 that you direct your questions and answers
21 through the Chair up here. Senator Gold, you
22 had a question.

23 SENATOR GOLD: Yeah, I'm trying

1 to get the whole question out so that we could
2 be more specific.

3 ACTING PRESIDENT KUHL: You
4 asking Senator Farley to yield to a question?

5 SENATOR GOLD: I'm asking what
6 you're defining as "low cost checking", as
7 opposed to high cost checking.

8 SENATOR FARLEY: That means a fee
9 for a checking account that would be
10 substantially lower than a monthly checking
11 account. The New Jersey plan for lifeline
12 checking has been very successful. I mentioned
13 that in my remarks and I suspect that the
14 Banking Board will set -- will follow the New
15 Jersey experience.

16 SENATOR GOLD: You -- you said
17 that there will be a credit card information
18 program. Is that the 800 number?

19 SENATOR FARLEY: That's correct.

20 SENATOR GOLD: And do you know
21 how that works? I mean we have a number of 800
22 numbers now in the state, and a lot of them are
23 useless because we don't fund them and you can't

1 get through on them anyway. One 800 number with
2 one phone and you've got millions of people
3 calling, and it doesn't do much good.

4 SENATOR FARLEY: That was not my
5 idea, Senator Gold, and I had trepidations about
6 it also, but it was an absolute insistence on
7 the part of the Assembly to have this 800 number
8 which would give you credit card information
9 which we hope is up to date and which we hope is
10 accurate and which we hope that they'll answer.

11 SENATOR GOLD: Well, I think it's
12 a great idea. I'm just trying to find out
13 whether we're funding it. I give the Assembly
14 credit for giving this great idea. Now, I want
15 to know whether the Senate gets any credit for
16 funding it.

17 SENATOR FARLEY: Yes, that
18 probably will be added in, in the budget, which
19 we're working on right now.

20 SENATOR GOLD: O.K. You said that
21 the bill has credit card parity so we get
22 greater parity with other states. How does that
23 work?

1 SENATOR FARLEY: How that works
2 is that basically I would venture to say that
3 the credit card that you have in your pocket is
4 not a New York-based credit card. I'll bet you
5 a nickel or more, whatever you wish. What this
6 does -

7 SENATOR GOLD: Who's got credit
8 cards?

9 SENATOR FARLEY: What this does
10 is allow the few -- and boy, are we few -
11 credit card companies that are still operating
12 in New York State and not in Delaware or South
13 Dakota, it allows -- it has four revisions
14 here.

15 They've had a lot of problems
16 with credit cards being stolen, fraud and
17 theft. It allows them to mail the credit cards
18 out to customers from different locations. It
19 also provides for certain limited fees. It's
20 similar to the score of other credit cards that
21 are issued out of state and it provides for
22 specific authority for credit card introductory
23 rates and rate sales. In other words, that's

1 where it -- they'll give you a very low interest
2 for a very short period of time or something
3 like that. In other words, you know how a home
4 equity line is that the first year you pay two
5 percent and after that it goes up.

6 There are basically four
7 revisions which all of the credit card companies
8 that do not operate in New York State have.
9 We've done that before.

10 SENATOR GOLD: Well, may -- if
11 the Senator will yield to a question. Does it
12 affect the interest rate that's put on it?

13 SENATOR FARLEY: Does it affect
14 the interest rate? No, it does not, as far as I
15 know. Does it affect the interest rate? No. We
16 do nothing about the interest rate.

17 SENATOR GOLD: All right.

18 SENATOR FARLEY: That's a very
19 competitive industry.

20 SENATOR GOLD: So when you say,
21 if I understand you -- when you say "parity,"
22 are you saying that the parity comes from these
23 basically promotional ideas, the initial

1 starting rate and the lower interest, the short
2 period of time?

3 SENATOR FARLEY: Basically, what
4 it does in that area is gives them the same law
5 that -- it conforms the laws that are in the
6 other states, in Delaware and South Dakota
7 basically, where all the credit cards are issued
8 where their operations are.

9 SENATOR GOLD: Yeah, but,
10 Senator, that's what I'm talking about. You are
11 well aware, Senator Farley, and I know you're a
12 professor of law here, so you're doubly aware
13 that our Constitution does not allow us to pass
14 legislation just by referring to other states.
15 We have to put it in language. So I'm asking
16 you: What is the language; what is it that the
17 other states have statutorily that we are
18 conforming to?

19 SENATOR FARLEY: Hold on. We do
20 not reference other laws.

21 SENATOR GOLD: No, I know you
22 don't.

23 SENATOR FARLEY: Just a -- let me

1 finish. On page 13 of the bill, it spells out
2 the answer to your question. I -- this is a
3 summation, I won't read it to you, but the fees
4 and charges permitted under this subdivision are
5 interest under New York law and all terms and
6 conditions and provisions of a retail install
7 ment credit including that without limitation
8 credit card charges, and fees, and so forth.

9 SENATOR GOLD: What does that
10 mean? Senator, I don't want you to read it to
11 me; I want you to tell me what it means.
12 There's a reference to a section of the United
13 States Code.

14 SENATOR FARLEY: It says -- well,
15 if I can generalize, it says that credit card
16 rates are deregulated because that's what New
17 York State law says. It refers to New York
18 State law; isn't that correct?

19 SENATOR GOLD: Well, Senator -

20 SENATOR FARLEY: We know, the
21 interest rate in New York State is deregulated.
22 In essence, that's what it says.

23 SENATOR GOLD: Yeah, if the

1 Senator will yield to a question.

2 SENATOR FARLEY: Yeah.

3 SENATOR GOLD: Senator, you just
4 referred me to that page. I didn't pick the
5 page out and ask you what it meant. What I'd
6 like you to just tell me, when you say that
7 we're creating parity and doing what other
8 states do, what is -- what are other states
9 doing that this bill will now do? You pointed
10 me to the section, which makes no sense to me in
11 answer to that question.

12 SENATOR FARLEY: Basically,
13 Senator Gold, other states have deregulated the
14 entire banking industry. We're not an island
15 and we're deregulating -- deregulated also,
16 that's basically what it is. It's the -- it
17 means that it will conform to New York law.

18 Should we put -- should we put in
19 a ceiling on credit card rates, this bill -
20 this provision would -- would not negate that.
21 Excuse me. This provision just says it will
22 conform to New York State interest laws.

23 SENATOR GOLD: Senator, as I -

1 if the Senator will yield to a question, Mr.
2 President.

3 ACTING PRESIDENT KUHL: Senator
4 will.

5 SENATOR GOLD: Senator, I hear
6 the words. I do hear your words. I just don't
7 understand them in relationship to my question.
8 You said that the bill creates credit card
9 parity so that, when you deal with credit cards
10 in New York State, they'll be competitive.
11 Other states are getting all our credit card
12 business, and all I want to know -

13 SENATOR FARLEY: That's only -
14 all right. Go ahead.

15 SENATOR GOLD: Can I finish the
16 question, Mr. President? All I want to know,
17 Senator Farley, in plain English is what is the
18 parity; what does it actually do that they will
19 now be able to do in New York State that they're
20 allowed to do in the other states that will make
21 our credit card business competitive? That's
22 all I'm asking.

23 SENATOR FARLEY: O.K. Let me try

1 again. I thought I explained this when I
2 spoke. Incidentally, "credit card parity",
3 quote, is just a term that I used to try to say
4 that we want to conform the credit card issuers
5 that are in this state with the 90 percent of
6 the other credit cards that are around the
7 country. A lot of New York banks have their
8 operations in Delaware and South Dakota.

9 SENATOR GOLD: What do we have to
10 do that?

11 SENATOR FARLEY: Let me finish,
12 and then you can start reasking your question.
13 What we're trying to do here is to give our
14 credit card issuers, the employees that work in
15 these credit card industries in New York State,
16 a chance to keep working and not be
17 non-competitive. We have had a terrible problem
18 in New York State in certain areas in your city
19 where credit cards have been stolen, where
20 there's been terrific fraud, and we want to be
21 able to vary where they can mail it from.

22 That's one of the provisions in
23 this. All of these provisions that are in the

1 credit card, quote "parity", and I wish I hadn't
2 used the word if it gets you so upset, is that
3 we're trying to conform the laws or conform our
4 credit card industry with the 90 percent of all
5 credit cards that are issued around the United
6 States.

7 SENATOR GOLD: O.K. Great, Mr.
8 President, I want to thank him for that answer.

9 ACTING PRESIDENT KUHL: Senator
10 Gold.

11 SENATOR GOLD: I want the record
12 to indicate I'm in favor of that. Senator
13 Farley, will you yield to one question?

14 SENATOR FARLEY: Yes.

15 SENATOR GOLD: How do we do it?
16 How does this bill do that? How does this bill
17 conform it in 90 percent of the way? You're
18 telling me you want to do it. I'm not arguing.
19 You tell me you want to put people to work. I'm
20 not arguing. Aside from allowing them to mail
21 the cards from different locations, what else
22 does the bill do? It's got 54 pages. It must
23 do something.

1 SENATOR FARLEY: O.K. O.K. One
2 provision was that they could only mail
3 something from New York State, O.K.?

4 SENATOR GOLD: Yeah.

5 SENATOR FARLEY: They could only
6 mail something from New York State. That was in
7 our law. What this does, it gives them
8 flexibility. They can mail it from New Jersey,
9 a close neighbor of Senator Marchi's. They can
10 mail it from Connecticut, if they wish to.

11 SENATOR GOLD: I love that.

12 SENATOR FARLEY: They can vary
13 it. That's one of the changes. There's no
14 restriction, and I guess there's no restriction
15 on other credit card companies as to where they
16 have to mail the stuff.

17 SENATOR GOLD: I appreciate -- is
18 there any other conforming?

19 SENATOR FARLEY: Yes, there is.

20 SENATOR GOLD: The parity comes
21 from the mailing, or is there anything else?

22 SENATOR FARLEY: It allows them
23 specific authority for credit card introductory

1 rates. In other words, they can give you, and
2 we couldn't do that before, our issuers could
3 not. They now can have, if you want an intro
4 ductory rate for a credit card and they can give
5 you a very low interest for a short period of
6 time, I guess, or maybe a long period of time if
7 they wish to. They couldn't do that before.
8 Other credit card issuers can do that.

9 Let me just say something to my
10 colleagues, including you, Senator Gold. Last
11 July -

12 ACTING PRESIDENT KUHL: Senator
13 Farley, this is in response to Senator Gold's
14 question?

15 SENATOR GOLD: Yes.

16 SENATOR FARLEY: Well, it's a
17 little bit non-germane.

18 SENATOR GOLD: I don't mind. If
19 it's important for you to say, I'm willing to
20 hear it.

21 ACTING PRESIDENT KUHL: Senator
22 Farley.

23 SENATOR FARLEY: I would like to

1 thank my colleagues in this house, and Senator
2 Onorato and quite a few others. We passed in
3 July a bill, 54 to 5, that was just a clean
4 extension of the Banking Law. We had none of
5 these provisions in it, and I thank my
6 colleagues for that, because it helped us in
7 negotiation.

8 SENATOR GOLD: Good. Mr.
9 President.

10 ACTING PRESIDENT KUHL: Senator
11 Gold.

12 SENATOR GOLD: Will the Senator
13 yield to a question?

14 ACTING PRESIDENT KUHL: Senator
15 Farley, do you yield? Senator Gold.

16 SENATOR GOLD: Senator Farley, I
17 think we're making real progress on this parity
18 issue, and I know it's your word. We allow them
19 to mail from any place outside of New York and
20 we allow them to use introductory interest rates
21 and promotional interest rates. Is there
22 anything else in that area that we do that you
23 would put under this category of parity?

1 SENATOR FARLEY: Yes. There is.
2 To give you an example, if you lose three credit
3 cards -- and I know that you would never do that
4 -- if you lose three credit cards, they can
5 charge you to give you a fourth one. That's one
6 other item.

7 SENATOR GOLD: Anything else? I
8 mean let's get it all out so we know what we're
9 voting on.

10 SENATOR FARLEY: That's about it,
11 Senator. There's not an awful lot. We have -
12 I suppose you can come up with some more. If I
13 can find some more parity things, I'd be willing
14 to give it to our credit card issuers because we
15 need the jobs.

16 SENATOR GOLD: Yeah, I'm for
17 that. Will the Senator yield to one more
18 question?

19 ACTING PRESIDENT KUHL: Senator
20 will.

21 SENATOR GOLD: This also refers
22 to what you described as the Motor Vehicle
23 Leasing Act. How does that part of it work,

1 Senator?

2 SENATOR FARLEY: That is
3 something that I have not been enthusiastic
4 over, not because of regulating the leasing
5 companies is not a good idea. That's really a
6 bill that was in Consumer Affairs over there in
7 the Assembly. Basically it's the Assembly's
8 bill with a little -- with a couple wrinkles
9 that have been changed, and we have agreed to
10 allow it in the banking bill, and the change
11 basically is the disclosures that would be
12 involved.

13 Just a moment. The bill would
14 add a new Article 9 to the Personal Property Law
15 to require that every lessor to inform the
16 consumer of the monthly payment, the number of
17 months in the term, any payment due at the start
18 of the lease, the residual value of the vehicle,
19 the purchase option price formula, the
20 disposition fee, the number of miles assumed
21 under the lease, and the per mile charge for
22 exceeding the assumed mileage and the formula
23 under which a lessor would apply to determine a

1 consumer's early termination liability.

2 A consumer would also be informed
3 of the cost of the insurance, the administrative
4 fees, taxes, title charges and other fees.

5 These would be available in a sample lease which
6 would be made available to the consumer upon
7 request, so that the consumer could compare the
8 costs of the different leases.

9 If the lease application is
10 rejected, the payment that the consumer made
11 must be refunded within 15 days of rejection.

12 If a consumer withdraws their offer, any vehicle
13 that the consumer traded in and any payment that
14 might have been made must be returned promptly.

15 A lessor may not transfer any
16 vehicle offered in the trade until the lease is
17 executed. A consumer would receive a complete
18 and conspicuous notice separate from the lease
19 itself, setting forth the consumer's obligation
20 if the car is a total loss as a result of the
21 theft or damage.

22 The bill would also permit the
23 provision of gap insurance which would protect

1 consumers against financial liability for the
2 difference between what they owe and what the
3 car's insured worth is when it is deemed to be a
4 total loss through the theft or damage.

5 The bill also provides for a
6 dispute resolution process subject to the
7 regulation by the Attorney General and permits
8 consumers to bring suits in dispute.

9 SENATOR GOLD: Thank you. Will
10 the Senator yield to another question?

11 ACTING PRESIDENT KUHL: Senator
12 Farley will.

13 SENATOR GOLD: I'm trying,
14 Senator, to listen to you and also digest the
15 memo at the same time and do my best. On page 3
16 of your memo, it talks about -- it says Chapter
17 548 of 1987 provided that banking and other
18 financial institutions which offered checking
19 accounts shall offer an account on which
20 canceled checks are returned to the customer.
21 What -- what is that supposed to mean in
22 reference to it? I know there's some banks -

23 SENATOR FARLEY: I still -

1 SENATOR GOLD: There are some
2 banks where they have -

3 SENATOR FARLEY: That's the
4 current law, Senator Gold.

5 SENATOR GOLD: I understand it.
6 But what is the purpose of referencing it here?
7 Was there some reason?

8 SENATOR FARLEY: It says you have
9 to return checks.

10 SENATOR GOLD: What?

11 SENATOR FARLEY: You have to
12 return checks. Banks have to return your
13 checks.

14 SENATOR GOLD: That's not what it
15 says. They must offer you that kind of an
16 account. In other words, the bank can have that
17 kind and another kind, is that correct?

18 SENATOR FARLEY: No. I guess
19 they can have both, but don't they return
20 checks?

21 SENATOR GOLD: Well, what I'm
22 trying to understand, Senator, and as I say, I'm
23 going -

1 SENATOR FARLEY: Well, my point of
2 it is they can offer you an account where you
3 don't want the checks returned. You say don't
4 clutter up my house with canceled checks. If
5 that's what you prefer, they can do that to you,
6 but they have to offer to return your checks.

7 SENATOR GOLD: Right, but when
8 you say, Senator, it's in the law today, that's
9 what the memo says. The memo says Chapter 548
10 of 1987 voided that. What is -- why is the
11 reference in here? In other words, if we don't
12 pass this bill today, that would lapse, is that
13 correct?

14 SENATOR FARLEY: That's correct.

15 SENATOR GOLD: All right. That's
16 one of the provisions that would lapse. On page
17 4, it talks about authorizing the making of
18 variable rate closed end installment loans and
19 also I guess there's provisions for open ended.
20 Can you tell me what -- what is that difference?
21 I'm a layman on that. What is the difference,
22 and how does this law affect that?

23 SENATOR FARLEY: You know what

1 I'll do, Senator Gold. I can understand your
2 real interest in all of these specifics. That
3 is the current Banking Law which you voted for a
4 number of years ago. It's been on the books for
5 a long time. I'll be happy to send you a copy
6 of the entire Banking Law as it exists.

7 We're not changing any of that.
8 We're just allowing it not to expire and, of
9 course, if this keeps up, it may expire.

10 SENATOR GOLD: Yeah, it might.
11 Mr. President, at this point -

12 ACTING PRESIDENT KUHL: Senator
13 Gold.

14 SENATOR GOLD: -- if I could
15 yield to Senator Dollinger. You have some
16 questions? Yeah, I want to yield to Senator
17 Dollinger. I'll read the memo in the meantime.

18 ACTING PRESIDENT KUHL: Senator
19 Dollinger.

20 SENATOR DOLLINGER: Senator yield
21 to a question?

22 SENATOR FARLEY: I'd be happy to,
23 Senator Dollinger.

1 SENATOR DOLLINGER: First of all,
2 by way of reference, I'd like to commend the
3 chairman of the Committee on Banks. I know it's
4 quite frustrating to get to the Ivory soap point
5 where it's 99 and 44/100ths pure, but you don't
6 have the final.

7 SENATOR FARLEY: I took 98.6 but
8 I'll take -

9 SENATOR DOLLINGER: It sounds to
10 me like you're at the 99 and 44/100ths. What
11 I'd like do through you, by way of question, Mr.
12 President, is it my understanding that page 7,
13 lines 6 through 18, are the provision that the
14 chairman of the Banking Committee discussed that
15 are currently in dispute with our colleagues in
16 the Assembly, is that correct?

17 SENATOR FARLEY: 7, line 6. Just
18 a second.

19 SENATOR DOLLINGER: I'm trying to
20 make sure that I understand the provision that
21 is currently contested.

22 SENATOR FARLEY: Yes, yes.

23 SENATOR DOLLINGER: O.K. Through

1 you again, Mr. President, I just want to make
2 sure I understand the -- the way this works.
3 Dealing with section (b) starting at line 6, it
4 says, The purposes of the SBIC sheets are to
5 provide, in effect, to facilitate small business
6 ownership by minorities. Is the term
7 "minorities" defined in the act?

8 SENATOR FARLEY: It would be -
9 it's, Senator, that it's my understanding
10 applies to the federal law, what the federal law
11 allows as minorities.

12 SENATOR DOLLINGER: O.K., but
13 there's no reference in the act, is there, to
14 the federal definition of that term?

15 SENATOR FARLEY: No, there is
16 not. Incidentally, just for your information,
17 the federal law does not include women.

18 SENATOR DOLLINGER: Excuse me?

19 SENATOR FARLEY: It does not
20 include women.

21 SENATOR DOLLINGER: Does not
22 include women?

23 SENATOR FARLEY: The federal law

1 does not include women under the definition of
2 "minority".

3 SENATOR DOLLINGER: Again through
4 you, Mr. President, another question of the
5 speaker, if the speaker will yield.

6 ACTING PRESIDENT KUHL: Senator
7 Farley, will you yield?

8 SENATOR FARLEY: Sure.

9 SENATOR DOLLINGER: Where by
10 reference do we incorporate the definition
11 section of the federal law?

12 SENATOR FARLEY: Well, -- well,
13 here's the problem. I think -- the original -
14 the original language of the Governor's program
15 bill, which this is at the request of the
16 Governor, this particular bill, used the federal
17 language almost in total. The Assembly has
18 really changed that substantially. We have been
19 desperately trying to make it more inclusive.

20 SENATOR DOLLINGER: Right.

21 SENATOR FARLEY: And this
22 particular language, the only difference in this
23 and the Assembly bill is that it might include

1 persons eligible for the earned income tax
2 credit. That's basically the only thing that
3 we're plugging into the Assembly language.

4 SENATOR DOLLINGER: Correct.
5 Again through you, Mr. President.

6 ACTING PRESIDENT KUHL: Senator
7 Farley continue to yield?

8 SENATOR FARLEY: Sure.

9 SENATOR DOLLINGER: The purpose
10 of my question is, as I look downstream in this
11 particular language, and I've got several other
12 questions that deal with the particulars of it,
13 is just to try to clarify what the terms mean so
14 that, if this is some day challenged, that there
15 will be some sense among the members of this
16 body in passing this bill what those specific
17 terms mean.

18 Is it my -- correct in my
19 understanding that the intention here is to
20 incorporate the federal SBIC law definition of
21 the term "minorities"?

22 SENATOR FARLEY: Yes, and you
23 have to be licensed by the federal -- by the

1 fed's before you can participate.

2 SENATOR DOLLINGER: O.K. So we're
3 going to adopt, incorporate then federal
4 definitions; is that correct?

5 SENATOR FARLEY: That's correct.

6 SENATOR DOLLINGER: All right.
7 Through you, Mr. President, if the sponsor will
8 continue to yield.

9 ACTING PRESIDENT KUHL: Senator
10 Farley continue to yield?

11 SENATOR FARLEY: Yes.

12 ACTING PRESIDENT KUHL: He does.

13 SENATOR DOLLINGER: Senator, it's
14 my understanding that minorities will continue
15 to be eligible and then there's a second group
16 of people that reside in highly distressed areas
17 or highly distressed as defined in other
18 sections of the act.

19 SENATOR FARLEY: Correct.

20 SENATOR DOLLINGER: And then
21 through you, Mr. President.

22 SENATOR FARLEY: Of course, it
23 excludes almost all of your Senate District.

1 SENATOR DOLLINGER: I'll take the
2 chairman's word for that.

3 SENATOR FARLEY: The highly
4 distressed area excludes about 90 percent of New
5 York State.

6 SENATOR DOLLINGER: And then -

7 ACTING PRESIDENT KUHL: Senator
8 Farley continue to yield?

9 SENATOR FARLEY: I certainly do.

10 SENATOR DOLLINGER: Through you,
11 Mr. President. And then there's a third group
12 of people, and those are the people entitled to
13 an earned income tax credit, and it -- under an
14 act -- it says under an enactment under -- under
15 the Internal Revenue Code. What does that
16 mean?

17 SENATOR FARLEY: That's just a
18 reference to an act where that came from.

19 SENATOR DOLLINGER: O.K.

20 SENATOR FARLEY: Simply it allows
21 people, poor people, to participate and possibly
22 get into a small business. They're excluded
23 without that language.

1 SENATOR DOLLINGER: Again through
2 you, Mr. President.

3 ACTING PRESIDENT KUHL: Senator
4 Farley continue to yield?

5 SENATOR FARLEY: Yes.

6 SENATOR DOLLINGER: Would the
7 eligibility for the earned income tax credit
8 apply in a single year?

9 SENATOR FARLEY: Yes.

10 SENATOR DOLLINGER: Just through
11 you, Mr. President, for clarification, if you
12 had something -

13 SENATOR FARLEY: It's on an
14 individual return basis, yes.

15 SENATOR DOLLINGER: How long
16 would the period of eligibility last?

17 SENATOR FARLEY: Well -- it would
18 -- it would last in the year, let's hope that
19 after they get into business, they won't need
20 that, but I would presume it would be in the
21 year in which they're applying they would take
22 their earned income tax credit information and
23 apply for a loan.

1 SENATOR DOLLINGER: O.K. Again
2 through you, Mr. President.

3 ACTING PRESIDENT KUHL: Senator
4 Farley continue to yield?

5 SENATOR FARLEY: Yes.

6 ACTING PRESIDENT KUHL: He does.

7 SENATOR DOLLINGER: Senator
8 Farley, if I understand the purpose of this
9 provision, I may be in agreement with it. My
10 concern is you become eligible to apply for this
11 assistance when you qualify for the earned
12 income tax credit, is that correct?

13 SENATOR FARLEY: Yes.

14 SENATOR DOLLINGER: What happens
15 if the first year you're in business you make
16 enough money so you no longer qualify?

17 SENATOR FARLEY: You've already
18 got the loan.

19 SENATOR DOLLINGER: So you can
20 make repayments on the loan even though you
21 qualify for the tax credit.

22 SENATOR FARLEY: I assume so.

23 SENATOR DOLLINGER: Is that

1 correct?

2 SENATOR FARLEY: That's correct.

3 SENATOR DOLLINGER: Was there any
4 discussion during the deliberations on this bill
5 -- Mr. President, again through you, Mr.
6 President -- of the question of averaging on a
7 five-year period of the earned income tax
8 credit? They could -

9 SENATOR FARLEY: Good point. We
10 can't even get the Assembly to even discuss it.
11 The Governor thought it was a good idea.

12 SENATOR DOLLINGER: I'm not
13 suggesting that it isn't. I'm simply trying to
14 find out. The current language says that if you
15 qualify for the EITC one year, you're then
16 eligible to apply and regardless of your past or
17 future income, you would apply for a loan
18 through the SBIC or SSBIC and be able to qualify
19 for the loan, is that correct?

20 SENATOR FARLEY: That's correct.

21 SENATOR DOLLINGER: O.K. The last
22 question I have on that language, if Senator
23 Farley will continue to yield.

1 ACTING PRESIDENT KUHL: Senator
2 Farley continue to yield?

3 SENATOR FARLEY: For one last
4 question.

5 SENATOR DOLLINGER: For one last
6 question.

7 ACTING PRESIDENT KUHL: The
8 Senator does.

9 SENATOR DOLLINGER: There's a
10 language used immediately after the earned
11 income tax credit which states whose
12 participation in the free enterprise system is
13 hampered to compete effectively in a marketplace
14 because of prevailing restrictive lending
15 practices.

16 SENATOR FARLEY: That's federal
17 language.

18 SENATOR DOLLINGER: O.K. Is that
19 clause designed to apply to all three categories
20 of the people?

21 SENATOR DOLLINGER: Again through
22 you, Mr. President, if Senator Farley would
23 yield for one more question.

1 ACTING PRESIDENT KUHL: Senator
2 Farley continue to yield for one more question?
3 Senator does.

4 SENATOR FARLEY: The Board -- and
5 on the question, I know what your question is
6 going to be. Senator Ohrenstein will have an
7 appointment -

8 SENATOR DOLLINGER: My further
9 question, again through you, Mr. President, is
10 how do they make that determination; is it made
11 on the basis of each single application that
12 comes in?

13 SENATOR FARLEY: Sure.

14 SENATOR DOLLINGER: And if so,
15 again through you, Mr. President, what proof
16 would be considered in determining whether or
17 not an applicant who meets the EITC or a
18 minority applicant or an applicant in an
19 economically distressed area, what criteria
20 would be applied to trigger the language that
21 they have been denied effective participation in
22 the capital system because of past restrictive
23 practices?

1 I'm specifically making reference
2 to the fact that this creates a need for a
3 Richmond study to determine whether or not there
4 have been discriminatory and restrictive
5 practices sufficient to trigger the right of
6 government to intervene on these bases in making
7 these awards.

8 SENATOR FARLEY: That's
9 determined by the criteria that is given to the
10 board, somewhat of a judgment call, I would say,
11 wouldn't you?

12 SENATOR DOLLINGER: Well, I guess
13 I'm -- again through you, Mr. President.

14 ACTING PRESIDENT KUHL: Senator
15 Farley, you continue to yield? Senator does.

16 SENATOR FARLEY: Yeah, I'll
17 yield.

18 SENATOR DOLLINGER: So that my
19 understanding, again through you, Mr. President,
20 that the determination of whether or not a
21 specific individual who is attempting to qualify
22 for the earned income tax credit, the board in
23 making its determination would have to decide

1 that that person had been unable to compete
2 effectively for capital in the marketplace due
3 to prevailing or past restrictive practices.

4 SENATOR FARLEY: Senator
5 Dollinger, you're making my point. That is why
6 it was better off to start with the -- to use
7 the federal language in here because we're in
8 uncharted waters many times with these -- with
9 this language.

10 As I said earlier, I don't know
11 whether you were here, there was a deputy
12 counsel said that there's no way we would
13 approve this language. I -- that bothers me.
14 The Governor said to me that just, I guess
15 several hours ago now, that he -- that his
16 original language was the better way to go. It
17 followed -- it tracked the federal language. I
18 think that they may be gummin' up the works with
19 this, but we've got to have a banking bill.

20 SENATOR DOLLINGER: I
21 appreciate. Through you, Mr. President.

22 SENATOR FARLEY: How much do we
23 have to give?

1 SENATOR DOLLINGER: Through you,
2 Mr. President.

3 ACTING PRESIDENT KUHL: Senator
4 Dollinger.

5 SENATOR DOLLINGER: I'm not
6 disagreeing with Senator Farley. I'm simply
7 trying to elucidate if there's a point at some
8 time in the future as to what we intended in
9 passing this bill and whether or not we intended
10 to incorporate federal rules, whether or not we
11 intended to incorporate the concept of creating
12 a criteria, having to prove that you were a
13 victim of prevailing or past restrictive
14 practices as a criteria for eligibility on the
15 basis of either income status or minority
16 status. We may be required to do that as a
17 matter of law. The board may be required to do
18 it as a matter of law in order to justify it
19 under the Richmond case from the United States
20 Supreme Court.

21 If I could ask one more question
22 through you.

23 ACTING PRESIDENT KUHL: Senator

1 Farley, do you yield to another question?

2 SENATOR FARLEY: You're on your
3 third last question.

4 ACTING PRESIDENT KUHL: Senator
5 Farley yields, Senator Dollinger.

6 SENATOR DOLLINGER: Well, I'm
7 taking it from Senator Gold. Through you, Mr.
8 President, I am familiar with the operation of
9 small business investment companies under the
10 federal rules. Those operations under the
11 federal system have tended to try to leverage
12 private capital to achieve small business in
13 vestment goals. Do I understand correctly in
14 this bill that the goal is to bring bank capital
15 to work rather than private capital to work to
16 achieve the goals of the SBICs?

17 SENATOR FARLEY: Well, yes, bank
18 capital is private capital.

19 SENATOR DOLLINGER: Well, but -

20 SENATOR FARLEY: But they're
21 going to put up what, 23 million? 23 million and
22 will leverage about 70 million.

23 SENATOR DOLLINGER: Through you

1 again, Mr. President.

2 ACTING PRESIDENT KUHL: Senator
3 Dollinger asks Senator Farley to yield. Do you
4 continue to yield?

5 SENATOR FARLEY: Yes, I will.

6 ACTING PRESIDENT KUHL: Senator
7 does.

8 SENATOR DOLLINGER: Just explain
9 to me, if you would, how that 23 million
10 translates into 70 million; where does the other
11 47 million come from?

12 SENATOR FARLEY: Well, it's three
13 to one, isn't it? There's a federal matching
14 grant. Currently the SBIC can obtain a
15 three-to-one leverage, the first 15 million
16 obtained in private capital, the additional
17 leverage is obtained for any private capital
18 invested up to 45 million. The 45 million
19 private investment will leverage the maximum
20 amount of 90 million. We have asked -- we have
21 set this up so it can leverage the maximum
22 amount of money from the federal government.

23 SENATOR DOLLINGER: Now, so I

1 understand it, the other match is coming from
2 the federal government; it's not coming from
3 private sources?

4 SENATOR FARLEY: That's correct.

5 SENATOR DOLLINGER: O.K. Just one
6 final question. This will be my final
7 question. Did -- in the deliberations in the --
8 the deliberations of the Committee and the
9 discussions with our other colleagues in the
10 other house, was the concept of allowing
11 privately funded small business investment
12 corporations who do not have bank resources but
13 would use federal tie-in dollars in what I would
14 call truly private capital dollars, not a bank
15 coalition putting the cash in but instead
16 private investors putting the cash in, was that
17 considered as an option to take --

18 SENATOR FARLEY: Of course, you
19 can already do that, Senator Dollinger. You can
20 do that without this law.

21 SENATOR DOLLINGER: Well, I
22 believe under the federal system but not
23 necessarily under the state system.

1 SENATOR FARLEY: That's correct.

2 SENATOR DOLLINGER: Would there
3 be no advantage in doing that under the state
4 system?

5 SENATOR FARLEY: Because that can
6 already be done privately. For instance, a
7 small business person goes into a bank and gets
8 a small business loan.

9 SENATOR DOLLINGER: I'm -

10 SENATOR FARLEY: Maybe I'm mis
11 understanding you.

12 SENATOR MENDEZ: Mr. President.

13 SENATOR DOLLINGER: I have just
14 one more question, Olga, to clarify this.

15 SENATOR FARLEY: We're not
16 setting up a state system. We're just trying to
17 leverage some federal money.

18 SENATOR DOLLINGER: O.K. I
19 believe Senator Gold yielded.

20 ACTING PRESIDENT KUHL: Senator
21 Dollinger, you still have the floor.

22 SENATOR DOLLINGER: Mr.
23 President, I believe I took the floor from

1 Senator Gold. I will offer it back.

2 SENATOR GOLD: Yes, if you're
3 finished, I know Senator Montgomery, Senator
4 Mendez, whoever all, you've got it.

5 SENATOR DOLLINGER: If I could
6 ask you to yield for one split second.

7 ACTING PRESIDENT KUHL: Senator
8 Dollinger on the bill.

9 SENATOR DOLLINGER: I hope it's
10 clear my colloquy with Senator Farley was just
11 an attempt to elucidate the proposal that's in
12 the bill and that I see being advanced in this
13 house.

14 I generally favor the concept of
15 a broader reach of this bill. I think that
16 there are some technical problems with respect
17 to the EITC and when it's used, whether it's
18 averaged over a period of time which maybe could
19 have effected a more direct linkage between the
20 population attempting to be served and the funds
21 we wanted to put into this system to attack
22 these problems of under-development.

23 So I think there may be some

1 other options. I think this moves in a better
2 direction, but my hope is that further
3 discussion will produce a compromise with our
4 colleagues across the way. I know it's been
5 difficult. I commend the chairman of the
6 committee for his hard work.

7 ACTING PRESIDENT KUHL: Senator
8 Montgomery.

9 SENATOR MONTGOMERY: Thank you,
10 Mr. President.

11 I'd just like to ask the sponsor
12 a couple of questions.

13 ACTING PRESIDENT KUHL: Senator
14 Farley, do you yield?

15 SENATOR FARLEY: Yep.

16 ACTING PRESIDENT KUHL: Senator
17 Farley yields.

18 SENATOR MONTGOMERY: Thank you,
19 Senator Farley.

20 Senator Farley, I realize that
21 you are -- the purpose is directed specifically
22 at minority business entrepreneurs, and in
23 distressed areas, as you say, in particular. Is

1 there a definition that you have for small
2 businesses; the size in particular?

3 SENATOR FARLEY: Yes. This,
4 again, is a federal definition.

5 SENATOR MONTGOMERY: O.K.

6 SENATOR FARLEY: And it is one -
7 it is a business with a net worth of less than 6
8 million and an average net income which would
9 not exceed 2 million for the preceding two
10 years.

11 SENATOR MONTGOMERY: Would not
12 exceed 2 million.

13 SENATOR FARLEY: For the
14 preceding two years.

15 SENATOR MONTGOMERY: Is there -
16 and there is no indication of the size other
17 than that? In other words -

18 SENATOR FARLEY: Well, that's an
19 indication of the size.

20 SENATOR MONTGOMERY: It's
21 defined.

22 SENATOR FARLEY: It's the federal
23 Small Business Administration generally defines

1 it to mean those businesses with a net worth of
2 less than \$6 million and an average net income
3 which did not exceed 2 million for the preceding
4 two years.

5 SENATOR MONTGOMERY: Do you know,
6 for instance, in New York State, how many small
7 businesses there are that fit into that
8 category?

9 SENATOR FARLEY: I have -

10 SENATOR MONTGOMERY: That are
11 minority in particular.

12 SENATOR FARLEY: I have no idea.

13 SENATOR MONTGOMERY: Do we have
14 any record of that?

15 SENATOR FARLEY: I have no idea.
16 I have no idea. I do know it's the only area of
17 growth really in this state.

18 SENATOR MONTGOMERY: In minority
19 businesses?

20 SENATOR FARLEY: No, small
21 businesses.

22 SENATOR MONTGOMERY: Small
23 business.

1 Senator, do you -- is there any
2 indication as to what categories of businesses
3 we would primarily be targeting this -

4 SENATOR FARLEY: No.

5 SENATOR MONTGOMERY: There's no
6 limit, in other words, any -- any small
7 business?

8 SENATOR FARLEY: Your imagination
9 is your opportunity.

10 SENATOR MONTGOMERY: Including
11 retail businesses, services.

12 SENATOR FARLEY: Retail,
13 wholesale.

14 SENATOR MONTGOMERY: Service
15 businesses?

16 SENATOR FARLEY: Yes, any
17 business you've got in mind.

18 SENATOR MONTGOMERY: That's good
19 to know. I didn't see that indicated in here.

20 Senator Farley, on the -- I see
21 where one of the areas that the Small Business
22 Investment Company, the investment company is
23 made up of two-thirds of the -- of the board of

1 people who will be, in fact, investing, putting
2 up the money?

3 SENATOR FARLEY: That's correct.

4 SENATOR MONTGOMERY: So those are
5 either individuals or institutions?

6 SENATOR FARLEY: That's correct.

7 SENATOR MONTGOMERY: O.K. And the
8 other third comes from where, did you say?

9 SENATOR FARLEY: Government;
10 comes from our friend, the government.

11 SENATOR MONTGOMERY: So the state
12 will be putting in another third of the money?

13 SENATOR FARLEY: That's correct.

14 SENATOR MONTGOMERY: And two
15 thirds of the board will consist of the
16 private.

17 SENATOR FARLEY: The private
18 sector.

19 SENATOR MONTGOMERY: And the
20 other third will consist of appointees by the
21 Majority Leader, the Speaker?

22 SENATOR FARLEY: The Governor,
23 the Majority Leader, Senator Ohrenstein -- the

1 Minority Leader, excuse me, Mr. Rappleyea.

2 SENATOR MONTGOMERY: All right.

3 Can we assume then that the two-thirds investors
4 will -- would primarily be people who are
5 already involved in -- in the banking community
6 by and large?

7 SENATOR FARLEY: It's going to be
8 banking institutions that decide to
9 participate.

10 SENATOR MONTGOMERY: So these -
11 in other words we're talking about people who
12 are part of the establishment banking industry
13 by and large?

14 SENATOR FARLEY: We're talking
15 about people who would be making a loan
16 probably.

17 SENATOR MONTGOMERY: O.K. All
18 right.

19 SENATOR FARLEY: They're anxious
20 to participate in this. It's very nice to be
21 able to lend the government's money.

22 SENATOR MONTGOMERY: You -

23 ACTING PRESIDENT KUHL: Senator

1 Farley, you continue to yield?

2 SENATOR MONTGOMERY: Oh, I'm
3 sorry, Senator Farley. Will you yield?

4 ACTING PRESIDENT KUHL: Senator
5 Farley, you continue to yield?

6 SENATOR FARLEY: Yes, I will.

7 ACTING PRESIDENT KUHL: Senator
8 does.

9 SENATOR MONTGOMERY: Senator, on
10 this page, the bill talks about -- I do have a
11 memo, I'm sorry. The bill talks about the fact
12 of the small business, this Small Business In
13 vestment Company will participate in
14 coordination with local -- with other state
15 agencies, and banking -- other banking
16 facilities, science and technology, UDC. Are we
17 -- do we, is that not what the Small Business
18 Centers do now? Is that -- that's what they do
19 primarily?

20 SENATOR FARLEY: Give me that
21 question again.

22 SENATOR MONTGOMERY: You have -
23 this refers to, on page 8, line 40, beginning at

1 line 40, 41, the investment companies will as
2 sist in coordination with assistance from local
3 bankers, local economic development corpora
4 tions, state Department of Economic Development
5 and Job Development Authority.

6 SENATOR FARLEY: That's called
7 spreading the word.

8 SENATOR MONTGOMERY: And do we -
9 we already do that, do we not?

10 SENATOR FARLEY: We like to think
11 we do.

12 SENATOR MONTGOMERY: Yes.

13 SENATOR FARLEY: But what the
14 purpose of that is to get that information out
15 there so the people can participate.

16 SENATOR MONTGOMERY: O.K. The -
17 Senator Farley, I'd just like to ask you
18 regarding -- Mr. President, if I may raise
19 another question with Senator Farley?

20 ACTING PRESIDENT KUHL: Senator
21 Farley, do you continue to yield?

22 SENATOR FARLEY: Yes, sir.

23 ACTING PRESIDENT KUHL: Senator

1 does.

2 SENATOR MONTGOMERY: It says on
3 page 10, Senator Farley, line 3, the corporation
4 may contact -- contract or otherwise affiliate
5 with local development corporations and other
6 local development organizations, including but
7 not limited to not-for-profit corporations
8 established pursuant to Article 9, so forth and
9 so on. Does that mean that, for instance, there
10 is a not-for-profit, and -- me rephrase that. I
11 don't know if it's not-for-profit.

12 There is a community credit union
13 that was recently chartered in my district and
14 one of the activities of that credit union is to
15 function as a local lending entity. It's -- and
16 its board is made up of people who live in the
17 area as well as who are -- who have various
18 areas of expertise, and they do some small
19 business lending primarily -

20 SENATOR FARLEY: Yes, I would
21 think that under that clause that what you speak
22 of, not knowing precisely the -- I think they
23 could work with that community -- with that

1 credit union.

2 SENATOR MONTGOMERY: In other
3 words, can the investment company make loans
4 through that -- that credit union or that
5 community credit union, or how would that work?

6 SENATOR FARLEY: No, they could
7 make it to that credit union, but not through
8 it.

9 SENATOR MONTGOMERY: But it is
10 itself a lending institution.

11 SENATOR FARLEY: Yeah, but I
12 don't think they're participating in it.

13 SENATOR MONTGOMERY: Does it -

14 SENATOR FARLEY: They could work
15 with it, but no, I don't think they could make
16 loans under this.

17 SENATOR MONTGOMERY: So does that
18 credit union now have to compete with the SBIC
19 in terms of access to funding which it then can
20 -- can make loans?

21 SENATOR FARLEY: I guess you
22 could -

23 SENATOR MONTGOMERY: Continue to

1 make loans?

2 SENATOR FARLEY: You could look
3 at it from that perspective, but these are,
4 generally speaking, providing funding to
5 businesses which are viewed too risky by banking
6 institutions. They're -- it's providing loans
7 to people and small businesses that generally
8 can't get loans. I mean if you mean that your
9 -- I think that's a positive thing.

10 I think that your credit union
11 that you're talking about would be delighted to
12 see some of your larger banking institutions
13 making loans to -- to poor people to start a
14 business, don't you?

15 SENATOR MONTGOMERY: Well, they
16 make loans to poor people too; that's the reason
17 for their being. That's what I'm concerned
18 about in terms of this bill.

19 SENATOR FARLEY: Well, I'll tell
20 you, we need more like your credit union then.

21 SENATOR MONTGOMERY: Senator -

22 ACTING PRESIDENT KUHL: Senator
23 Farley, you continue to yield? Senator does.

1 SENATOR MONTGOMERY: Yes, Mr.
2 President. Let me just make a statement on it.
3 Thank you, Senator Farley.

4 ACTING PRESIDENT KUHL: The floor
5 is yours, Senator Montgomery.

6 SENATOR MONTGOMERY: Let me just
7 say that I am very pleased, and I certainly hope
8 that this -- that the results of this bill will
9 be as -- as intended, once all of the small -
10 the minor disagreements are worked out.

11 I would just like to go on
12 record, being on record in saying that up until
13 this point, our attempts in the state have been
14 very, very disappointing to say the least as it
15 relates to trying to direct money, direct access
16 to resources to small businesses, minority
17 business in particular, and part of that is, as
18 I understand it, based on speaking to the state
19 agency people who have been charged with that
20 mission, as well as small business people
21 themselves.

22 Part of the problem is one that
23 the small businesses in our -- that we're

1 talking about, the small business that I'm
2 talking about, minority businesses in my
3 district, are one and two people oftentimes and
4 three people. It's the one guy who is
5 struggling desperately. He's a wonderful
6 designer of hats. He makes his own hats, and he
7 goes out and markets his own hats, and when he
8 sells that bunch -- that batch, then he has to
9 go back and make some more through his own
10 manufacturing entity and what have you.

11 He's -- granted, he needs a lot
12 of assistance, but certainly he does not often
13 fit into the small business category that we're
14 talking about when we say, you know, not more
15 than 6 million and not more than 2 million in
16 the last year. You know, he doesn't begin to
17 fit that. It's one and two businesses who make
18 leather garments and sell a few, would like to
19 expand, people who really are at the very, very,
20 very beginning rudiments of business
21 development.

22 We have not been able to help
23 those people, and I think that's where a lot of

1 the growth can take place if we're able to
2 provide the kind of assistance that is -- that
3 will allow them to grow. There is a mind set by
4 the lending institutions and the people who have
5 grown up in that atmosphere of mistrust, and so
6 we have high risk loan -- revolving loan funds
7 in the state of New York which never make it to
8 the hands of the high risk businesses because
9 the people making the loans have a mind set of
10 the -- that does not include high risk
11 businesses.

12 So I'm afraid that if we're
13 establishing the board two-thirds with people
14 from the industry, from the community where
15 we've experienced the problem already, I'm not
16 sure that they're going to be able to make that
17 flip and be able to accommodate the various
18 nuances of really little bitty businesses that I
19 think about when I say small business.

20 So that certainly is a concern of
21 mine, and I would hope that, as we look at what
22 happens with the funding, I don't know where the
23 funding will go when it's not used, but what

1 we've generally done is that it ends up being
2 eaten up by something else because we blame the
3 victim. The small businesses didn't get it,
4 they didn't get it because they didn't deserve
5 it somehow; they weren't eligible to receive
6 it. The money is still sitting there, we
7 weren't able to lend it. So it goes back into
8 the pot, and it gets redirected, and I -- I'm
9 not able to track it always, and I don't know, I
10 always say it gets stolen by, you know, it's the
11 food of the minnows being stolen by the whales.
12 That happens too often, and I certainly hope
13 that we won't allow that to happen to this
14 program in terms of small business.

15 So, Senator Farley, I commend you
16 but, as you can see, I do have some concerns
17 about it and it's based on having worked very
18 closely, being frustrated for many years with
19 the economic development entities of our state
20 who, with every good intention, do not, in fact,
21 offer assistance to small businesses and the
22 whole issue of the marketing and the coordinat
23 ing and the workshops and all of these little

1 things that supposedly they do with the dog and
2 pony shows with those small business centers.

3 I can tell you in no uncertain
4 terms they do not serve small business people,
5 people who have a bakery shop who need a loan to
6 expand their bakery shop, or who have these
7 kinds of problems do not have the time to go and
8 sit and have a lecture and attend a workshop and
9 travel up and down the state and receive
10 certificates for being the wonderful business
11 person of the year. They just don't have time.
12 They're out there trying to eke out a living,
13 and if we can't figure out how to help those
14 people, then the whole issue of the state
15 helping small businesses is a charade.

16 So I hope this doesn't end up
17 being in that category.

18 Thank you, Mr. President.

19 ACTING PRESIDENT KUHL: Senator
20 Mendez.

21 SENATOR MENDEZ: Senator Farley
22 yield for a question?

23 ACTING PRESIDENT KUHL: Senator

1 Farley, will you yield to a question? Senator
2 does.

3 SENATOR MENDEZ: Senator Farley,
4 about the effect of your bill, the small
5 business investment, small business investment
6 business community will give -- let me start
7 over again. The SBIC will provide businesses
8 monies lending -- would lend money to small
9 businesses throughout the state of New York and
10 the SSBIC will provide loans to small businesses
11 that are located in very distressed or minority
12 or poor areas.

13 O.K. My question along those
14 lines is, if there is a small businessman
15 located or a small businesswoman located in a -
16 in a poor area, would that person have to apply
17 only to the SSBIC or will that person be able to
18 apply -

19 SENATOR FARLEY: No.

20 SENATOR MENDEZ: -- able to apply
21 to both?

22 SENATOR FARLEY: No, no, no, can
23 apply either place.

1 SENATOR MENDEZ: Either one.

2 Good.

3 Secondly, the banks, the banks
4 that are participating in the SBIC or the SSBIC,
5 would they be able to qualify for CRA credit?

6 SENATOR FARLEY: Yes.

7 SENATOR MENDEZ: This is a good
8 bill. It's a good bill because for years and
9 years you have heard all of us here criticizing
10 the banks for red-lining, even after that
11 particular legislation they have not come up to
12 par in terms of -- of doing what they're
13 supposed to do in this area.

14 So that's the only thing that I
15 think is very bad in this bill. I think that
16 this bill should have taken -- that we should
17 have taken notice of the bad track record in
18 this area, in the area of CRA, and then give a
19 credit after a certain period of time when the
20 SSBIC or the SBIC have proven that they have
21 foregone the bad record that up to now they have
22 had in this area with red-lining.

23 That's the only bad, bad point

1 that I see in that bill. Otherwise, Senator
2 Farley, I think that this bill is very badly
3 needed in our communities. I am very happy to
4 say that the businesses in our communities in
5 the poor communities will be able to apply to
6 either of these two financial entities, but the
7 only thing, as I said before, that that is bad
8 here, that the banks do not deserve to be
9 receiving credit, the CRA credit with these new
10 things because of the kind of record that they
11 have had before.

12 I'm so sorry it's there but again
13 I -- I congratulate you, and I think it's a good
14 bill except for that.

15 ACTING PRESIDENT KUHL: Is there
16 any other Senator wishing to -

17 SENATOR FARLEY: If I might, I
18 would like to pass the bill. The Governor's
19 office has called me and wants to talk to me.
20 The Assembly has adjourned after passing the
21 extension which he has no intention -- which he
22 has no intention of signing.

23 I would like to put this to

1 rest. I know that you've got an awful lot of
2 questions. I don't know what the purpose behind
3 these questions is, but I know that you've been
4 asked to take as much time as you can, but I
5 would like to bring some finality to this, my
6 neighbor, Senator Connor.

7 ACTING PRESIDENT KUHL: Senator
8 Connor.

9 SENATOR CONNOR: Will you yield
10 to a question?

11 ACTING PRESIDENT KUHL: Senator
12 Farley, will you yield to a question? Senator
13 does.

14 SENATOR CONNOR: I only have 15
15 or 20 questions, Senator. No, just a couple on
16 the motor vehicle, and that's why I focus on
17 this.

18 SENATOR FARLEY: That's not my
19 area of expertise, you realize that, my fellow
20 Senator. But I'll do the best I can.

21 SENATOR CONNOR: Well, Senator,
22 it's new. If you could explain, I understand
23 there's an arbitration provision in there.

1 SENATOR FARLEY: To settle
2 disputes.

3 SENATOR CONNOR: Right. Now, my
4 question is, who -- that's a good use of an
5 arbitrator. Seriously the -- it's the lessor
6 though, I think, who can select its own internal
7 arbitration -- arbitrator; is that correct?

8 SENATOR FARLEY: I beg your
9 pardon?

10 SENATOR CONNOR: As I understand
11 it, the bill provides an option to the lessor to
12 designate its own internal arbitration procedure
13 and arbitrator, is that correct?

14 SENATOR FARLEY: Yes, that's
15 correct. It can be appealed, but -

16 SENATOR CONNOR: Well, yeah,
17 that's my question. Can that be appealed?

18 SENATOR FARLEY: Yes.

19 SENATOR CONNOR: And if so how,
20 if you could explain that.

21 SENATOR FARLEY: Well, anyway, I
22 think it could be appealed at -- to a lower
23 level court, a small claims court or to -- and

1 on up.

2 SENATOR CONNOR: Well, generally,
3 Senator, isn't it true that when you appeal from
4 an arbitration you have to show that the
5 arbitrator's decision or the arbitrator acted
6 arbitrarily and capriciously in order to
7 overcome? I mean otherwise arbitration is
8 binding.

9 SENATOR FARLEY: That doesn't
10 stop you from appealing, though.

11 SENATOR CONNOR: Well, it makes
12 your appeal short-lived though, Senator.

13 SENATOR FARLEY: I couldn't
14 concur with you more, but -

15 SENATOR CONNOR: Now, in terms of
16 these -- now, I often -- let me proffer my
17 question. I've been seeing these ad's, too good
18 to be true, \$300 a month, drive a brand new
19 Cadillac off, no down payment, and then at the
20 end of the ad, there's often -- and since I hit
21 40 I can't read it, but before I was 40 I know
22 the small print used to say, you know, you had
23 to pay so many cents a mile after 8,000 miles

1 and the wear and tear, and so on, and I gather,
2 Senator, the problem with this wear and tear is
3 that people return the car and end up with a
4 very, very large bill for wear and tear which is
5 determined by the lessor.

6 Now, as I understand this bill,
7 isn't it true that it provides that the -- does
8 it provide any remedy for the lessee, I guess?
9 You know, I read in the paper last week about
10 some guy who said, oh, he went out and got his
11 own estimates and they wouldn't even hear about
12 it. What's a person in that situation to do
13 under this bill?

14 SENATOR FARLEY: I guess the
15 whole purpose of the bill is that he could take
16 this model lease home with him and compare it
17 with other leases. It gives them a little bit
18 of comparison shopping.

19 SENATOR CONNOR: O.K. Well,
20 Senator, that was my next question or the answer
21 to my next question which was -

22 SENATOR FARLEY: Then you don't
23 need to ask it.

1 SENATOR CONNOR: No.

2 ACTING PRESIDENT KUHL: Senator
3 Connor, are you asking Senator Farley to
4 continue to yield?

5 SENATOR FARLEY: You're getting
6 me in trouble here. This is the third call from
7 the Governor.

8 ACTING PRESIDENT KUHL: He does,
9 Senator Connor.

10 SENATOR CONNOR: All right.
11 Thank you. You have -- O.K. You say you can
12 take the lease home and study it. Well, you
13 know, I'm a big believer in doing away with all
14 these legalese terms and having plain language,
15 and I know we have adopted "plain language"
16 bills in the past, but I recall you being a
17 staunch supporter of "plain language" bills.

18 The question is, why not require
19 in this bill that the lease be in plain
20 language? You know, some people could take home
21 something with all sorts of legal terms in it
22 and they could study it for a week and it
23 doesn't make it any clearer.

1 SENATOR FARLEY: We put that in
2 one of your proposals and they rejected it out
3 of hand.

4 SENATOR CONNOR: Who is "they,"
5 Senator?

6 SENATOR FARLEY: The Assembly.

7 SENATOR CONNOR: They rejected
8 the proposal or the plain language proposal?

9 SENATOR FARLEY: The plain
10 language proposal.

11 SENATOR CONNOR: Well, I'm
12 shocked, Senator. If you had called me, I would
13 have talked to anybody on the Assembly side and
14 urged them to take -

15 SENATOR FARLEY: I will remember
16 that.

17 SENATOR CONNOR: Next time, we're
18 friends you know, Senator, just give a call.

19 Now, back to my question that I
20 -- about the alternative. My real question is
21 on the wear and tear, can the lessee go out and
22 get their own estimates?

23 SENATOR FARLEY: Yes, they can.

1 SENATOR CONNOR: All right. So,
2 now, switching back to the Small Business
3 Investment Corporation, Senator. Switching off
4 of this topic to the Small Business Investment
5 Corporation, I'm just curious, as a member in
6 this body who has been waiting for this banking
7 bill for months and months and months, and we
8 extended it to the end of January and here we
9 are mere hours away from its expiration, just
10 what -- what really is the political dispute
11 about this? When was this provision in your bill
12 in its present language, when was that put on
13 the table? When was that put in the bill,
14 Senator?

15 SENATOR FARLEY: Which provision?

16 SENATOR CONNOR: The provision to
17 which there is no agreement.

18 SENATOR FARLEY: It's been in the
19 agreement I would say since last -- we've had
20 everything on the table asking them to try to
21 in -- be inclusive. I don't think anybody in
22 this chamber, and I can only speak for this
23 chamber, would object to a poor person getting a

1 small business loan, and being excluded simply
2 because they're not a minority, and we have put
3 down economically and socially deprived, we've
4 offered that. It's the Governor's language. We
5 have offered the income tax credit language. We
6 also have offered the economic development
7 zone.

8 It -- it boggles my mind why none
9 of these proposals have been accepted, so we
10 have put in here the earned income tax credit
11 provision that we felt was realistic. All it is
12 is for poor people, working poor people that
13 would maybe like to get a small business loan.
14 That's basically it.

15 We -- every time we had
16 agreement, Senator Connor, we had agreement
17 after agreement after agreement, a new thing was
18 thrown on the table. It was kind of like let's
19 just keep this going on and on and on.

20 SENATOR CONNOR: Now, you, the
21 Senator -- Mr. President, if the Senator would
22 yield.

23 ACTING PRESIDENT KUHL: Senator

1 Farley, do you continue to yield?

2 SENATOR FARLEY: Yes.

3 ACTING PRESIDENT KUHL: Senator
4 does.

5 SENATOR CONNOR: Senator, could
6 you elucidate for me what exactly is the
7 language that you say others -- the other house
8 wishes to have in place of your language?

9 I think you've done a good job in
10 explaining what your different proposals were as
11 to qualifying language.

12 SENATOR FARLEY: Basically, the
13 short version, the Assembly bill would only
14 include minorities, persons who reside in highly
15 distressed areas which is a very exclusive -
16 well, that's not the right word, excluding -
17 it's a very excluding area of New York State.

18 SENATOR CONNOR: Limited.

19 SENATOR FARLEY: "Limited" is a
20 better word, I'm sorry. You're wearing me out
21 here. And persons who reside in neighborhood
22 based alliance communities. That's all. That's
23 all. It does not include poor people.

1 SENATOR CONNOR: Now, that's for
2 the second corporation, right?

3 SENATOR FARLEY: Yes, that's all
4 we're talking about.

5 SENATOR CONNOR: That's all we're
6 talking about. O.K. Thank you, Senator.

7 Mr. President, on the bill. I
8 don't know what it is around here, and I'm not
9 particularly criticizing this house or the other
10 house, but why we always have to be under the
11 gun, why we always have to be down to the final
12 hours on any issue, it seems, any expiration,
13 any sunset, end of session, four days past the
14 budget deadline, Saturday night, 4th of July,
15 there always seems to be that in order to do or
16 to make a reasonable attempt at doing the
17 people's business, these -- these -- this
18 institution of the Legislature takes us down to
19 the wire, forces us to deal with a very complex
20 bill.

21 I mean I -- if my questions to
22 Senator Farley about the leasing provisions
23 weren't the most technically pointed or erudite,

1 it's because we just get down to the wire here
2 and here it is a whole new provision on
3 leasing. All I know about leasing cars is I
4 once did it a number of years ago, and when I
5 took it back, the guy wanted me to pay a lot of
6 money for a couple of dents, and we negotiated
7 it out.

8 But the fact of the matter is we
9 get hit with that. We have all the other
10 banking provisions, many of which have been
11 discussed off and on over the last year. I'm
12 not saying these proposals are a total surprise
13 to anybody. They're not. But when you get a
14 final piece of legislation, Mr. President, it's
15 very important to weigh it as a legislator, it's
16 very important to weigh it. It's very important
17 to contrast, O.K., what's new in here from my
18 point of view and the point of view of my
19 constituents: What do we gain, what do we lose,
20 and it's a balancing. And I'm not suggesting,
21 Mr. President, the people who negotiated,
22 Senator Farley and the people in the Assembly
23 and the Governor's office, naturally as a

1 product of the negotiation they do that
2 balancing, they do a balancing, and they decide
3 they have agreement on whatever dozen or two
4 provisions represent changes in a banking bill.

5 But really, Mr. President, that's
6 the back room negotiating that characterizes the
7 way this Legislature operates. As members, I
8 believe we ought to have an opportunity to study
9 a bill like this and evaluate if the system
10 persists in having this negotiation by a
11 handful, we ought to be able to evaluate what
12 those compromises were, and the way we get down
13 to the final hour, the way it's presented, and I
14 know it was obvious that Senator Farley was
15 under pressure to take some phone calls or
16 something and would like to speed this process,
17 but the fact of the matter is the rules allow us
18 two hours and two hours is barely enough time to
19 digest something like this and also to get feed
20 back.

21 You know, how am I supposed to
22 get feedback from my constituents about their -
23 the effect on them and what their views are

1 about the inevitable compromises that are struck
2 with respect to any but the simplest
3 legislation, and this process doesn't afford us
4 that opportunity. And so now here we are and
5 the main sticking point is a difference in
6 language, albeit an important one I suspect,
7 between the two houses, and now we're told the
8 other house is adjourned for a couple of hours,
9 and I guess we're going to pass this probably
10 and adjourn for a couple of hours and maybe
11 we'll adjourn at the call of the Majority
12 Leader, but I have a feeling we're going to be
13 asked to stick around because while this state
14 has been able to exist for weeks without a
15 budget and this state has seemed to be able to
16 exist for several days without a Tenant
17 Protection Act and we've missed other deadlines
18 and gone, Oh, my goodness, what's it mean that
19 the last two days we haven't had a law on this
20 or that?

21 I really suspect, for some
22 reason, this Legislature is not going to let New
23 York State exist for three minutes without a

1 banking bill, a bank regulation bill, and so I
2 suspect we're in for a long night, and I can
3 only deplore that that's the way we make laws.
4 I don't think it adds to the credibility of the
5 institutions that are supposed to be doing this
6 kind of lawmaking and, you know, I haven't heard
7 from many people in my district who lease
8 vehicles either as lessee or lessors.

9 I don't know how this will affect
10 businesses. I don't know how it will affect,
11 more importantly I suspect in my district,
12 consumers in the leasing business. We just are
13 never given anything but a last minute, Oh, gee,
14 I know you got a lot of good questions but jeez,
15 we ought to hurry up and do this. Something is
16 going to expire. And I don't like -- I've been
17 seeing this for years. But I don't think that's
18 the way we ought to do business, Mr. President.

19 SENATOR GOLD: Mr. President.

20 ACTING PRESIDENT KUHL: Senator
21 Gold.

22 SENATOR GOLD: Yeah, Senator
23 Farley. I have been checking out the memo, and

1 I am curious about one comment that I think you
2 made, and I want to clarify it. In terms -- if
3 you will yield to a question, sir.

4 ACTING PRESIDENT KUHL: Senator
5 Farley, will you yield to a question?

6 SENATOR FARLEY: Yes, I will.

7 ACTING PRESIDENT KUHL: Senator
8 does.

9 SENATOR GOLD: In terms of the
10 financing agency, as it's called, mailing from
11 outside the state and still being considered an
12 in-state issuer of the credit cards, the way I
13 read that, Senator, we are, by that language,
14 authorizing these companies to basically do a
15 large part of their day-to-day business in other
16 states and employ people and we're going to give
17 jobs in other state. Isn't that exactly what's
18 going to happen?

19 SENATOR FARLEY: That's exactly
20 what's not going to happen.

21 SENATOR GOLD: I'd be glad to
22 hear you explain that.

23 SENATOR FARLEY: Yes. You're

1 very specific here on page 13 starting with line
2 30. But basically, Senator Gold, all that
3 allows them to do is to take physically and drop
4 it in a mail box outside the state. It's to
5 prevent theft and fraud and to kind of vary
6 where they mail it from.

7 SENATOR GOLD: In other words, if
8 I understand you, and it makes sense, I just
9 want to make sure I understand it, in other
10 words, Senator, the jobs, all the work would be
11 done in New York State?

12 SENATOR FARLEY: That's correct.

13 SENATOR GOLD: But instead of
14 people who are interested in theft knowing that
15 it always gets deposited in the Elmira post
16 office, that this way they could have a
17 messenger go to Cortland, could go to New
18 Jersey, could go to Vermont, and just put them
19 in those; is that what it is?

20 SENATOR FARLEY: That's exactly
21 it.

22 SENATOR GOLD: All right. I
23 appreciate it, and thank you, and I think it's

1 the last question. The -- the part -- and I'm
2 reading from this memo.

3 It permits charges for the
4 additional services of replacement of stolen
5 cards, replacement of sales slips and all of
6 that. Those are, just so I understand it,
7 situations which you say will make them
8 competitive but will be now increased costs upon
9 the card holder if they need those services.

10 SENATOR FARLEY: I -

11 SENATOR GOLD: In other words,
12 now, those are services that go with the card?

13 SENATOR FARLEY: I gave you that
14 example that they will now be able to charge
15 you, I think, for your fourth lost credit card.

16 SENATOR GOLD: Well, but this
17 also, Senator Farley, and I'm not saying it
18 shouldn't be the law, but I want it on the
19 record, it says for copies of sales slips,
20 monthly statements and other documents not
21 required by federal or state law governing
22 billing disputes.

23 In other words, right now, as I

1 understand it, if you want a copy of a sales
2 slip or whatever, you request it. Under this
3 there may be a charge for it, and I'm not saying
4 it should or should not be, but the way I'm
5 reading this memo -

6 SENATOR FARLEY: That's correct.

7 SENATOR GOLD: All right. So and
8 is -- and, Senator Farley, is that in the
9 existing law that we're codifying or is that in
10 addition to the new -

11 SENATOR FARLEY: That's in the
12 existing law. It -- oh, this is a new law.

13 SENATOR GOLD: Yeah.

14 SENATOR FARLEY: That is not the
15 -- that is not the current situation because
16 banks in other states can charge those fees.

17 SENATOR GOLD: I apologize for
18 that interruption. That is new language.

19 SENATOR FARLEY: Banks in other
20 state, banks that have credit card operations
21 can charge those fees. Whether they do or not
22 depends on the credit card company. It's a very
23 competitive business.

1 SENATOR GOLD: No, I understand.
2 Mr. President, on the bill.

3 ACTING PRESIDENT KUHL: Senator
4 Gold, on the bill.

5 SENATOR GOLD: Yeah. Mr.
6 President, I don't think there's any necessity
7 to -- to be repetitious, and I would like very
8 much to be associated with some of the final
9 remarks made by our new Assistant Minority
10 Leader, Senator Connor.

11 We have tried over the years and
12 when I say "we," I mean all of us -- I'm not
13 saying this as a Democrat/Republican issue. We
14 tried to make some changes in some of the
15 legislative processes, and I would hope that the
16 reason we want to make the changes is because of
17 some philosophy -- philosophical tie that we
18 have to the people who sent us here, and the
19 comment that Senator Connor made about giving
20 people in the districts time for comment is a
21 very, very well taken point.

22 We have in our Constitution a
23 requirement, we can't even act on bills unless

1 they've been on our desks for three legislative
2 days and, obviously, emergencies are taken care
3 of. But it just seems, Senator Farley, that the
4 only -- that we all know there's got to be a
5 better way, but the only way you get it to be a
6 better way is to do it. You know, sometimes I
7 say the only way to do it is to do it.

8 Maybe at some point we just have
9 to all of us stop it. It is ridiculous. This
10 is an important issue and, Senator Farley, your
11 explanations today certainly demonstrate that
12 you are a very knowledgeable person in this
13 field, and you're a good person to be speaking
14 in this field.

15 Our main objection is that you
16 shouldn't be subjected to having to fight on
17 this issue within seven hours of its deadline
18 and then we wind up in a situation where,
19 unfortunately, laws are hard to undo. It's hard
20 to make a law, but it's hard to undo that, and
21 what many of us on this side of the aisle are
22 concerned about is that some place in this 54
23 pages is something that maybe we didn't ask

1 about.

2 You certainly didn't hide it out
3 of any venality, Senator Farley. You tried to
4 be very open on it, but something that adversely
5 will affect people or situations that we care
6 very much about, and then we are stuck literally
7 in the circumstance of trying to undo that with
8 the same complicated three parties, our house,
9 their house and the Governor, and it just isn't
10 -- it isn't a good way to do it.

11 I would hope -- we understand the
12 rush involved in this, and we're going to bring
13 this to a vote, I assume, very, very, very soon,
14 but I really would hope that it's the end of
15 this. It just makes no sense. I look around
16 this room, and I can tell you as I look at every
17 face, I see people I respect, and somehow at
18 sometimes I say to myself, how could these 60
19 other people who I respect, the 200 -- the 150
20 in the other house, the Governor, and all his
21 staff, I look in their faces, I respect you all
22 and we can not find a solution so that we deal
23 with important issues in a more businesslike and

1 dignified way. It makes no sense to me.

2 Thank you, Mr. President.

3 ACTING PRESIDENT KUHL: Is there
4 any other Senator wishing to be heard on this
5 bill?

6 (There was no response.)

7 Read the last section.

8 THE SECRETARY: Section 67. This
9 act shall take effect immediately.

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT KUHL: Senator
14 Montgomery to explain her vote.

15 SENATOR MONTGOMERY: Yes, I would
16 like to explain my vote, Mr. President.

17 I'm going to vote for this
18 legislation because I think obviously we have to
19 pass a bill, and I want to be responsible in
20 that respect, but I do want to be on record as
21 it relates to hopefully the memorandum of
22 agreement that is called for in the legislation,
23 and I would hope that it is considered -- that

1 it has considered some of the issues that I am
2 raising here.

3 One is the size of small
4 businesses. I think that really needs a very
5 careful look and a more definitive
6 classification for businesses in our state, and
7 the amount and the size of the loans is also
8 very important. The ability to -- to make small
9 loans is sometimes very critical for small
10 businesses, and that is not an -- an area that
11 is dealt with oftentimes.

12 The representation of
13 shareholders, I think, is extremely important
14 and I do hope that the MOU will somehow indicate
15 that that absolutely be reflective of the small
16 businesss that we hope to provide assistance
17 for. People from the small business community,
18 people from the minority community, women,
19 people with a very wide range of background and
20 experiences and not just the financial
21 institution community representation as we are
22 inclined -- as it is inclined to be reflective,
23 white and male primarily.

1 There is no targeting that is
2 indicated, and I know this is a -- it's a curse
3 word to many people, but it's -- I think we must
4 say it. We must in our own minds understand the
5 implications of it, that when you say minority,
6 that in and of itself is very fluid, but then
7 when you add all of the other -- the other
8 criteria for being eligible to be assisted, if
9 you don't say at least X percent of this program
10 should be directed to minority businesses, it
11 will not happen.

12 So I want to be on record for
13 supporting that concept. I want it to be done
14 within the context of the federal and state
15 legal aspect of targeting or setting goals or
16 somehow establishing that a percentage of the
17 assistance or particularly the loans shall be
18 directed to minority businesses and, just to
19 lastly be very parochial about this, there is a
20 very successful kind of community credit union
21 in my district that was started by people who
22 live in that community; it's Bedford-Stuyvesant
23 where we have no banks, and the reason that the

1 credit union was started was because that is a
2 community where banks have essentially fled and
3 left us without financial institutions.

4 And so I don't want them to now
5 be faced with the possibility of an entity that
6 I'm voting for coming in and supplanting them
7 and any other credit union that exists. There
8 may be one or two others in the city of New
9 York, because they came in when no one else was
10 willing to invest in certain communities, in
11 certain districts.

12 So with that, I say, Senator
13 Farley, I do hope that we're able to address
14 some of those extremely important issues because
15 without an economic engine we can't hope to
16 generate the kinds of jobs for the people in the
17 community that this bill wishes to address.

18 ACTING PRESIDENT KUHL: Senator
19 Montgomery, how do you vote?

20 SENATOR MONTGOMERY: I vote yes.

21 ACTING PRESIDENT KUHL: Senator
22 Montgomery in the affirmative. Announce the
23 results.

1 Senator Dollinger to explain his
2 vote.

3 SENATOR DOLLINGER: Mr.
4 President, I want to commend the Banking
5 Committee again on this bill. This is a
6 difficult bill and a difficult concept to deal
7 with. I will, again, however, echo the comments
8 of my colleague, Senator Montgomery, in that we
9 are stepping down the road to increase the
10 availability of funds to those who are in
11 economic distress.

12 I appreciate the chairman's
13 explanation of the broadening of that definition
14 which this bill encompasses. My hope is that we
15 will continue to look at this problem of whether
16 or not the broadening of this definition is
17 achieving the laudable goal that the chairman of
18 the committee has articulated and my colleague,
19 Senator Montgomery, has articulated to bring
20 financial capital to those who can use it as a
21 form of entrepreneurship, increase job oppor
22 tunities in our distressed areas, broaden the
23 base of wealth, generate new wealth in the

1 communities that desperately need it in this
2 state.

3 My hope is, and I don't know
4 whether the bill provides it, I haven't read all
5 the details, my hope is that this will require
6 not only a reporting requirement for the success
7 of these small business banks and the
8 specialized small business banks, but also that
9 those reports come back to the Legislature so
10 that we can evaluate whether these steps which
11 appear to be going in the right direction are
12 absolutely in reality moving us in that
13 direction.

14 The last thing I would just
15 mention, I asked a question about the
16 incorporation concept. I've done some quick
17 research on incorporation. I hope we don't run
18 into a problem by incorporating both federal
19 statutes and federal regulation into this act.
20 It's something I have some concern about in
21 doing some quick research.

22 I understand the intention is to
23 rely on the federal principles with respect to

1 earned income credits. I hope we don't run into
2 a problem with that. I can't quite tell based
3 on my research, but I certainly see our
4 intentions not to create any constitutional
5 problem under this bill, but instead to simply
6 use a system of federal accounting as a means to
7 treat part of the targeted population and
8 facilitate the delivery of improved capital and
9 availability of capital to people in distress.

10 So I hope we don't create a
11 problem with that. Maybe that's something we
12 can talk about again, but I will vote in favor
13 of this bill, Mr. President. I think it's a
14 good step, and I hope we keep our eyes on it to
15 make sure that it goes in the direction we want
16 it.

17 ACTING PRESIDENT KUHL: Record
18 Senator Dollinger in the affirmative.

19 Senator Onorato to explain his
20 vote.

21 SENATOR ONORATO: Thank you, Mr.
22 President.

23 Senator Farley, I want to con

1 gratulate you on a job very, very well done
2 under very trying and difficult situations, and
3 I personally want to thank you for including me
4 in on many of your discussions.

5 While we passed an earlier
6 straight out extender bill earlier this session,
7 last session, this particular bill that we're
8 voting on today is much more inclusive,
9 including the auto leasing bill which was not
10 part of the original bill, and there's a lot
11 more in the banking bill that all of us should
12 be appreciative, and I certainly want to assure
13 my colleagues that it has not limited the scope
14 of the banking institution to lend money to the
15 small businesses in our community, but it has
16 expanded it.

17 It has, as every one loves to use
18 the phrase, leveled the ball playing field. I
19 think our particular version levels it a lot
20 more than the Assembly version, and I am urging
21 my colleagues before this day is over beyond -
22 on both sides not only of our house but in the
23 other house, to move forward with a deregulation

1 bill that we can all live with.

2 I intend to vote in the affirm
3 ative.

4 ACTING PRESIDENT KUHL: Record
5 Senator Onorato in the affirmative. Announce
6 the results.

7 SENATOR GOLD: Hold on a second.

8 ACTING PRESIDENT KUHL: Clerk
9 will announce the results.

10 THE SECRETARY: Ayes 52.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 Senator Present, what's your
14 desire?

15 SENATOR PRESENT: Thank you, Mr.
16 President. Let's take up the non-controversial
17 calendar, please.

18 ACTING PRESIDENT KUHL: The clerk
19 will call the non-controversial Third Reading
20 Calendar.

21 THE SECRETARY: On page 4,
22 Calendar Number 13, by Senator Levy, Senate Bill
23 Number -

1 SENATOR GOLD: Lay aside,
2 please.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar Number
6 25, by Senator Bruno, Senate Bill Number 1744-B,
7 an act to amend the Executive Law.

8 ACTING PRESIDENT KUHL: Last
9 section.

10 THE SECRETARY: Section 3. This
11 act -

12 SENATOR GOLD: Lay aside,
13 please.

14 ACTING PRESIDENT KUHL: Lay the
15 bill aside.

16 THE SECRETARY: Calendar Number
17 29, by Senator Bruno, Senate Bill Number 4615-B,
18 an act to amend the Executive Law.

19 ACTING PRESIDENT KUHL: Last
20 section.

21 THE SECRETARY: Section 3. This
22 act shall take effect September 1st.

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 52.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 30, by Senator Bruno, Senate Bill Number 4616
8 B, an act to amend the Economic Development
9 Law.

10 ACTING PRESIDENT KUHL: Last
11 section.

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

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 52.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 31, by Senator Bruno, Senate Bill Number 4617
22 B, an act to amend the State Administrative
23 Procedure Act.

1 SENATOR GOLD: Lay it aside,
2 please.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar Number
6 47, by Senator Johnson.

7 SENATOR GOLD: Lay it aside,
8 please.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 49, by Senator Marino, Senate Bill Number
13 3237-A.

14 SENATOR GOLD: Lay it aside,
15 please.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside.

18 THE SECRETARY: Calendar Number
19 54, by Senator Volker, Senate Bill Number
20 4944-A, an act to amend the Civil Rights Law and
21 the Criminal Procedure Law.

22 SENATOR GOLD: Yeah. Lay it
23 aside.

1 ACTING PRESIDENT KUHL: Lay the
2 bill aside.

3 THE SECRETARY: Calendar Number
4 55, by Senator Skelos, Senate Bill Number 1156,
5 an act to amend the Executive Law and the Penal
6 Law.

7 SENATOR GOLD: Lay it aside,
8 please.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 63, by Senator Kuhl, Senate Bill Number 537, an
13 act to amend the Agriculture and Markets Law.

14 ACTING PRESIDENT KUHL: Last
15 section.

16 THE SECRETARY: Section 3. This
17 act shall take effect immediately.

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 52.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 64, by Senator Kuhl, Senate Bill Number 4654,
3 Agriculture and Markets Law, in relation to
4 agricultural assessments.

5 ACTING PRESIDENT KUHL: Last
6 section.

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 52.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 66, by Senate Kuhl, Senate Bill Number 3336-A,
17 Agriculture and Markets Law.

18 ACTING PRESIDENT KUHL: Last
19 section.

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

22 ACTING PRESIDENT KUHL: Call the
23 roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 52.

3 ACTING PRESIDENT KUHL: The bill
4 is passed.

5 THE SECRETARY: Calendar number
6 67, by Senator Kuhl, Senate Bill Number 3413-A,
7 an act to amend the Agriculture and Markets
8 Law.

9 SENATOR GOLD: Lay it aside,
10 please.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 68, by Senator Kuhl, Senate Bill Number 4426-B,
15 Agriculture and Markets Law.

16 ACTING PRESIDENT KUHL: Last
17 section.

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

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 52.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 THE SECRETARY: Calendar Number
4 69, by Senator Tully, Senate Bill Number 26-A,
5 an act to amend the Public Health Law.

6 ACTING PRESIDENT KUHL: Last
7 section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 52.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 70, by Senator Daly, Senate Bill Number 3137, an
18 act to amend the Public Health Law, in relation
19 to imitation controlled substances.

20 ACTING PRESIDENT KUHL: Last
21 section.

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.
3 (The Secretary called the roll.)
4 THE SECRETARY: Ayes 52.
5 ACTING PRESIDENT KUHL: The bill
6 is passed.
7 THE SECRETARY: Calendar Number
8 72, by Senator Tully, Senate -
9 SENATOR GOLD: Lay it aside.
10 ACTING PRESIDENT KUHL: Lay the
11 bill aside.
12 THE SECRETARY: Calendar Number
13 74, by Senator Johnson, Senate Bill Number 1357,
14 an act to amend the Real Property Tax Law.
15 ACTING PRESIDENT KUHL: Last
16 section.
17 THE SECRETARY: Section 2. This
18 act shall take effect immediately.
19 ACTING PRESIDENT KUHL: Call the
20 roll.
21 (The Secretary called the roll.)
22 THE SECRETARY: Ayes 52.
23 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 75, by Senator Skelos, Senate Bill Number 1422
4 B, an act to amend the Economic Development
5 Law.

6 ACTING PRESIDENT KUHL: Last
7 section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 52.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 77, by Senator Johnson, Senate Bill Number 1703
18 A, an act to amend the Real Property Tax Law.

19 ACTING PRESIDENT KUHL: Last
20 section.

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

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 52.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 78, by Senator Cook, Senate Bill Number 1654-A,
8 Education Law.

9 ACTING PRESIDENT KUHL: Last
10 section.

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 52.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 79, by Senator Farley, Senate Bill Number
21 2014-A, Education Law, in relation to efficiency
22 study grants.

23 ACTING PRESIDENT KUHL: Last

1 section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 52.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 81, by Senator Daly, Senate Bill Number 4794-A,
12 an act to amend the Education Law.

13 ACTING PRESIDENT KUHL: Last
14 section.

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 51, nays
21 one, Senator Maltese recorded in the negative.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 82, by Senator Kuhl, Senate Bill Number 6215-A,
3 Education Law, in relation to school building
4 aid.

5 ACTING PRESIDENT KUHL: There's a
6 local fiscal impact note at the desk. Last
7 section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 52.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 83, by Senator Bruno, Senate Bill Number 2186,
18 an act to amend the Real Property Tax Law.

19 SENATOR DOLLINGER: Can we have
20 an explanation?

21 ACTING PRESIDENT KUHL: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number

1 86, by Senator Levy, Senate Bill Number 74, an
2 act to amend the Highway Law and the Executive
3 Law.

4 ACTING PRESIDENT KUHL: Last
5 section.

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 52.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 87, by Senator Levy, Senate Bill Number 78, an
16 act to amend the General Business Law.

17 ACTING PRESIDENT KUHL: Last
18 section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 51, nays
2 one, Senator DeFrancisco recorded in the
3 negative.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 88, by Senator Levy, Senate Bill Number 191, an
8 act to amend the Vehicle and Traffic Law.

9 ACTING PRESIDENT KUHL: Last -
10 SENATOR GOLD: Lay aside.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 89, by Senator Levy, Senate Bill Number 192, an
15 act to amend the Highway Law.

16 ACTING PRESIDENT KUHL: There's a
17 local fiscal impact note at the desk. Last
18 section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 52.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 90, by Senator Stafford, Senate Bill Number
6 2778, an act to amend the Vehicle and Traffic
7 Law, in relation to the operation of school
8 buses.

9 ACTING PRESIDENT KUHL: Last
10 section.

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 51, nays -
17 ayes 50, nays two, Senators Daly and DeFrancisco
18 recorded in the negative.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 93, by Senator Bruno, Senate Bill Number 3945,
23 an act to amend the Vehicle and Traffic Law.

1 ACTING PRESIDENT KUHL: Last
2 section.

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

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 52.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 94, by Senator Levy, Senate Bill Number 4850, an
13 act to amend the Highway Law, in relation to
14 expenditures for repair.

15 ACTING PRESIDENT KUHL: Last
16 section.

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 52.

23 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 95, by Senator Johnson, Senate Bill Number 661,
4 an act to amend the Environmental Conservation
5 Law.

6 ACTING PRESIDENT KUHL: Last
7 section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 52.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 96, by Senator Johnson, Senate Bill Number 1303,
18 Environmental Conservation Law.

19 ACTING PRESIDENT KUHL: Last
20 section.

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

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 52.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 97, by Senator Daly, Senate Bill Number 6067-A,
8 Environmental Conservation Law.

9 ACTING PRESIDENT KUHL: Last
10 section.

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 52.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 98, by Senator Johnson, Senate Bill Number 6371,
21 an act to amend the Environmental Conservation
22 Law.

23 ACTING PRESIDENT KUHL: Last

1 section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 51, nays 1,
8 Senator LaValle recorded in the negative.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 99, by Senator Johnson, Senate Bill Number 2475,
13 an act to amend the Banking Law and the Tax
14 Law.

15 ACTING PRESIDENT KUHL: Last
16 section.

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 52.

23 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 100, substituted earlier today, by member of the
4 Assembly Farrell, Assembly Bill Number 7782-A,
5 an act to amend the Banking Law.

6 ACTING PRESIDENT KUHL: Last
7 section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 52.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 102, by Senator Farley, Senate Bill Number 1616,
18 an act to amend the Public Officers Law, in
19 relation to the power of the state legislators.

20 ACTING PRESIDENT KUHL: Last
21 section.

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 52.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 103, by Senator Stafford, Senate Bill Number
9 6384, an act to amend the Tax Law.

10 SENATOR DOLLINGER: Lay aside.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 104, Senator Libous moves to discharge the
15 Committee on Investigations, Taxation and
16 Government Operations from Assembly Bill Number
17 9231-B and substitute it for the identical
18 Calendar Number 104.

19 ACTING PRESIDENT KUHL:
20 Substitution is ordered. Last section.

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

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 52.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Excuse me. Ayes
7 51, nays one, Senator Dollinger recorded in the
8 negative.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 105, by Senator Saland, Senate Bill Number 2377,
13 an act to amend the Family Court Act.

14 ACTING PRESIDENT KUHL: Last
15 section.

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 52.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 106, by Senator Saland, Senate Bill Number 2378,
3 an act to amend the Social Services Law.

4 ACTING PRESIDENT KUHL: Last
5 section.

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 52.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 107, by Senator Saland, Senate Bill Number 3379,
16 an act to amend the Family Court Act.

17 ACTING PRESIDENT KUHL: Last
18 section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 52.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 108, by Senator Libous, Senate Bill Number 4473
6 A, an act to amend the Social Services Law.

7 ACTING PRESIDENT KUHL: Last
8 section.

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 52.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 109, by Senator Saland, Senate Bill Number 4868,
19 an act to amend the Family Court Act.

20 ACTING PRESIDENT KUHL: Last
21 section.

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 52.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 Senator Present, that completes
8 the non-controversial calendar.

9 SENATOR STAFFORD: Mr.
10 President.

11 ACTING PRESIDENT KUHL: Senator
12 Stafford.

13 SENATOR STAFFORD: I ask for
14 unanimous consent to be recorded as abstaining
15 on Calendar Number 110, Senate Print 2106.

16 ACTING PRESIDENT KUHL: Without
17 objection, so ordered.

18 Senator Present.

19 SENATOR PRESENT: Mr. President,
20 let's take up the controversial calendar,
21 please.

22 ACTING PRESIDENT KUHL: Clerk
23 will call the controversial Third Reading

1 Calendar.

2 THE SECRETARY: On page 4,
3 Calendar Number 13, by Senator Levy.

4 SENATOR PRESENT: Lay the bill
5 aside for the day, please.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside temporarily.

8 THE SECRETARY: Calendar Number
9 25, by Senator Bruno, Senate Bill Number 1744
10 B, an act to amend the Executive Law.

11 SENATOR GOLD: Senator Bruno
12 yield to a question?

13 ACTING PRESIDENT KUHL: Senator
14 Bruno, will you yield to a question from Senator
15 Gold?

16 SENATOR BRUNO: Yes.

17 ACTING PRESIDENT KUHL: Senator
18 does.

19 SENATOR GOLD: Senator, this is a
20 bill that we've had before and it's passed
21 overwhelmingly but my notes indicate a memo in
22 1992 from DEA -- DEC. Are there any recent
23 memos that you know of?

1 SENATOR BRUNO: Not that I have
2 in my possession, Senator.

3 SENATOR GOLD: Last section.

4 ACTING PRESIDENT KUHL: Last
5 section.

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 51, nays 1,
12 Senator Ohrenstein recorded in the negative.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 31, by Senator Bruno, Senate Bill Number 4617
17 B, an act to amend the State Administrative
18 Procedure Act.

19 SENATOR GOLD: Hold on.

20 ACTING PRESIDENT KUHL: Senator
21 Gold.

22 SENATOR GOLD: Could we have a
23 short explanation, please?

1 ACTING PRESIDENT KUHL: Senator
2 Bruno, explanation has been requested.

3 SENATOR BRUNO: Yes, Mr.
4 President. This bill we have passed before in
5 this chamber. It relates to negotiated
6 rulemaking by state agencies. And, very simply,
7 if a state agency is going to establish
8 regulations, new regulations on business, or
9 substantially change existing regulations, they
10 must issue a notice and the office of ORMA,
11 Regulatory and Management Assistance, would set
12 up an arbitrator who would arbitrate the
13 rulemaking before a committee of the industry or
14 business to be regulated and the state agency.
15 And this is of no real cost to the state, but
16 what it really does is allow businesses to have
17 some input before they are overly regulated by a
18 state agency.

19 And what happens now, after the
20 fact, they read about it. They get issued these
21 regulations; and then, if they want relief, they
22 end up in court. They end up with attorneys.
23 They end up negotiating from weakness. So we're

1 trying to get in front of the process.

2 And I can tell you that the
3 Governor, in his wisdom, has seen fit to
4 institute something like this in the agencies
5 now, but the difference in what he's done and in
6 what we're proposing is that he says, when you
7 are going to negotiate, the agency has total
8 control. The agency sets the arbitrator. The
9 agency establishes the rules. The agency has
10 the reps. They say who will serve on the
11 committee. And after the whole process is over,
12 they don't have to accept one single thing that
13 was proposed to them.

14 This legislation becomes law -
15 and I encourage you to do it -- once agreement
16 is reached by this arbitrator and the agency,
17 then what they agree on must be included in the
18 regs as they go forward, and the arbitrator also
19 can encourage the agency not to go forward if,
20 after discussions, it appears it's not in the
21 best interests of the business community or
22 those to be regulated.

23 ACTING PRESIDENT KUHL: Senator

1 Gold.

2 SENATOR GOLD: Will Senator yield
3 to a question?

4 SENATOR BRUNO: Yes.

5 ACTING PRESIDENT KUHL: Senator
6 Bruno, will you yield to a question?

7 SENATOR BRUNO: Yes, Mr.
8 President.

9 ACTING PRESIDENT KUHL: Senator
10 yields.

11 SENATOR GOLD: Senator Bruno, an
12 agency decides that it wants to have a rules
13 change under your bill I assume they start out
14 with some kind of a notice of publication.

15 SENATOR BRUNO: Yes.

16 SENATOR GOLD: All right. And
17 who does the notice go to?

18 SENATOR BRUNO: The Office of
19 Regulatory and Management Assistance, who then
20 notifies, puts out a notice to the industry to
21 be regulated that this process is going to take
22 place and invites them to reach them to indicate
23 an interest in serving on a committee, and the

1 management assistance group sets the arbitrator
2 in place from an established list of people who
3 are professionals in this work, so they are
4 objective about what's going on.

5 SENATOR GOLD: Senator yield to a
6 question?

7 SENATOR BRUNO: Yes, Mr.
8 President.

9 ACTING PRESIDENT KUHL: Senator
10 yields.

11 SENATOR GOLD: Senator, when you
12 take some of the large industries that have
13 industry groups and well-known representatives,
14 I can understand what you said so far, but
15 supposing you have a -- I don't know whether you
16 want to call it an industry, but you have people
17 who are doing business in a certain area, and
18 there is no filed lobbyist or huge organization,
19 what is the -- how do the people in that
20 business -- how are they made aware of the
21 proposed regulations?

22 SENATOR BRUNO: How are they made
23 aware?

1 SENATOR GOLD: Yes. In other
2 words, who gets notified in such a situation?
3 In other words, let's say there's a Petroleum
4 Council. Well, I guess you notify the Petroleum
5 Council. I'm not worried about the insurance
6 industry, but there are, I don't know, maybe
7 cleaning stores, I don't know, that may not have
8 a huge group that represents them, as such.
9 What does the management office do? Who do they
10 contact? How do they get the notice out?

11 SENATOR BRUNO: Well, if these
12 are major rules, major regulations that are
13 going to affect an industry -- take the chemical
14 industry -- I'm not sure that they have
15 lobbyists here that represent them as an
16 industry, but they are on file at the Secretary
17 of State's Office as to what their business is
18 and what their interests are. So the Office of
19 Management Assistance would reach out into the
20 industry through the records that are available
21 for any company that's incorporated here in the
22 state and creates a notice -

23 SENATOR GOLD: All right. So -

1 SENATOR BRUNO: -- and just
2 invites participants.

3 SENATOR GOLD: So I understand it
4 properly, it's the office's obligation to
5 determine what is fair in terms of who they
6 contact in order to stir up interest if it's out
7 there.

8 SENATOR BRUNO: Or the state
9 agency. If it's EnCon and they know who the
10 rules are going to affect, then they would be
11 helpful with Management Assistance in getting
12 the word out to those people.

13 SENATOR GOLD: Well, Senator, you
14 brought up EnCon. Supposing that there are new
15 environmental regulations and it involves people
16 who own certain types of land. These may be
17 Average citizens that own land and they are
18 going to now be affected. How does the notice
19 get out to these people?

20 SENATOR BRUNO: Well, the
21 Governor presently has a procedure in place that
22 I described that isn't very effective and
23 doesn't work. How does the Governor notify?

1 Through the State Registry, and they put out the
2 notice in that way. The only difference is -
3 and, Senator, what I'm saying is that there is
4 an attempt to do this now, but it's meaningless.
5 So they basically say we publish that we're
6 going to establish these rules. We invite you
7 to negotiate with us. Okay. But we, in
8 essence, end up negotiating with ourselves
9 because we're in total control of the process;
10 and after we get through, we don't have to pay
11 any attention to what you've had to say.

12 So that's very discouraging to
13 businesses, but the notices go out presently,
14 and there has been some exchange, but the
15 results are poor.

16 SENATOR GOLD: Mr. President.

17 SENATOR BRUNO: And I believe, by
18 the way -

19 SENATOR GOLD: Sorry.

20 SENATOR BRUNO: I'm sorry, but,
21 Mr. President, the Governor in his "State of the
22 State" message indicated that he wants to
23 strengthen this process. He talks about an

1 ambassadorship program where there will be
2 ambassadors with each state agency -- and we
3 have legislation that relates to that -- to be
4 the representative of the groups that are
5 regulated within that agency. So this is the
6 direction that even the Governor's office seems
7 to think makes sense, so there isn't anything
8 extraordinary about this. We're only trying to
9 expedite the process because the business
10 community desperately needs relief in this
11 state.

12 ACTING PRESIDENT KUHL: Senator
13 Gold.

14 SENATOR GOLD: Yes. Senator
15 yield to a question?

16 SENATOR BRUNO: Yes.

17 SENATOR GOLD: But on the point
18 we're talking about, "how notice gets out," I
19 don't want to be facetious in any way, but I
20 think what you're telling me is that the
21 Governor has a process for notice which is
22 insufficient, but that's the process, so you're
23 adopting that process.

1 SENATOR BRUNO: No, the notice
2 is -

3 SENATOR GOLD: I'm not talking
4 about the hearing part of the process but the
5 notice part.

6 SENATOR BRUNO: No, the notice
7 gets out, and that's sufficient. It's the
8 process that is insufficient that we are trying
9 to correct. So the notice that the Governor's
10 office presently puts out through his state
11 agencies is fine.

12 SENATOR GOLD: Mr. President. On
13 the bill.

14 ACTING PRESIDENT KUHL: Senator
15 Gold on the bill.

16 SENATOR GOLD: We've had this
17 bill before; and besides myself, Senator
18 Ohrenstein and Senator Leichter, it seems to
19 have been a good one to vote for by most of
20 you. It's supported I think by the National
21 Federation of Independent Businesses.

22 My problem with it, Senator, is
23 really very simple. We are given the

1 responsibility of governing. The agencies are
2 given delegated responsibility from the agency,
3 and the process that Senator Bruno described
4 indicates, as he says, that the agency reaches
5 out but that they have the power.

6 The way I read your bill, first
7 of all, the notice is really going to go to the
8 fat cats, the big people. Those are the
9 industry people who are known and who register.
10 Certainly, when you deal with legislation that
11 may affect smaller people or more diverse
12 interests, I'm sure the notice provisions are
13 such that they are not going to be affected
14 under your bill or the Governor's, but what you
15 are basically saying, the philosophy of your
16 bill, Senator Bruno, which I understand, is that
17 if people are going to be affected by
18 legislation then they should be part of the
19 process, the rulemaking process.

20 The problem with that, Senator
21 Bruno, is that everybody I represent is affected
22 by income taxes; but before we negotiate it, we
23 don't bring them in and have 18 million, 17

1 million people voting on income taxes. We have
2 the responsibility. They elect us, and then we
3 get together and we deal with it, and that goes
4 with every single issue.

5 And what we do, Senator, is we
6 set up regulatory agencies that are supposed to
7 regulate an industry, being fair to those people
8 in the industry and also protecting the public
9 interest which is their ultimate responsibility;
10 and if they are not doing it well, then we
11 should step in. If a Governor is not doing it
12 well with his agencies, we step in.

13 But the concept, the basic
14 philosophical concept that before an agency can
15 involve itself in rulemaking, which is an
16 extension of legislative authority -- and, by
17 the way, must be very carefully done -- that the
18 industry involved will then be a partner and it
19 just legislatively and governmently in my
20 opinion makes no sense. I realize that based
21 upon last year's vote I am in a vast minority,
22 but I think that's an important point to make
23 because I think philosophically there is a major

1 problem with the bill.

2 ACTING PRESIDENT KUHL: Senator
3 Bruno.

4 SENATOR BRUNO: Mr. President.
5 On the bill.

6 And thank you, Senator Gold, and
7 I know you are very sincere in your observations
8 and your comments.

9 Let me just point out a major
10 distinction in your understanding, and it is
11 probably my inability to communicate accurately
12 and well what this bill does.

13 When you talked about legislators
14 legislate and you can't open up the process to
15 17 million people, you're right. That's what we
16 are elected for. But regulators regulate, and
17 they aren't elected by anybody. They are
18 appointed and many times 18 tiers down, and they
19 take it upon themselves to regulate businesses
20 by their own thought process not by legislation,
21 and the public has no way of getting back at
22 those regulators other than to submit or seek
23 legal relief which is expensive.

1 Now, the bottom line is this, Mr.
2 President. Four out of ten jobs lost in this
3 country in the last four years are from New York
4 State. When surveys have been done of
5 businesses in this state -- and this is
6 important that we hear this finally -
7 seventy-two percent of all of the small
8 businesses in this state said that they think
9 that government is hostile to their business.
10 Forty-nine percent of them said they would leave
11 if they could. Now, that's not what we in
12 government ought to be all about. We shouldn't
13 have businesses out there feeling that we in
14 government are hostile to those businesses.

15 I, Mr. President, don't think
16 it's an accident that, since 1980, we have led
17 the country in job loss. Had we only kept pace
18 in New York State with the rest of the country,
19 1.2 million more people would be employed in New
20 York State today. Think about that. If we had
21 kept pace with the rest of the country since
22 1980, 1.2 million more people would be employed
23 in this state. In the last three years since

1 1990, the country has recovered their job loss.
2 We in this state employ 8-1/2 percent less
3 people than we did four years ago. We are not
4 recovering with the rest of the country.

5 It is this kind of
6 overregulation, oversimplification that has been
7 stifling business, smothering business, closing
8 businesses, driving them out of this state; and
9 all we keep hearing from the second floor it's
10 everybody in the world's fault except ours.

11 Now, I assume part of the
12 responsibility because I have been serving here
13 while a lot of this has been happening, but I'm
14 not the chief executive of this state, and
15 somebody has to be held accountable, and I think
16 it's about time that we stopped just using words
17 and that we start doing something to lead this
18 state out of the recession and join the rest of
19 the country in job recovery because people that
20 are unemployed out there, people that are on
21 welfare, have a right to work and we in
22 government should support those people and not
23 encumber them by overregulating the businesses

1 that keep them from employing people in this
2 state.

3 SENATOR GOLD: Mr. President.

4 ACTING PRESIDENT KUHL: Senator
5 Gold.

6 SENATOR GOLD: Yes. I will be
7 kind and I'll save my campaign speech for the
8 re-election of Senator Cuomo until another time
9 because, Senator Bruno, I know why our state has
10 problems and everybody knows why it has
11 problems, and that's why you no longer have a
12 Republican in the White House in Washington, but
13 let's not get involved in that.

14 The fact of the matter is,
15 Senator Bruno, if I were a member of the
16 Majority in this house and I had real political
17 ambition, real political ambition -- you can
18 have your leaderships and you can have your
19 Finance Committee -- there is a place I would
20 want to be, and Senator Present knows I have
21 said this for years. I would want to be the
22 chair of the Administrative Regulations Review
23 Commission because that was created not only by

1 joint resolution but then by statute to do
2 something -- to do something. And what was it
3 supposed to do? It was supposed to create a
4 mechanism whereby the Legislature -- a process
5 whereby the Legislature would finally have some
6 real oversight power. Let's see what the
7 agencies are doing. Let's analyze this agency
8 and that one. And if they are overregulating in
9 this area, we're going to cut back because we
10 all understand what the law is.

11 The law is simple. An agency may
12 not legislate. They may only take a grant of
13 authority from the Legislature and do some
14 rulemaking within the law making that we have
15 done; right? And, therefore, when I hear all of
16 the arguments on the other side of the aisle
17 about how the agencies are going way past that,
18 here was the chance.

19 Not only did we set up an
20 Administrative Regulations Review Commission but
21 because nobody likes to talk to each other we
22 wind up with two of them. Statute didn't say
23 it. But the Republicans do their thing in this

1 house. The Democrats in the Assembly do their
2 thing. We wind up with two of them.

3 Well, it's been a long time now.
4 I think I may be still the only original member
5 that's on that commission, but it's been a long
6 time now. And what have we done? Well, we do
7 things. And under the chairmanship of Senator
8 Present -- I think Senator Sears may have had it
9 for a while and Senator Cook. We have done some
10 things. But I'm not talking treason here. We
11 have the ability, the responsibility to do
12 massive overseeing into that area.

13 Now, that's different than your
14 bill which says, "I don't want to oversee it. I
15 just want the business community to think or
16 know that I like them, so I'm going to make them
17 a partner." And now before you can have an
18 agency exercise regulatory authority, granted it
19 by you -- by you! -- you are going to tell them
20 that they must sit down with the people being
21 regulated and get their consent. Well, that is
22 crazy.

23 SENATOR BRUNO: Will you yield?

1 SENATOR GOLD: In a minute. In a
2 minute, and I will yield, certainly.

3 You know, we are all very
4 sophisticated in this room, and we all
5 understand that if you run for office you got to
6 say you're against taxes and you got to say
7 you're against this and say you're against that,
8 and how you vote on the floor of the Senate
9 doesn't seem to matter much. But be fair.

10 At least let's look each other in
11 the eye and be honest and fair about it. There
12 isn't one law in the State of New York enacted
13 in the last twenty years or more that gives
14 rulemaking authority to an agency that didn't
15 receive the approval of you, the Republicans in
16 this house. You've had the majority. You can
17 structure that language as narrowly as you want
18 so that every agency must stay within these very
19 narrow guidelines and protect the consumers and
20 protect the business community. I can only
21 assume since I am looking at some very
22 distinguished people on the other side who are
23 very bright that you have structured that in a

1 way that you thought was accurate and would do
2 the job. If you didn't think its job is being
3 done, that's what you've got the Administrative
4 Regulations Review Commission for.

5 Now, that's a far cry, Senator
6 Bruno, than giving away the store. And in all
7 respect to you, who I do respect, and I
8 understand your philosophy, I think that it's a
9 huge jump and it's a jump too far.

10 SENATOR BRUNO: Mr. President.
11 Will Senator Gold stand for a question?

12 SENATOR GOLD: Yes, sir.

13 ACTING PRESIDENT KUHL: He will.

14 SENATOR BRUNO: Senator, Senator
15 Johnson was refreshing my memory, and I am
16 asking you. I ask if you would recall that in
17 the "State of the State" by this Governor in '93
18 that he proposed just the kind of thing that's
19 on the floor here today? Do you remember that,
20 Senator?

21 SENATOR GOLD: No. No, Senator,
22 I don't have the speech.

23 SENATOR BRUNO: Okay.

1 SENATOR GOLD: And I can say to
2 you -- I can say to you, Senator, that speeches
3 are language and principles. Bills are bills.
4 If you're telling me there is a Governor's bill
5 that does this, I will be glad to take a look at
6 that as the Governor's bill.

7 Except, I'll tell you something.
8 If the Governor proposes what you have in your
9 bill, I would be -- certainly in a small
10 minority, I'm sure, but one of those who would
11 say philosophically it's wrong.

12 SENATOR BRUNO: And, Senator, you
13 are very few times wrong?

14 SENATOR GOLD: Me?

15 SENATOR BRUNO: You, yes.

16 Philosophically or otherwise -

17 SENATOR GOLD: I don't know.

18 When was I wrong?

19 SENATOR BRUNO: -- and I respect
20 that. I want to ask if you think that this bill
21 requires the consent of those to be regulated
22 before a regulation can be enacted?

23 SENATOR GOLD: The way that I

1 understand your explanation of your legislation,
2 your legislation would place upon those being
3 regulated what I believe to be an inordinate
4 amount of power into the process. I believe
5 that the current situation which gives them
6 notice and invites their participation and takes
7 from them the information that they have to give
8 is a lot different than giving them a vote into
9 a process. And I think that giving them a vote
10 into a governmental process goes too far.

11 SENATOR BRUNO: Thank you,
12 Senator Gold.

13 And I just want to correct
14 because, again, I have trouble, sometimes, being
15 clear because this is a complicated process.

16 This -- if this became law, it
17 does not mandate that the input from those to be
18 regulated must become part of the law or the
19 regulation. It doesn't do that at all. It
20 simply says that those to be regulated will have
21 some input in the process. That's what it
22 says. It doesn't say that their input must be
23 accepted. So it simply opens up the process and

1 makes those to be regulated feel as if they are
2 not just being dictated to, but they have
3 something to say about the process.

4 Thank you.

5 ACTING PRESIDENT KUHL: Senator
6 Stavisky.

7 SENATOR STAVISKY: Would the
8 sponsor yield?

9 ACTING PRESIDENT KUHL: Senator
10 Bruno, do you yield?

11 SENATOR BRUNO: Yes.

12 ACTING PRESIDENT KUHL: Senator
13 does.

14 SENATOR STAVISKY: Senator, I
15 wanted to ask you this question. When this bill
16 was presented to us previously, did it have a
17 provision defining consensus of the committee as
18 two-thirds of the members of the committee?

19 SENATOR BRUNO: My recollection
20 is that it did, Senator. Two-thirds of the
21 committee that meets must consent in the
22 regulation going forward as a recommendation.
23 That represents a consensus. When two-thirds of

1 the committee agrees, that represents a
2 consensus and that is recommended to the
3 agency. The agency can accept or deny.

4 SENATOR STAVISKY: Senator Bruno,
5 given that definition of a consensus, do you
6 feel that we should have a two-thirds approval
7 of any bill that is approved by the Senate of
8 the State of New York?

9 SENATOR BRUNO: Well, as you
10 know, Senator, there are some bills on this
11 floor that do require a two-thirds vote.

12 SENATOR STAVISKY: I know, but
13 I'm talking about a general rule.

14 SENATOR BRUNO: No, I don't,
15 Senator.

16 SENATOR STAVISKY: It seems to me
17 that you are imposing a higher standard for
18 consensus, Senator Bruno, and I regret that I
19 didn't recall this provision in the earlier
20 vote. If you say that it was in there, in the
21 earlier vote, I will accept that.

22 But we should not impose upon
23 those involved in rulemaking a higher standard

1 of agreement than we ourselves are prepared to
2 accept.

3 I heard the conversation on an
4 earlier bill where there was the question, "If
5 you do not like the decision, you can go to
6 arbitration." I have often felt that maybe we
7 should go to arbitration between the Senate and
8 the Assembly, when we can't even get a consensus
9 at times when only a single, simple majority is
10 needed. If we in the Legislature, professional
11 legislators, can not get a consensus, then maybe
12 we need arbitration procedures, and maybe we
13 ought to impose the same kind of standard to our
14 own deliberations when we fail to reach
15 agreement with the other house. Maybe there is
16 something lacking in both houses, and a
17 compulsory arbitration procedure should resolve
18 the differences between the Senate and the
19 Assembly. And throw the Governor in there,
20 also. We shouldn't leave him outside.

21 I think you are establishing here
22 in this proposed rulemaking procedure too high a
23 standard of consensus. Consensus has always

1 been, with few exceptions in this chamber -- you
2 are absolutely right. There are certain bills
3 that require a two-thirds approval or 60 percent
4 approval. We are establishing here a flawed
5 definition of consensus.

6 Consensus means in general
7 agreement not an extraordinary agreement, the
8 kind that you would need for a constitutional
9 amendment. We are not asking the regulators to
10 amend the Constitution of the State of New
11 York. We are asking them according to your
12 procedure to come up with a consensus.

13 And I believe that if I had noted
14 this previously, I guess I would have joined
15 Gold, Leichter, and Ohrenstein in their negative
16 vote. And with the consensus defined at
17 two-thirds, I think I'm going to join them this
18 time to.

19 ACTING PRESIDENT KUHL: Senator
20 Wright.

21 SENATOR WRIGHT: Mr. President.
22 On the bill.

23 I think it's important to point

1 out that when we are discussing negotiated
2 rulemaking the whole emphasis is to ensure that
3 the voice of the regulated community is heard in
4 the process. And while we certainly hear that
5 voice when we enact legislation, and that's our
6 responsibility as elected officials, I don't
7 share your confidence in the agencies doing
8 likewise.

9 And as chair of the ARC, I have
10 had numerous examples related to me where, in
11 fact, the agencies don't listen to the regulated
12 community, and they impose additional burdens on
13 that community. They impose additional costs on
14 the regulated community, and that in turn has
15 cost jobs and raised the cost of doing business
16 in this state.

17 And if you have any occasion to
18 talk to the business community in this state,
19 and it's not limited to the business community,
20 if you have occasion to talk to local
21 governments, they will tell you the same thing
22 about the regulatory impact and what it's doing
23 in this state. So it's very important that, in

1 fact, we have an additional oversight, a
2 control, if you will, in this process when we
3 are dealing with the agencies, because,
4 unfortunately, the ARC does not have veto
5 power.

6 The ARC does not have the ability
7 to veto a regulation that we believe exceeds the
8 statute, that we believe goes beyond and the
9 agency takes substantially beyond the authority
10 of this Legislature. We, in turn, have enacted
11 legislation and proposed legislation over the
12 past year that addresses a number of those
13 concerns, ten of those bills joined with by
14 members in the Assembly and sent to the
15 Governor.

16 So, clearly, regulatory control
17 is an issue recognized by both houses,
18 recognized by the executive branch and an issue
19 that we need to move ahead on.

20 I don't put the faith in the
21 agencies. I think there needs to be the voice
22 of the regulated community, and heard,
23 particularly when you talk about the standard of

1 consensus. I would agree if those individuals
2 in the agencies were elected, they could work to
3 a lower standard, but they in fact are not.
4 They do not have the input. They are appointed
5 officials and, accordingly, should achieve a
6 higher concensus in terms of working on the
7 issue of regulations, and that is what it's all
8 about, ensuring participation, ensuring that the
9 regulated community has their voice heard; that
10 when regulations are looked at, they can be
11 implemented effectively. They can be
12 implemented and enforced effectively.

13 That's the whole point of
14 negotiated rulemaking, to create a more level
15 playing field so we're not simply relying on the
16 expertise of agencies but we're relying on the
17 people who continue to do business in this state
18 and their expertise. And on the basis of that,
19 I would encourage my colleagues to support the
20 bill.

21 ACTING PRESIDENT KUHL: Senator
22 Stavisky.

23 SENATOR STAVISKY: Senator Wright

1 yield for a question?

2 ACTING PRESIDENT KUHL: Senator
3 Wright, will you yield?

4 SENATOR WRIGHT: Certainly.

5 ACTING PRESIDENT KUHL: Senator
6 yields.

7 SENATOR STAVISKY: Would you
8 apply the same standard, the two-thirds
9 consensus, to other groups within the
10 population? For example, consumers who are
11 affected by regulations where rate increases are
12 given, should consumers be tallied and,
13 therefore, unless there is a two-thirds vote by
14 a committee in which consumers are represented
15 equally, there would be no rate increase in the
16 utilities?

17 SENATOR WRIGHT: There is a
18 mechanism for review of the utility rate
19 increases. In terms of regulations that affect
20 the consumers, this statute would apply equally
21 to them. They would be identified as having
22 participation in a particular rule that would
23 adversely affect the consumer, and they would be

1 part of that negotiating process achieving the
2 same degree of consensus.

3 So we're talking apples and
4 oranges in terms of the examples that you are
5 utilizing.

6 SENATOR STAVISKY: I didn't hear
7 a clear yes or no to your answer. What about
8 employees? After all, sometimes we impose
9 settlements upon employees in the private as
10 well as the public sector. Should we have a
11 consensus of two-thirds, including the employee
12 representatives, when we deny to the public
13 employees, for example, a benefit that they wish
14 and we decide that that benefit is not now -
15 not supportable in terms of a public policy in
16 the state at a given moment? Would you extend
17 that to the working people as well as to the
18 business people at two-thirds consensus
19 definition?

20 SENATOR WRIGHT: Oh, I think
21 there, in fact, are numerous examples that we
22 can identify where there should be a super
23 majority -- in fact, there are in statute where

1 additional majorities are required dependent
2 upon a particular circumstance.

3 You know, there are many who
4 advocate when taxes are being raised, when
5 constitutional debt limits are being modified,
6 there should, in fact, be super majorities, and
7 I think those are issues that we have bills
8 introduced we would like to see you also
9 address.

10 SENATOR STAVISKY: Again, I
11 didn't hear a -

12 ACTING PRESIDENT KUHL: Senator
13 Stavisky, do you -- excuse me, Senator Stavisky.

14 SENATOR STAVISKY: Yes, sir.

15 ACTING PRESIDENT KUHL: Do you
16 wish Senator Wright to yield to you, sir?

17 SENATOR STAVISKY: I want him to
18 continue to yield until the questioning is
19 over.

20 I did not hear a clear yes or no
21 to that question, and I think that if you are
22 going to give a special benefit to business,
23 then be fair across the board. Give that

1 special benefit of consensus, consultation to
2 consumers whom we do represent, remember, and to
3 people who work for us in government or work for
4 others in the private sector.

5 I don't see the clear willingness
6 when there is regulation that imposes a burden
7 upon other groups besides business. I don't see
8 a willingness to accept that single standard.
9 I'm not pressing for this. It may be a very
10 good idea.

11 But if you believe that the super
12 majority is needed, then let it be a super
13 majority across the board no matter whose ox is
14 being gored. There may be environmental people
15 who would like to be consulted with a super
16 majority before economic interests betray the
17 environmental concerns and needs of the State of
18 New York.

19 Be cautious when you impose a new
20 standard in participatory democracy. Make
21 certain that standard cuts evenly across the
22 board and that it not benefits one segment of the
23 population to the detriment of others.

1 ACTING PRESIDENT KUHL: Is there
2 any other Senator who wishes to be heard on this
3 bill?

4 (There was no response.)

5 Clerk will read the last section.

6 THE SECRETARY: Section 2. This
7 act shall take effect on the first day of
8 September.

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT KUHL: Announce
13 the results.

14 THE SECRETARY: Those recorded in
15 the negative on Calendar Number 31 are Senators
16 Galiber, Gold, Ohrenstein and Stavisky. Ayes
17 48. Nays 4.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 47, by Senator Johnson, Senate Bill Number 2372,
22 an act to amend the Penal Law.

23 ACTING PRESIDENT KUHL: Senator

1 Johnson, an explanation has been asked for by
2 Senator Gold.

3 SENATOR JOHNSON: Mr. President.
4 This bill makes it illegal to possess an obscene
5 sexual performance by a child or a sexual
6 performance by a child makes this a class E
7 misdemeanor. This bill has been debated three
8 years prior, very interesting debates.

9 The fact is that the Supreme
10 Court has held it legal to pass this type of
11 law. Several years ago, 27 states had passed
12 this law. I think there are several other
13 states who since have joined, passed a similar
14 law making it illegal to possess this material
15 which is of interest to pedophiles primarily,
16 used to show to children to entice them into
17 doing similar sexual acts.

18 And I feel the majority in this
19 house have felt in the past that this should be
20 illegal to possess this. The only way to stop
21 the production of this material is to stop the
22 end market for it, and this is a good way, I
23 feel, to do that.

1 Senator Gold?

2 SENATOR GOLD: Mr. President.

3 ACTING PRESIDENT KUHL: Senator
4 Gold.

5 SENATOR GOLD: Yeah, Senator
6 Johnson, I'd just like to ask you one question
7 because I think you made a misstatement, and I
8 just want to -

9 SENATOR JOHNSON: Really?

10 SENATOR GOLD: You said it makes
11 it an E misdemeanor. It's an E felony.

12 SENATOR JOHNSON: An E felony,
13 yes, of course. I have been reading it so many
14 times, it's all going around in my head.

15 SENATOR GOLD: No problem. No
16 problem.

17 SENATOR JOHNSON: It's a felony,
18 yes, that's correct.

19 SENATOR GOLD: Mr. President.

20 ACTING PRESIDENT KUHL: Senator
21 Gold on the bill.

22 SENATOR GOLD: As Senator Johnson
23 has pointed out, this has been debated a number

1 of times. And I would like to point out with
2 regard to that debate that we now have laws in
3 this state which make it illegal to be involved
4 in kiddie porn.

5 This bill does nothing along
6 those lines. This talks about possession of a
7 document. It isn't concerned about when it was
8 ever created, whether the people involved in it
9 could have been dead for 200 years, or whatever,
10 and we've had this whole debate.

11 Senator Connor and myself and
12 Senator Leichter and Montgomery and Ohrenstein,
13 Paterson, Santiago, Smith, Stavisky and Waldon
14 have voted against it in the past.

15 Last section.

16 ACTING PRESIDENT KUHL: Read the
17 last section.

18 THE SECRETARY: Section 2. This
19 act shall take effect on the first day of
20 November.

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Those recorded in
2 the negative on Calendar Number 47 are Senators
3 Galiber, Gold, Ohrenstein, Santiago, Smith
4 Stavisky and Waldon. Ayes 45. Nays 7.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 Senator Smith, are you asking to
8 be recognized to explain your vote?

9 SENATOR SMITH: No, Mr.
10 President. I think the vote has been counted.
11 I would ask unanimous consent to be recorded in
12 the negative on Calendar Number 31.

13 ACTING PRESIDENT KUHL: Without
14 objection, so ordered.

15 SENATOR SMITH: Thank you, sir.

16 THE SECRETARY: Calendar Number
17 49, by Senator Marino, Senate Bill Number 3237A,
18 an act to amend the Criminal Procedure Law.

19 SENATOR GOLD: Mr. President.

20 ACTING PRESIDENT KUHL: Senator
21 Gold.

22 SENATOR GOLD: Yes. This bill we
23 had last year, also, and I just wanted to remind

1 Senators Leichter and Markowitz and Ohrenstein
2 and Santiago that they voted in the negative,
3 and that it was opposed last year by the Civil
4 Liberties Union on the HIV testing issue and by
5 the Gay Men's Health Crisis.

6 ACTING PRESIDENT KUHL: Senator
7 Dollinger has asked for an explanation of the
8 bill.

9 Senator Volker.

10 SENATOR VOLKER: Mr. President.
11 This is a bill that, as I think Senator Gold
12 explained briefly, is called the Rape Victims
13 Services Act of 1994, which basically sets up a
14 series of provisions relating to everything from
15 addressed -- the address of a victim to
16 statewide telephone services for rape victims,
17 for evidence kits involving sexual offense
18 evidence kits, provides a provision in here for
19 improved prosecution programs at local defense
20 attorney -- or local prosecutors.

21 It sets up a whole series of
22 programs. In fact, let me just say to you that
23 this is something that, personally, I feel very

1 strongly about; that I think it's really a
2 crying shame that we have not been able to come
3 to an agreement over the last couple years on a
4 bill that passed here the other day sponsored by
5 Senator DiCarlo and this bill in relation to the
6 crime of rape.

7 I am extremely hopeful that
8 before this session is out that we will develop
9 an agreement with the Assembly on the issue of
10 rape services and on the issue of increasing
11 penalties in rape crimes.

12 If there is anything further that
13 I can explain, I will be happy to do it.
14 There's a whole series of provisions. This
15 bill, by the way, passed the Assembly.
16 Essentially, this is the same bill that passed
17 the Senate, rather, last year; and I believe
18 essentially the same bill passed the year
19 before. There have been some fairly minor
20 changes, but it's essentially the same bill.

21 Senator Dollinger.

22 SENATOR DOLLINGER: Mr.

23 President.

1 ACTING PRESIDENT KUHL: Senator
2 Dollinger.

3 SENATOR DOLLINGER: Will the
4 sponsor yield to a question?

5 SENATOR VOLKER: Sure.

6 ACTING PRESIDENT KUHL: Senator
7 Volker yields.

8 SENATOR DOLLINGER: Senator, I
9 know we have been through this bill in
10 committee. I just wanted to follow up an issue
11 that came up in committee. Your counsel
12 provided me with some additional information
13 with respect to the HIV testing requirement.

14 SENATOR VOLKER: Right.

15 SENATOR DOLLINGER: As I
16 understand it, again, through you, Mr.
17 President, the bill permits an HIV test to be
18 conducted at the request of the victim -

19 SENATOR VOLKER: Right.

20 SENATOR DOLLINGER: -- upon
21 arrest and arraignment. Is that correct?

22 SENATOR VOLKER: Upon arrest and
23 arraignment at the request of the victim, and it

1 provides for a test of the defendant. That's
2 correct.

3 SENATOR DOLLINGER: Again,
4 through you, Mr. President. Is that test
5 mandatory? The Court can order that test of the
6 defendant?

7 SENATOR VOLKER: I think what
8 happens, if I'm not mistaken, is that upon the
9 request that he have a hearing. The only
10 difference, I think, is that since the statute
11 here provides for a test, then I would think
12 clearly the hearing would -- the defense
13 attorney would then be in a position where he
14 would have to show why the test should not be
15 provided to the -- to the victim.

16 But it's true that that is the
17 process for which -- if this bill were passed.
18 And, by the way, I assume -- I think you are
19 aware that because the State of New York does
20 not provide for testing of such victims, we
21 stand to lose a considerable amount of money
22 under the drug laws or under the present -
23 federal drug money, I'm sorry -- because of the

1 fact that we don't comply with federal standard
2 that say that we should allow victims to be able
3 to have testing in cases such as this.

4 SENATOR DOLLINGER: Again,
5 through you, Mr. President, if Senator Volker
6 will yield?

7 ACTING PRESIDENT KUHL: Senator
8 Volker, will you continue to yield?

9 SENATOR VOLKER: Sure.

10 ACTING PRESIDENT KUHL: He does.

11 SENATOR DOLLINGER: Again, just
12 so I make sure I understand this. Is the event
13 that triggers the ability of the Court to
14 mandate the test the arraignment or a finding of
15 probable cause of a felony indictment? What is
16 the precursor determination by the Court in
17 order to order the defendant, putative
18 defendant, to undergo the test?

19 SENATOR VOLKER: Probable cause.
20 In other words, there has to be a showing of
21 evidence of a crime before the person can ask
22 for the testing of the defendant by the victim.

23 SENATOR DOLLINGER: Again,

1 through you, Mr. President. Is it anticipated
2 that that showing of probable cause would be
3 either an indictment for a felony or a hearing
4 on the probable cause if there were a
5 misdemeanor allegation, or does it not apply to
6 misdemeanors?

7 SENATOR VOLKER: It would just be
8 a felony, and it would be a conviction or a
9 hearing or an indictment on a felony, but it
10 would not be in the case of a misdemeanor. It
11 would only be in the case of a felony.

12 SENATOR DOLLINGER: Again,
13 through you, Mr. President. Senator Volker,
14 just one other question. My understanding -
15 and I reviewed the materials that your counsel
16 provided and they were helpful. My
17 understanding is that the federal law currently
18 requires that the testing for HIV only be
19 conducted upon conviction and not prior to
20 conviction. Is that correct?

21 SENATOR VOLKER: We believe
22 that's correct, Senator. That's right. Yes.
23 We're not saying, by the way, Senator, that this

1 provision here is the absolute necessary
2 provision in order to comply with the law. This
3 probably goes a little beyond what is necessary,
4 admittedly, but some sort of testing provision
5 if it is not based by the Legislature and signed
6 by the Governor will create a real problem under
7 the federal rules.

8 SENATOR DOLLINGER: On the bill,
9 Mr. President.

10 ACTING PRESIDENT KUHL: Senator
11 Dollinger on the bill.

12 SENATOR DOLLINGER: First of all,
13 on the bill, and then I have, I believe, a
14 series of amendments at the desk.

15 On the bill itself, the issue of
16 the HIV testing is a very important one. I
17 appreciate the chairman's consideration on
18 this. This is a difficult issue from many
19 perspectives. But at least in my reading of the
20 federal statute, it simply requires that upon
21 conviction the test must be conducted in order
22 for us to get the federal drug money, and I
23 agree with that concept.

1 I think that the potential danger
2 that's included in this statute is that you
3 could have someone tested upon a finding of
4 probable cause, have a finding one way or
5 another on an HIV test, have a trial in which
6 the defendant is found not guilty, and the
7 victim will have been put through a process of
8 anticipation whether it's through HIV positive
9 or negative, whatever the result of testing is,
10 and may end up with an inclusive result at the
11 trial, that is, the person is found not guilty
12 of the conduct and there is no correlation in
13 the victim's mind between guilt and the testing
14 result.

15 I think there is a danger
16 inherent in that process. From my point of
17 view, I think that's something we have to look
18 at in this bill very carefully, I think for a
19 number of reasons because of the overall impact
20 of this bill, I'm going to vote in favor of it,
21 but I think that's a very critical
22 determination, and I hope that in the
23 discussions with our colleagues across the hall

1 that that issue will be looked at in even
2 greater debate if this comes back; that the
3 danger of a test result that is not followed by
4 a conviction could be excessive trauma, frankly,
5 on everyone's part, and something we should be
6 aware of.

7 Mr. President. I believe there
8 are also a series of amendments at the desk on
9 this bill.

10 ACTING PRESIDENT KUHL: The Clerk
11 indicates that there are two amendments at the
12 desk.

13 SENATOR DOLLINGER: I'll call up
14 number 1.

15 ACTING PRESIDENT KUHL: Are you
16 asking -

17 SENATOR DOLLINGER: Ask to waive
18 its reading, and ask that -

19 ACTING PRESIDENT KUHL: All
20 right. You are asking an opportunity to explain
21 it?

22 SENATOR DOLLINGER: Yes, Mr.
23 President. Thank you.

1 ACTING PRESIDENT KUHL: Senator
2 Present, why do you rise?

3 SENATOR PRESENT: Mr. President.
4 I would like to make a point of order that
5 Senator Dollinger's amendment to Senator
6 Marino's bill is out of order since it violates
7 Rule 6, Section 4 B, in that, it is not germane
8 to the original object of the purpose of Senator
9 Marino's bill.

10 Moreover, it seeks to amend
11 completely different sections of the law than
12 that addressed by Senator Marino's bill.
13 Senator Marino's bill addresses the plight of
14 rape victims, and Senator Dollinger's amendment
15 offers nothing on that subject.

16 Therefore, I ask that you rule
17 Senator Dollinger's amendment out of order.

18 ACTING PRESIDENT KUHL: The chair
19 would rule, Senator Dollinger, that your
20 amendments are out of order as not being germane
21 -- the first amendment. That's the only
22 amendment on the floor at this point.

23 SENATOR DOLLINGER: Yes, I

1 understand that, Mr. President. Can I appeal
2 the ruling of the chair on that issue and be
3 heard?

4 ACTING PRESIDENT KUHL: That you
5 can.

6 SENATOR DOLLINGER: With respect
7 to the issue before us, the amendments relate.

8 SENATOR DALY: Object. Mr.
9 President. Is an appeal of the decision by the
10 chair debatable? Is a decision by the chair
11 debatable?

12 ACTING PRESIDENT KUHL: Senator,
13 the Senator's motion has been ruled out of order
14 as not being germane. He has appealed the
15 decision of the chair, and that is debatable.

16 And the chair has recognized
17 Senator Dollinger to indicate why he feels the
18 chair ruled incorrectly.

19 Senator Dollinger.

20 SENATOR DOLLINGER: Mr.
21 President. The issue of the amendments, and I
22 believe the amendments deal with the action that
23 this body was asked to take several weeks ago to

1 deal with the issue of banning assault weapons
2 in the State of New York, and I would simply
3 point out that a part of this bill which is
4 currently before us relates to the provision of
5 mace in the State of New York and allows a
6 weapon that we have previously banned to now
7 become available. We're dealing with weapons.
8 This bill involves making a weapon available.

9 What the amendment seeks to do is
10 take another weapon which is now freely
11 available in this state, a far more dangerous
12 weapon than mace and restrict it's availability
13 to the people of this state, and I would simply
14 point out that nothing could be more germane
15 than, since we're dealing with weapons, to take
16 another section of law that involves weapons and
17 make an amendment in that section to restrict
18 access to a weapon which, at least in my
19 judgment, is far more dangerous, far more
20 threatening to the public, and one I think this
21 Legislature and this body should be on record in
22 favor of restricting access to.

23 So for that reason, Mr.

1 President, I believe it is germane. It does
2 relate to the topic at issue. It is part of
3 something that will promote greater safety in
4 this state, and I certainly think we ought to
5 get on with the business of creating not only a
6 restriction on -- removing restrictions on mace
7 which I support but imposing restrictions on
8 assault weapons, as well.

9 ACTING PRESIDENT KUHL: The Chair
10 reminds members that a vote in the affirmative
11 is to sustain the ruling of the chair. A vote
12 in the negative is a ruling to overturn the rule
13 of the chair.

14 Based on that, all those in favor
15 of the sustaining the ruling of the chair,
16 signify by saying aye.

17 (Response of "Aye.")

18 Opposed, nay.

19 (Response of "Nay.")

20 (Continuing response of "Aye.")

21 The ayes have it. The ruling of
22 the chair is sustained.

23 SENATOR GOLD: Mr. President.

1 ACTING PRESIDENT KUHL: Senator
2 Gold.

3 SENATOR GOLD: Is there such a
4 thing as a rebuttal aye after the nays have
5 already out voted the ayes?

6 ACTING PRESIDENT KUHL: Senator
7 Dollinger, do you wish to present amendment
8 number 2?

9 SENATOR DOLLINGER: In view of
10 the last vote, Mr. President, I will waive the
11 presentation of amendment number 2, but I will
12 be back.

13 ACTING PRESIDENT KUHL: Any
14 member wishing to speak on the bill.

15 (There was no response.)

16 Clerk will call the last section.

17 THE SECRETARY: Section 27. This
18 act shall take effect immediately.

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 50. Nays
23 2. Senators Ohrenstein and Santiago recorded in

1 the negative.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 Senator Present.

5 SENATOR PRESENT: Mr. President.

6 I move that the Senate recess until 9:00 p.m.

7 ACTING PRESIDENT KUHL: The
8 Senate stands in recess until 9:00 p.m.

9 (Whereupon at, 6:20 p.m., the
10 Senate recessed.)

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1 ...At 12:19 a.m...

2 SENATOR PRESENT: I'd like to
3 announce a Rules Committee meeting at 12:30 in
4 Room 332. I would like to announce a Rules
5 Committee meeting at 12:30 in Room 332.

6 ...At 12:35 a.m....

7 ACTING PRESIDENT SPANO: Senate
8 will come to order. Senator Present.

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

12 ACTING PRESIDENT SPANO: Reports
13 of standing committees. Secretary will read.

14 THE SECRETARY: Senator Marino,
15 from the Committee on Rules, reports the
16 following bill directly for third reading:
17 Senate Bill Number 6584, by the Committee on
18 Rules, an act to amend the Banking Law and the
19 Personal Property Law, in relation to making
20 technical corrections.

21 ACTING PRESIDENT SPANO: Read -

22 SENATOR GOLD: No objection.

23 ACTING PRESIDENT SPANO: Read the

1 last section.

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

4 SENATOR PRESENT: Is there a
5 message at the desk?

6 ACTING PRESIDENT SPANO: Message
7 is at the desk.

8 SENATOR PRESENT: I move we
9 accept the message.

10 ACTING PRESIDENT SPANO: All
11 those in favor signify by saying aye.

12 (Response of "Aye.")

13 Opposed nay.

14 (There was no response.)

15 The message is accepted. Read
16 the last section.

17 SENATOR DOLLINGER: Could we just
18 have an explanation of the amendment.

19 ACTING PRESIDENT SPANO: Sure,
20 Senator Dollinger.

21 SENATOR DOLLINGER: Just short
22 and quick, please.

23 ACTING PRESIDENT SPANO: Senator

1 Farley.

2 SENATOR FARLEY: Yes.

3 SENATOR DOLLINGER: Got to make
4 the night worthwhile.

5 ACTING PRESIDENT SPANO: Excuse
6 me, Senator Present.

7 SENATOR FARLEY: Let's have some
8 order here.

9 ACTING PRESIDENT SPANO: Can we
10 please have some order in the chamber.

11 SENATOR PRESENT: Would you
12 recognize Senator Montgomery.

13 ACTING PRESIDENT SPANO: Senator
14 Montgomery.

15 SENATOR MONTGOMERY: Yes, Mr.
16 President. I would like to ask unanimous
17 consent to be recorded in the negative on
18 Calendar Number 47.

19 ACTING PRESIDENT SPANO: Without
20 objection.

21 SENATOR MONTGOMERY: Thank you.

22 ACTING PRESIDENT SPANO: Senator
23 Farley for a brief explanation.

1 SENATOR FARLEY: Thank you.

2 The banking deregulation bill
3 which this house passed 52 to nothing a few
4 hours ago, several hours ago, has been passed
5 and signed into law in the Assembly.

6 This is a chapter amendment to
7 take care of the disagreement that we have in
8 regard to the SSBIC portion of the legislation.
9 What is added here on the front page is "***
10 provided, however, in approving applications for
11 assistance, priority shall be given to
12 minorities residing in neighborhood-based
13 alliance communities, designated economic
14 development zones and/or highly distressed
15 areas" and, of course, the earned income tax
16 credit is in there also, which gives inclusive
17 ness throughout the state of New York.

18 The rest of the bill is technical
19 corrections that were made -- that were made to
20 the leasing portion of this bill. There even
21 may be more coming on that at another date, but
22 in essence, that's all that there is here. This
23 is totally agreed to. It will be passed

1 unanimously, I think, in both houses.

2 SENATOR DOLLINGER: Mr.
3 President, would Senator Farley yield to just
4 one question?

5 ACTING PRESIDENT SPANO: Senator
6 Farley, would you yield to a question?

7 SENATOR FARLEY: Yeah.

8 SENATOR DOLLINGER: Could you
9 just explain to me, through you, Mr. President,
10 just explain to me how the priority system
11 works. Is it is a priority based on designated
12 criteria; is it a \$70 million pot that's going
13 to be set aside designated for minorities in
14 these categories, or how is the priority system
15 going to work?

16 SENATOR FARLEY: That will be
17 determined by the board, but this is the same
18 language that we've had precedent for in the
19 Jobs Bond Act and other places. In other words,
20 it's language that has been consistent by both
21 of these houses addressing this issue.

22 The board that will be appointed
23 will make that decision as to the -- as to

1 priority.

2 ACTING PRESIDENT SPANO: Senator
3 Dollinger.

4 SENATOR DOLLINGER: Just on the
5 bill ever so briefly.

6 I appreciate the difficulty in
7 arriving at this compromise, but one of the
8 things we talked about earlier today was the
9 question of regulation and the power of
10 regulators. It seems to me we've given them a
11 very, very broad field in which to play in
12 trying to determine what the phrase "priority"
13 means, and we may end up with the board and
14 other people interpreting that term in such a
15 fashion which may not achieve the goals that the
16 legislation is designed to do, and I would just
17 say that the danger of regulatory control and,
18 in fact, talking with Senator Wright and Senator
19 Bruno and some others, we're opening an awful
20 big door here for them to drive through, and we
21 don't know what this is going to look like.

22 I'm going to vote in favor of the
23 chapter, Mr. President, but I'm expressing my

1 concern about how that will be interpreted.

2 ACTING PRESIDENT SPANO: Read the
3 last section.

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

6 ACTING PRESIDENT SPANO: Call the
7 roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT SPANO: Senator
10 Waldon to explain his vote.

11 SENATOR WALDON: Not really. I
12 would like the record to show that had I been
13 here last week when Calendar Number 57 was acted
14 on, I would have voted in the negative.

15 ACTING PRESIDENT SPANO: Can we
16 just wait until we finish the roll call.

17 THE SECRETARY: Ayes 51, nays
18 one, Senator Padavan in the negative.

19 SENATOR STAFFORD: Mr. President,
20 I'd like to request permission to abstain from
21 voting, please.

22 SENATOR FARLEY: Results.

23 THE SECRETARY: Ayes 52, nays

1 one.

2 ACTING PRESIDENT SPANO: The bill
3 is passed.

4 Senator Waldon.

5 SENATOR WALDON: Thank you, Mr.
6 President.

7 My colleagues, I would like the
8 record to reflect had I been here last week when
9 Calendar Number 57 was voted upon, I would have
10 voted in the negative.

11 ACTING PRESIDENT SPANO: So
12 noted.

13 SENATOR WALDON: Thank you, Mr.
14 President.

15 SENATOR PRESENT: Do we have any
16 housekeeping to clean up here?

17 ACTING PRESIDENT SPANO: That's
18 it.

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

22 ACTING PRESIDENT SPANO: The
23 Senate will stand adjourned until tomorrow at

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3:00 p.m.

(Whereupon at 12:41 a.m., the
hearing was the Senate adjourned.)