ALBANY, NEW YORK

February 15, 1994

3:25 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: The Senate will come to order. If you will - Senators please find their seats, and stand with me for the Pledge of Allegiance.

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

ACTING PRESIDENT FARLEY: Today, we're pleased to have with us Father Bruce Reed, who was recently ordained, of the St. Vincent DePaul Parish of the Diocese of Rockville Centre, Long Island.

Father Reed.

FATHER REED: O Lord, we ask Your special blessing and benediction upon this session. We know that You call us to be Your instruments in the world, to imitate Your mercy and justice in the world, to provide legislation which imitates Your mercy and forgiveness.

We ask You to strengthen and empower us in our session, that we may be productive and efficient instruments of Your grace and kingdom in the world, and we ask this

in Your spirit. Amen.

ACTING PRESIDENT FARLEY: Thank you, Father Bruce. Nice to meet you.

The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, February 14th. The Senate met pursuant to adjournment, Senator Padavan in the Chair upon designation of the Temporary President. The Journal of Sunday, February 13th, was read and approved. On motion, Senate adjourned.

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

Order of business.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select -- we have a report of a standing committee. The Secretary will read.

THE SECRETARY: Senator Stafford,

from the Committee on Finance, reports the following bills directly for third reading:

Senate Bill Number 1284, by Senator Johnson, an act to amend the Vehicle and Traffic Law.

1306, by Senator Levy, an act to amend the Executive Law, the Estates, Powers and Trusts Law.

4017, by Senator LaValle, an act to amend the Executive Law, in relation to the population requirements for municipalities wishing to establish youth bureaus.

4519, by Senator Maltese and others, an act to amend the Executive Law.

6001, by Senators Stafford and Volker, an act to amend the State Finance Law and the Public Authorities Law.

6307-A, by Senator Holland, fire fighting equipment in the in the possession of the Office of Mental Retardation.

6321, by Senator Stafford, in relation to the creation of a fire district in the town of Westport.

6345, by Senators Volker and Present, Public Authorities Law, creating the Livingston County Water and Sewer Authority.

6689, by Senator Stafford, State Finance Law, in relation to the manner of contracting, paying and refunding of state debt.

Senator Cook, from the Committee on Education, reports the following bills directly for third reading:

Senate Bill Number 241, by Senators LaValle and Trunzo, an act authorizing the approval of certain building aid for the William Floyd Union Free School District.

6113-A, by the Committee on Rules, Education Law, in relation to employment education preparation apportionments.

6589, by Senator Present, apportionment of certain education aid to the Portville Central School District.

Senator Holland, from the Committee on Social Services, reports the following bills directly for third reading:

Senate Bill Number 565, by Senator Skelos and others, Social Services Law, in relation to certain conviction records.

1106-A, by Senators Daly and others, Social Services Law, direct payment of shelter allowance.

1775-A, by Senator Holland and others, Social Services Law.

2839-B, by Senator Holland and others, Social Services Law.

And 5626-B, by Senators Holland and others, Social Services Law.

Senator DeFrancisco, from the Committee on Veterans, reports the following bills directly for third reading:

Senate Bill Number 368-A, by Senator Maltese and others, Real Property Tax Law.

1053-A, by Senator Maltese and others, Real Property Tax Law.

1396, by Senator Lack and others, Civil Service Law.

4354, by Senator Larkin and

others, Education Law.

6370, by Senator Levy and others, an act to amend the Highway Law.

And 6513, by Senator Farley, an act to amend the Highway Law, in relation to the Schenectady County Veterans Memorial Highway.

All bills reported directly for third reading.

ACTING PRESIDENT FARLEY: All bills directly to third reading.

Reports of select committees.

Motion and resolutions.

Senator Velella.

SENATOR VELELLA: Mr. President, my bill on page 10, I offer the following amendments to Calendar Number 211, Senate Bill 5518, and ask that the bill retain in -- its place on the Third Reading Calendar.

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

Senator Kuhl.

SENATOR KUHL: Yes, Mr.

President, I wish to call up my bill, Senate Print 6215-A, recalled from the Assembly which is now at the desk.

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

THE SECRETARY: By Senator Kuhl, Senate Bill 6215-A, an act to amend the Education Law, in relation to school building aid.

ACTING PRESIDENT FARLEY: Senator Kuhl.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT FARLEY: The bill is before the house.

SENATOR KUHL: Offer up the following amendments.

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

SENATOR KUHL: Also, Mr. President, I wish to call up my bill, Senate Print Number 3945, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Bruno, Senate Bill Number 3945, an act to amend the Vehicle and Traffic Law.

SENATOR KUHL: Move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Offer up the following amendments.

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

Senator Johnson.

SENATOR JOHNSON: Mr. President, as long as I'm standing and we are open for this type of activity, I would like to request that on page 9, Calendar Number 195 be laid aside for the day.

ACTING PRESIDENT FARLEY: Lay that bill aside for the day, Senator Johnson's bill. Any other motions?

We have some substitutions, Senator Present. Secretary will read them.

THE SECRETARY: On page 11, Senator Volker moves to discharge the Committee on Corporations, Authorities and Commissions from Assembly Bill Number 9035 and substitute it for the identical Third Reading 216.

Also on page 11, Senator Larkin moves to discharge the Committee on Mental Health and Developmental Disabilities from Assembly Bill Number 8924 and substitute it for

the identical Third Reading 217.

ACTING PRESIDENT FARLEY: Substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, I move that we adopt the Resolution Calendar, copies of which are on our desk.

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

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Present.

SENATOR PRESENT: Mr. President, I believe we can take up the non-controversial calendar.

ACTING PRESIDENT FARLEY: The Secretary will read the non-controversial calendar.

THE SECRETARY: On page 4,

Calendar Number 27, by Senator Wright, Senate Bill Number 4106-A -

SENATOR PRESENT: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 623, by Senator Velella, Senate Bill Number 6398, Insurance Law, in relation to dental risk management programs.

SENATOR PRESENT: Lay that bill aside.

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

THE SECRETARY: Calendar Number 88, by Senator Levy, Senate Bill Number 191, an act to amend the Vehicle and Traffic -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it

aside for the day.

THE SECRETARY: Calendar Number 103, by Senator Stafford, Senate Bill Number 6384, an act to amend -

SENATOR GOLD: Lay that aside for Senator Dollinger, please.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 126, by Senator Hannon, Senate Bill Number 281-A, authorizing the County of Nassau to accept an application for real property tax exemption.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 130, by Senator Stafford, Senate Bill Number 438, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: Lay that aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 158, by Senator Saland, Senate Bill Number 2583, Education Law, in relation to making certain incarcerated persons ineligible for certain general tuition awards.

ACTING PRESIDENT FARLEY: Okay. I thought you said 158. It's 153, calendar - read the last section.

SENATOR GOLD: Lay aside 153.

ACTING PRESIDENT FARLEY: 153, lay it aside. Lay 153 aside.

THE SECRETARY: Calendar Number 154, by Senator LaValle, Senate Bill Number 3970-A, Education Law in relation to membership

on the -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 157, by -

SENATOR GOLD: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for today.

THE SECRETARY: Calendar Number 158, by Senator Maltese, Senate Bill Number 3304, an act to amend the Education Law.

SENATOR DOLLINGER: Lay that aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 162, by Senator Maltese, Senate Bill Number 6411, administrative code of the city of New York.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 163, by Senator Stafford -

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 164, by Senator Larkin, Senate Bill Number 1942, an act to amend the Vehicle -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 165 -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 168 -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 169 -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 171, by Senator Johnson, Senate Bill Number 6562, to provide for a study by the New York State Thruway Authority.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 176, by Senator Levy, Senate Bill Number 1002, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 177, by Senator Velella -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 180, by Senator Volker -

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 186, by Senator Cook -

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 187, by Senator Lack, Senate Bill Number 348, an act to amend the Penal Law.

SENATOR GOLD: Lay it aside for Senator Dollinger.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 189, by Senator Skelos, Senate Bill Number 3612, an act to amend the Criminal Procedure Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 192, by Senator Johnson, Senate Bill Number 783-A, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 197, by Senator LaValle, Senate Bill Number 577, an act to amend the Correction Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

SENATOR SMITH: Lay it aside, please.

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

THE SECRETARY: Calendar Number 200, by Senator Skelos, Senate Bill Number 6569, an act to amendment the Executive Law, in relation to the powers and duties of the Crime Victims Board.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 203, by Senator Hannon, Senate Bill Number 3169, Real Property Law, in relation to the sale of

mobile homes.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 204, by Senator Hannon, Senate Bill Number 3170, an act to amend the Real Property Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 205, by Senator Hannon, Senate Bill Number 3173, Real Property Law and the Private Housing Finance Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 208, by the Senate Committee on Rules, Senate Bill Number 6084, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 209, by Senator Velella, Senate Bill Number 2230, an act to amend the Insurance Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 210, by Senator Velella, Senate Bill Number 2595, an act to amend Chapter 24 of the Laws of 1992 amending the Insurance Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 214, by Senator Farley, Senate Bill Number 2756-A, an act to amend the Not-for-Profit Corporation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 215, by Senator Trunzo, Senate Bill Number 3473, an act to amend the Public Authorities Law and the General Municipal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 216, substituted earlier today, by member of the Assembly Hoyt, Assembly Bill Number 9035, an act to amend the Public Authorities Law, in relation to making a technical correction regarding the Buffalo Sewer District -- Sewer Authority.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 217, substituted earlier today by the Assembly Committee on Rules, Assembly Bill Number 8924, an act to amend Chapter 591 of the Laws of 1993, relating to authorizing the lease of certain facilities in the Middletown Psychiatric Center.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT FARLEY: The

bill is passed.

Senator Hannon.

SENATOR HANNON: Mr. President, I would like to request permission to star a bill.

ACTING PRESIDENT FARLEY: All right.

SENATOR HANNON: Page 10, Calendar Number 207, Print 5190.

ACTING PRESIDENT FARLEY: 207 is starred at the request of the sponsor.

Senator Present, that concludes the non-controversial.

SENATOR PRESENT: Make we take up the controversial, please.

ACTING PRESIDENT FARLEY: Controversial. The Secretary will read.

THE SECRETARY: On page 4, Calendar Number 103, by Senator Stafford -

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 130, by Senator Stafford, Senate Bill Number

438, an act to amend the Real Property Tax Law.

SENATOR GOLD: Are you going to do it?

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay that bill aside temporarily.

THE SECRETARY: Calendar Number 153, by Senator Saland -

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay that bill aside temporarily.

THE SECRETARY: Calendar Number 154, by Senator LaValle, Senate Bill Number 3970-A, an act to amend the Education Law.

ACTING PRESIDENT FARLEY: Read the last section.

Explanation has been asked for. Lay it aside temporarily.

THE SECRETARY: Calendar Number 158, by Senator Maltese, Senate Bill Number 3304, Education Law, in relation to instruction

in the display, use and proper respect for the Flag.

SENATOR PRESENT: May we lay that bill aside temporarily and call up 165.

ACTING PRESIDENT FARLEY: Call up 165. Lay aside 158 temporarily.

THE SECRETARY: Calendar Number 165, by Senator Goodman, Senate Bill Number 2706, an act to amend the Vehicle and Traffic Law, in relation to allowing parking violation bureaus to increase the fine for illegal parking.

SENATOR GOLD: Mr. President, would Senator Goodman yield to a question?

ACTING PRESIDENT FARLEY: Senator Goodman, would you yield to a question.

SENATOR GOODMAN: Yes, Mr. President.

SENATOR GOLD: Senator Goodman, I have absolutely no sympathy at all for anyone who parks in handicapped parking spaces but I'm -

SENATOR GOODMAN: Except the

handicapped, Senator.

SENATOR GOLD: Except the handicapped. That's a good point. Thank you. That's a wonderful point.

At any rate, Senator Goodman, assuming that somebody is now doing it and they're paying $150, I don't see where 200 stops them. I assume the purpose of the bill is to stop them in some way. I mean, isn't there something else we can do? Towing them automatic or whatever, but do you think that adding $50 when it's already $150 really accomplishes the purpose, and I'm not going to vote no on the bill because anything we can do is fine, but do you think that just adding $50 does it?

SENATOR GOODMAN: First, let me say I appreciate your support for this humble offering. Second, let me say we've contemplated several other options: One would be the guillotine. Second would be the stock. The third might be the gallows, but all of these seem to be unavailable and so we just decided to resort to that age-old technique known as

monetary penalties and hitting the pocketbook nerve.

I am not certain that by going to the higher level of fine that you've just men tioned, $250, rather than 100, that we will - 250 -- that we will deter all of those people who selfishly put their cars in disabled parking spaces but, Senator, quite seriously, we would want to try to do this, because there is a sufficient breach of this law to cause us real concern that those who rely upon getting their automobiles closer to places of commerce, so that when they shop for groceries or other essentials, that they not have a long way to go to get those items into the trunks of their cars.

SENATOR GOLD: Last section.

SENATOR GOODMAN: Thank you, Senator.

ACTING PRESIDENT FARLEY: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

Would you sponsor yield to a question?

SENATOR GOODMAN: Yes.

SENATOR SMITH: Thank you, Senator Goodman.

The only concern that I have - and I have been an advocate for the handicapped for most of my life -- is that in some instances, the signage is not properly placed or that it is no| quite evident where the handicapped space ends and other spaces then start, and I would not wnt to subject other people |o fines that aren't just because they cannot read the signage properly. That's the only problem. Do you know if your bill -- I have not read it -- will take into consideration that everything must be in order prior to us issuing the summons?

SENATOR GOODMAN: Senator, I understand your objection and it's certainly legitimate. I think for the most part these places tend to be plainly marked. In some instances there are painted signs in the parking

place itself which may over time have become dim or maybe totally obscured. This, I think occurs only in a small number of cases, but in that instance, I would assume that a magistrate would use the same discretion that's used in the matter of parking in a no parking zone from which the sign has been detached or from which the sign is otherwise obscured.

So there are, of course, remedies in the court itself once one is hauled into court, but here again, the failure to have adequate marking in all instances does not invalidate the basic purpose of the bill.

SENATOR SMITH: Thank you very much.

SENATOR GOODMAN: Thank you, Senator.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, can we call up Calendar 153?

ACTING PRESIDENT FARLEY: 153. The Secretary will read Senator Saland's bill.

THE SECRETARY: Calendar Number 153, by Senator Saland, Senate Bill Number 2583, an act to amend the Education Law, in relation to making certain incarcerated persons ineligible for certain general tuition awards.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, what this bill would do would be to say that the approximate $5 million a year that's currently being spent on

some 5,000 inmates to provide them with the ability to take college courses would be eliminated and those monies would effectively be used for the non-inmate -- for people who are struggling to try and obtain funds for college education, for people on the other side of the walls.

It's a bill which I think recognizes certainly the current difficult times that much of New York State is enduring, particularly those who are trying to find the wherewithal to put themselves through college or get assistance from families. I think perhaps it also recognizes, although this was in long - long before the event, it also recognizes that perhaps it's bad enough that the state of New York, through the Governor and the Commissioner, sought to bring Thomas Grasso back so he could serve his life sentence before being sent back to Oklahoma to be executed, but we need not also provide him with a college education while he's waiting here.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Would the sponsor yield to a question?

ACTING PRESIDENT FARLEY: Senator Larkin, will you yield?

SENATOR SALAND: Senator Larkin?

ACTING PRESIDENT FARLEY: I'm sorry, Senator Saland.

SENATOR GOLD: I want to deal with Senator Saland directly.

Senator, I just want to understand how the program works. We've had a bill that we debated, I think it was sponsored by Senator Cook, which dealt with the issue of higher education of people in the prison system. Now, how does this work in terms of these financial programs when someone is incarcerated?

SENATOR SALAND: TAP is asset or income driven and it's basically driven by your ability financially, and there are very few people that I'm aware of who are serving in our

corrections facilities who have the kinds of incomes that take them out of the realm of being TAP eligible, and this is saying we don't -- we don't think that you should be TAP eligible. This is not saying that you can't be provided an education or a secondary education or can't receive some type of job training, and it certainly doesn't prevent those who might have the means either by way of family assistance or by way of loans, if they can obtain them or if their family can obtain them, from receiving some college work.

SENATOR GOLD: If the Senator would yield to another question.

ACTING PRESIDENT FARLEY: Senator Saland.

SENATOR GOLD: What I'm trying to get out on the table, Senator, and I assume you can describe this better than I can, Senator Cook had a bill which was concerned about this and whether or not we should be spending money to educate these people. Now we're talking about these people getting -- applying for

student aid and student loans. How do these - how does this -

SENATOR SALAND: Let me see if I can -- as best as I can recollect, present the distinction between Senator Cook's bill and my bill, and I can recall standing up at that time and explaining my vote and commending Senator Cook for his efforts, and I said perhaps my approach would be even less appealing to those who opposed Senator Cook's bill than with Senator Cook's bill. His bill, as I recall it, basically said if, in fact, you have received some type of college tuition assistance while you were serving as an inmate, you would be required, upon your graduation, to basically make good those funds. It was a loan by the taxpayers of the people of the state of New York and we would like to you repay it.

My bill, I guess sort of says I don't want to go as far as Senator Cook. I don't necessarily want it as a pay-back option. I think that there are other people who could use those funds and make better use of those

funds, probably several thousand students, prospective students who would be well served by having these monies, people from disadvantaged communities, people from communities throughout our state, regardless of whether its urban, suburban or rural.

SENATOR GOLD: Senator -

ACTING PRESIDENT FARLEY: Senator Gold -- would you yield?

SENATOR GOLD: Senator, let me put on the table what is troubling me because I obviously am not as well versed as perhaps you and Senator Cook are.

SENATOR SALAND: You're very kind, Senator. I am sure you're very well versed. I've always found you to be.

SENATOR GOLD: I'm being very serious. I'm not trying to be ingratiating. You have somebody who's incarcerated and there is a program of higher education available to an inmate. Now, I was under the impression that if they were qualified for this program, they could get into the program, and that Senator Cook and

others, as a matter of philosophy, believed that these people should not be getting what amounts to, quote "free education". That's what I believed as I -- as we discussed this bill. This bill is leading me to believe other things, and that is that if they're incarcerated and they are eligible for the program, they have to in some way pay for that program now, but that they pay for it either through TAP or student or other kinds of loans, which is a different philosophy, I think, than what I thought I understood on Senator Cook's bill. That's why I want to know what that mechanism is.

If someone is an inmate today and they want to participate in a college program, do they have to pay for it? Do they have to apply for TAP or a student loan or come up with the money or, in fact, are we giving these people a free education?

SENATOR SALAND: The monies, as I understand it, that some 2500 inmates receive per semester are monies that come primarily from TAP. That amounts to about 2.57 -- $2.57

million per semester, annualized we're talking, as I said earlier, some 5,000 inmates, some $5-plus million.

As I mentioned earlier, my approach is a bit different than Senator Cook's, and I think in part the types of economic times that we have to contend with currently certainly justifies the approach that I've taken. I'm not saying get rid of the money. What I'm saying is let the money stay in the pool but there are disadvantaged people who are not incarcerated, are not on the wrong side of the walls, who could be well served by getting these monies and using that to further their education by going to college.

SENATOR GOLD: Thank you.

Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: I am still a little confused as to exactly how this works, and it obviously works a little differently than I thought.

I want to point out there is a memorandum in opposition from the New York State Independent Colleges and Universities, and we have had this before. In the past, Senator Connor and Espada and myself, Leichter, Markowitz, Montgomery, Ohrenstein, Paterson, Smith, Stavisky and Waldon have voted in the negative.

I would just say this, though, Senator Saland, I think I'm missing something and I'm not trying to miss it, I really am not. Someone is incarcerated and we give them a training program, for example, how to repair eyeglasses and whatever. These training programs exist at the prison. I don't believe -- and I may be wrong, but I don't believe we charge the inmates money to participate in those programs, the auto repair shops and whatever. I thought, as we have debated Senator Cook's bill over the years, that if certain other inmates would apply for higher education, they would get it, and that that was offensive to many people who felt that if their children couldn't get a

higher education for nothing, you shouldn't have to go to prison to get one.

Your bill is telling me something different, and while you're right, I don't agree with your bill even more than I don't agree with Senator Cook's bill, it's because as I'm explaining it, if I'm explaining it right, your philosophy does offend me more, because if you now have a situation where someone is incarcerated but they are eligible for the TAP program or the student loan which gets repaid or whatever and they are, in fact, paying for their education, I don't know why we're mixing up the apples and oranges.

The youngsters who are not incarcerated are entitled to apply for TAP or for student loans. We're not affecting them at all and then these people who are incarcerated are making the applications, so I don't see that as anywhere near as offensive, if I can use that word, as the concept spelled out by Senator Cook where he was implying that people in prison were getting this all for free, they are on vacation

while these poor other kids were out on the street and couldn't get the education.

So I'm going to continue to vote in the negative, and as I pointed out, the New York State Independent Colleges and Universities have filed in opposition on the bill once again.

SENATOR SALAND: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Saland.

SENATOR SALAND: Thank you.

I certainly don't mean to denigrate Senator Gold's arguments. Obviously, we have a very strong difference of opinion. I believe that these taxpayer monies should basically go where they will be best served and help those who, I believe, are in far greater need.

Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44, nays 4. Senators Gold, Markowitz, Ohrenstein and Smith recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I would request unanimous consent to be recorded in the negative on Calendar Bill Number 176.

ACTING PRESIDENT FARLEY: 176, Senator DeFrancisco will be in the negative.

Senator Present.

SENATOR PRESENT: Take up Calendar Number 158 and then follow regular order.

ACTING PRESIDENT FARLEY: 158.

THE SECRETARY: Calendar Number 158, by Senator Maltese, Senate Bill Number 3304, an act to amend the Education Law, in relation to the instruction in the display, use

and proper respect for the Flag.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

Senator Maltese.

SENATOR MALTESE: Mr. President, this bill would amend Section 802, Subdivision 1 of the Education Law in order to require the instruction of proper respect toward the Flag.

Presently, according to the Board of Education, the city has no mandate requiring such instruction and the Department of Education has indicated that while there is a requirement to instruct in the areas of patriotism and citizenship, there is no specific instruction provided for in this area.

This bill would incorporate into the Education Law the provisions of Section 170 to 177 of Title 36 of the United States Code as a minimum for instruction. This is, of course, supported by many veterans' groups and the American Legion specifically, and while it would be mandated in Section 802 and would cover the

sections enumerated in the United States Code, which I'll read this heading, would be the National Anthem, the Star Spangled Banner, conduct during playing, Pledge of Allegiance to the Flag, manner of delivery, display and use of the Flag by civilians, codification of rules and customs, definition, time and occasions for display, position and manner of display and respect for the Flag.

Mr. President, the -- the times when respect seems to be in short supply for any of the traditions of not only our country but the traditions and morality espoused by the veterans' groups that are supporting this legislation and many of the groups that have assisted in making this country great seem to mandate some clarification here as to what instructions should be given.

We have checked with, as I say, the Board of Education, and apparently no instruction is required specifically to these areas that are enumerated in the United States Code, so it would seem that this serves a

purpose.

This legislation has been debated three prior years, so the various reasons and rationale for this legislation have been covered in a prior debate.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Maltese yield to one -- to a couple questions?

ACTING PRESIDENT FARLEY: Will you yield?

SENATOR MALTESE: Yes.

SENATOR DOLLINGER: First of all, I note in the sponsor's memorandum accompanying the bill, it talks about elementary and secondary schools. Do you know whether any secondary schools in New York State do a Flag curriculum? Do we do it in high school?

SENATOR MALTESE: Well, we - Senator Dollinger, we -- Mr. President, we checked with the Board of Education based on prior debate, and perhaps even in response to Senator Dollinger's question last year, and what

we were told then was that -- that these areas were not specifically required either in elementary or secondary education.

SENATOR DOLLINGER: Okay. Again, through you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Do you know whether there's actually a Flag curriculum for high school students?

SENATOR MALTESE: I don't know for a fact, but I imagine if there had been one, they would have responded in the affirmative to our questions.

SENATOR DOLLINGER: Okay. Again, through you, Mr. President if Senator Maltese would continue to yield. You referred to the Board of Education. Is that the Board of Education of the city of New York, Senator?

SENATOR MALTESE: The -- Mr. President, I would even give the name. I don't know the title, but according to somebody named Bob Terte of the New York City Board of

Education, the city has no curriculum, and as far as the Department of Education here in Albany, the person that responded was a Joanne Larson and indicated -- and this is the quote I have -- "While there is a requirement to instruct in the areas of patriotism and citizenship, there is no specific Flag instruction provided for".

SENATOR DOLLINGER: Okay. I guess my question, again through you, Mr. President, if Senator Maltese would continue to yield.

ACTING PRESIDENT FARLEY: I'm sure he will.

SENATOR DOLLINGER: Do you know, even though whether -- even though it's not required, is it actually going on?

SENATOR MALTESE: Mr. President, I don't know for a fact but I imagine given the dedication and experience of any of the teachers in the public school system, that it is, in fact, probably going on in many of the public and private schools in our state, but the

problem is that with the demands of time and other subjects intervening and intruding, undoubtedly there are many teachers who might be fine teachers but are choosing to skip it. This would mandate that instruction, rather than leave it up to an individual teacher.

SENATOR DOLLINGER: Just one other question, again through you, Mr. President. Senator, you mentioned that this sense of patriotism for the Flag and the tradition for the Flag was somehow in short supply in this state. Just so I understand, what's your proof for that, that this is in short supply?

SENATOR MALTESE: Mr. President, I don't mean to call the fair name of our state into disrepute. I think that what that is a commentary on is our times, perhaps some of the TV programs, radio programs, media, manifested by some of the things occurring in our society, perhaps even lawless acts, crime, which would seem to indicate that respect for any of the - the moral traditions of our city and state and

country are in short supply. It's kind of a lament, hoping that things get better.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I note that the fiscal implication on the sponsor's memo indicates that there's no implication, no cost associated with this mandate, is that correct?

SENATOR MALTESE: Mr. President, it would seem that this would simply take the place of other instruction -- other instruction and mandate a more formal, if you will, curriculum and, therefore, there should be no additional time spent in the specific classes or curriculum.

SENATOR DOLLINGER: And again, just through you, Mr. President. Who do you anticipate will write this curriculum?

SENATOR MALTESE: It's called for in the bill, it will be left up to the Commissioner of Education.

SENATOR DOLLINGER: On the bill,

Mr. President.

ACTING PRESIDENT FARLEY: On the bill, Senator Dollinger.

SENATOR DOLLINGER: I appreciate Senator Maltese's intent in this piece of legislation. I'm going to vote for this piece of legislation. I guess, if there is a good mandate, this is a good mandate, but don't mistake the fact that it's a mandate.

What does it take to write a curriculum? My guess is -- and I've talked about this frankly in public meetings that I've had about this particular bill and what it means as far as a mandate goes. My guess is this is bill going to be sent to the Commissioner of Education, if it passes the other house and gets sent over there by the Governor. The Commissioner of Education is going to do what every good curriculum writer would do. He's going to have a deputy assistant, subordinate commissioner, put together all of the material on the Flag, find out whether it incorporates those sections of the U.S. Code, then spend a

couple hundred dollars working a team to try to come up with a draft curriculum, then they'll publicize the draft curriculum for all of the public in this state. They'll analyze the comments. They'll publish the final regulation -- the final suggested curriculum. That will go out to all the school districts. They, in turn, will find out what they're doing in their curriculum and try and conform to it.

The answer is, there's going to be thousands upon thousands upon thousands of instructional and educational time that will go into putting this mandate together. I don't think it's -- the fiscal implication is none. I think the fiscal implication is substantial, but even with that, I'm prepared to vote for this mandate, because I think this is something we should do.

My guess is -- and I appreciate Senator Maltese's point of view, but when I found out about this bill, I talked about it in both the Brighton and Greece School Districts and they said, "We do all this stuff. We don't

need to be told do that," and then, of course, I checked with my other expert about primary education, Senator Jones, and she confirmed that in the first grade class that she taught, they did it as well. So we're telling them to do something; we're not even sure whether they currently do it.

My strong opinion is, because of the reverence that this state holds the Flag in, they're already doing all these things and we don't need to tell them. But lest there be any doubt, I'm prepared to vote for this very good mandate, but I recognize it is a mandate nonetheless and the cost of it is not none. It is probably significant.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day after it shall have become a law.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

Regular order.

THE SECRETARY: Calendar Number 163, by Senator Stafford, Senate Bill -

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 164, by Senator Larkin -

SENATOR GOLD: Explanation.

THE SECRETARY: -- Senate Bill Number 1942, an act to amend the Vehicle and Traffic Law.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number

168, by Senator Levy, Senate Bill Number 5435-B, an act to direct the New York State Thruway Authority to do a study on use and revenue of the Thruway system.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 169, by Senator Holland, Senate Bill Number 6312, an act to amend the Public Authorities Law.

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 177, by Senator Velella, Senate Bill Number 1579, an act to amend the Vehicle and Traffic Law and the Criminal Procedure Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 180, by Senator Volker, Senate Bill Number 919-A, an act to amend the Penal Law, in relation to resisting arrest.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Senator Volker, for an explanation.

SENATOR VOLKER: Mr. President, this bill pertains to raising the penalty for the use of physical force in resisting arrest. At the present time, any type of resisting arrest the same penalty is provided, which is a Class A misdemeanor. But we're providing in this bill, and a number of law enforcement agencies have asked for it, that there should be

separate grades of resisting arrest, depending on whether physical force is used.

What we do in this bill is, if physical force is used in the resisting arrest, then the penalty would be a Class E felony, the lowest grade of felony. The standard resisting arrest which could be passive, a whole series of things that could constitute as resisting arrest, would continue to be a Class A misdemeanor.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Senator Volker, can I just ask you one question?

SENATOR VOLKER: Certainly.

SENATOR GOLD: If someone resisted arrest and used physical force or whatever, isn't that also definable as just a straight assault on a police officer? What degree of crime would that be?

SENATOR VOLKER: Generally speaking, it is not because what happens is, if there is a serious physical injury, yes, or even

a physical injury, what often happens in these resisting arrest cases is the person is stopped for speeding or something of this nature, and the resisting arrest may, in fact, be refusing to -- an order, falling to the ground, all sorts of things, but if they actually push the police officer, maybe even strike the police officer, generally speaking, if there's no injury, you really can't, unless you want to charge them with attempted assault, which is almost impossible. That's where the resisting arrest comes in.

SENATOR GOLD: Thank you.

I just want to remind some of the members we've had this before, and Senators Connor, Espada, Galiber, Leichter, Markowitz, Mendez, Montgomery and Senator Smith have voted in the negative.

Last section.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of

November.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48, nays 2. Senators Markowitz and Smith recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Can we call up Calendar 164, please.

ACTING PRESIDENT FARLEY: 164, by Senator Larkin.

THE SECRETARY: Calendar Number 164, by Senator Larkin, Senate Bill Number 1942, an act to amend the Vehicle and Traffic Law, in relation to authorizing the issuance of special registration.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Larkin.

SENATOR LARKIN: What this bill

really does is it allows those disabled people to use the state-owned lands.

You probably are going to ask about the DEC's opposition. I recognize their opposition, but if they would read the bill a little carefully, they will find out that what we're doing is consistent with what we have been doing with the use of public lands.

The bill really reads in part there that specifically registered ATVs may be operated on state-owned waters or lands for purposes of transporting a severely disabled person to or from waters or land from which the person intends to take fish or wildlife.

I think that this has been tried in other countries. They do it now in Great Britain and France and there hasn't been a problem.

SENATOR GOLD: Would the Senator yield -

ACTING PRESIDENT FARLEY: Senator Larkin.

SENATOR LARKIN: Yes, Senator.

SENATOR GOLD: Senator, it seems to me there's two separate parts to this bill and I'm tying to get through it fast so as not to hold you up. The second part deals with registered ATVs may -- ATVs may be operated in state-owned waters, et cetera, for the purpose of transporting severely disabled persons, et cetera.

But the first part of the bill deals -- seems to be different and allows any severely disabled person who would be entitled to register a motor vehicle, et cetera -- are those two separate -

SENATOR LARKIN: I don't think they are, Senator. We've talked to the disabled community and what we're saying here is that somebody in this condition is going to have access to the lands that the state owns. It's going to be a vehicle. It's going to be registered. It's going to indicate that it's a handicap, and I just think we're just making something more than is there.

SENATOR GOLD: Well, the -- what

I'm getting at, under the second part of the bill, page 2, lines 38 to 43 -

SENATOR LARKIN: M-m h-m-m.

SENATOR GOLD: -- the language is short. Provided further that a specifically registered ATV may be operated on state state-owned water or lands for the purpose of transporting a severely disabled person to and from waters or lands from which the person intends to take fish, wildlife, et cetera.

This is a specific grant that these people can use the ATV for specific kinds of purposes.

SENATOR LARKIN: Only on those state lands. They can't use it any place else in this connection right here, sir.

SENATOR GOLD: They can't use it on your front lawn. We're not talking about your front lawn. We're talking about state land.

SENATOR LARKIN: Yes, sir.

SENATOR GOLD: What I'm saying, this is a specific direction. They can use the

vehicle for them to be able to get to fishing spots and water spots and things of those - that sort, isn't that correct?

SENATOR LARKIN: Yes, sir. What it says is that they're going to -- go ahead.

SENATOR GOLD: Now, what I'm concerned about or I gather that the memo is concerned about is the first part of the bill. The first part of the bill allows the registration, and my question is, under the first part of the bill, does that entitle them to any other uses on state land other than what is specifically set forth on the second page?

SENATOR LARKIN: No. It's very clear. In the memo is the same thing. The memo allows the Commissioner of Motor Vehicles to promulgate enabling rules, issue registration for the ATV itself and a certificate to the disabled person.

SENATOR GOLD: Okay.

SENATOR LARKIN: And this was discussed with them also, and now their DEC memo says that we're registering the vehicle and

we're not doing anything to the disabled person.

SENATOR GOLD: I just want to read. You made reference to the memo and while we have made comments in the past about the Department of Environmental Conservation and its failure to provide memos, this time they have done that.

One -- third paragraph. "ATV use is not without impact on natural resources. Some lands are not suitable for motorized vehicles and have been classified to exclude them in order to protect delicate resources."

Now, the purpose of your bill I find very unoffensive. If you want to make it possible for people who are disabled to be able to get around and use natural resources, I think that's a reasonable purpose of a bill. They are apparently concerned, though, that there are some areas where they believe no motor vehicles should be able to go.

Under your bill, are they able to make those kinds of regulations? In other

words, let's say for the sake of argument, that you are in a location where you are -- where there is fishing and I'm at the road and a disabled person could go with this vehicle directly to you or if there were delicate lands there, does the Department have the right to say, "No, you have to go past the sergeant over here and then go around?"

Do they have any right under your bill that would provide that they could take care of the disabled people but still protect some of the lands that if they felt this was a problem.

SENATOR LARKIN: If you look at their own rules and regulations now, they have severely imposed restrictions on the use and the accessibility for all of these people.

What we're saying now is we're opening this up to disabled people for their ATV. We're also allowing in there that these people -- and the Department is aware of it in the discussions -- that they can promote rules and regulations but they cannot deny the direct

access and their language here, in my opinion, is that they, as before, are trying to just directly control the access. This is the same department that is saying, "We want to open up our lands for use".

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT FARLEY: Senator Larkin, would you continue to yield?

SENATOR GOLD: Are you saying, Senator, that there -- where is the provision in the bill, if you can just point out to me, which gives the Department the ability to provide the rules and regulations for the use once we do the license?

SENATOR LARKIN: Senator, we - in the discussions -- in the memorandum, we're very clear about allowing the Commissioner of Motor Vehicles to promulgate enabling regulations, issue registrations for the ATV itself and a certificate to the disabled person.

SENATOR GOLD: All right. Senator -- Senator, if I most respectfully can

say this. You are bright enough to know that the memo is not law.

SENATOR LARKIN: I understand that.

SENATOR GOLD: And your side of the aisle, as well as many people on my side of the aisle, are concerned about administration - administrative agencies and their rule-making authority going past what is given statutorily. I know Senator Present, when he was involved with ARRC felt that way and I'm sure your present chairman feels the same. My only question is, would it perhaps be better to amend the bill, to merely give them, in the bill, the right to make rules and regulations so that once these people are licensed, that they not be denied access, but that the Department have some way of protecting some of the routes they may take. Maybe route A, B and C is available, but they should take route A, which is just as good for them but would protect the lands involved in route B and C. They would wind up in the same place.

If you're saying this in your memo, I think we ought to have that in your law.

SENATOR LARKIN: Well, I read the memo as you have. All I see is a negative answer to a piece of legislation that addresses an issue that was brought to our attention and I don't believe that if we amend this in that way, we will be doing anything but giving more control to DEC who, in their memorandum, does not make any indication of what they want to do. All they're saying is that it will have an impact on the environment.

I don't see a number of individuals with an ATV who are disabled having a rally like they have with motorcycles or that. I just think, in my honest opinion, if the DEC thought there was something wrong, really wrong, I think they should have come in and said, "Could we negotiate or could we do this?" They've done none of that except to put a memorandum in, and I think that this is just the stop gap for them to say they don't want disabled people in state park lands.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Senator Larkin, I have a philosophical difference with you. You propose a piece of legislation. The Department, which is headed by someone appointed by the Governor, and I assume has some power with the Governor, says to you and I in a memo, that they have a concern, it would seem to me, Senator, that the best way to handle the disabled who you are trying to help and who I am very sympathetic to, is to try to make the legislation in such a manner that it is uncomfortable for even the Governor to even want to veto it and certainly uncomfortable for many of us to oppose it, because we don't want to oppose it, and I think that the concept of your bill has an awful lot of merit. I mean, it really does.

On the other hand, Senator, it's one sentence that could be added to the bill which says that the Department has the right to make rules and regulations concerning this,

provided that their rules and regulations do not restrict access. You could do these kinds of things and put that in there. I'm not suggesting that you put in rule making authority that negates what you're trying to do with the bill but, as I said to you, if you're now in this park land and you had to get from where you are to Senator Farley, you could take perhaps three routes which are -- each one is easy but two of them or one of them might affect the environment, and the Department might want to suggest that disabled people take the others. They would still be getting access to the state lands. Only it's a reasonable compromise, and I don't know why you don't want to do it, unless maybe, Senator, you don't want it to become a law and you want us to have to vote on this issue year after year, and believe me, there are plenty of bills with great legislative history to pass year after year and it's a great newsletter year after year, and instead of having to think of new ideas, you've got a legislative program good for five years.

Now, I know you don't practice as a Senator that way but, Senator, I'm just suggesting to you, I would be glad to help you, not only pass the bill here, but in the other house and with the Governor, but what's the sense of not reacting if a department has a suggestion? It's a long question, if you want to answer it or not, it's up to you.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT FARLEY: Call the roll. Ring the bell.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(There was no response.)

Senator Connor excused.

Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

SENATOR DALY: Aye.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Explain my vote briefly.

ACTING PRESIDENT FARLEY: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Senator Gold has raised an interesting and important issue with respect to this bill and, frankly, with a whole lot of bills that we do that seem to get one-house status, and I think it should be taken into account by the Majority on this bill, and I will vote, however, in the affirmative.

ACTING PRESIDENT FARLEY: How do you vote?

SENATOR DOLLINGER: Aye.

THE SECRETARY: Senator Espada.

(There was no response.)

Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Galiber.

(There was no response.)

Senator Gold.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold to explain his vote.

SENATOR GOLD: Thank you.

There's no doubt in my mind that we have the capacity to be stubborn and we have the capacity to pass with 31 votes, anything we have in the confines of this room. What we don't have is the capacity to take a piece of paper and just because 31 of us like the idea, make it into a law.

Now, I would love to help these disabled people. This piece of paper in its present form probably helps no one. I shouldn't say no one. I guess if it's a good press story, politically, it might help somebody, but the people that I want to help, I don't think are running for office. They happen to be people

who are disabled and who would like better access to our state lands, and the way they get that is perhaps by something being passed that allows ATVs to be used in a proper manner that's safe for them and safe for the environment and I don't know why we wouldn't do that. I really don't know why we wouldn't do that.

It seems to me this building gets more and more run by ego instead of intellect. I don't know when we're going to stop it. I congratulate Senator Larkin for a good idea. I'm not so thrilled that we come to this floor day after day with the concept that we can't amend anything once we start it to date because it's perfect, and we all know what happens. If this bill is going to see the light of day as a law, it's going to come back when -- in the middle of the night when somebody might forget that the suggestions came from a Democratic commissioner or from Democratic Senators. If that isn't the most childish nonsense, I don't know what is.

There are wonderful ideas that

can come out of a debate process that can make good ideas into laws, and I think it degrades this body when we, day after day, take these really silly, silly political, egotistical positions. I think it's a shame, but I'm glad, Senator Larkin, that you brought it to the floor and gave us the opportunity to spend this time discussing it. I mean, I feel this is such a wonderful idea, it would be tragic to just vote on it and let it go away and, therefore, I wanted the slow roll call so we could give it the proper time and energy that it deserves because, Senator Larkin, if it's so great that it can't be amended, then it certainly deserves more than just a passing conversation from all of us.

I really hope that before this session ends, we can see something amended or something that has a chance to become a law. As a matter of fact, I see that Assemblyman Seminerio's name is also on this and I intend to talk to him, because I know that Tony Seminerio is a very sincere fellow who would like to see a

law, and perhaps Tony Seminerio wants to see a law more than Senator Larkin does and maybe we can get it resolved that way.

I vote aye.

ACTING PRESIDENT FARLEY: Continue the roll.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: Yes.

THE SECRETARY: Senator Hannon.

(There was no response.)

Senator Hoffmann.

SENATOR HOFFMANN: Yes.

THE SECRETARY: Senator Holland.

(There was no response.)

Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Jones.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Mr. President, to explain my vote.

ACTING PRESIDENT FARLEY: Senator Larkin to explain his vote.

SENATOR LARKIN: Last year in this house, we passed a significant piece of legislation that addressed an issue of handicapped individuals who wanted to use a bow and arrow with their ATVs in our state parks.

After much discussion, it was passed. It provided individuals who used to hunt and fish, an access to use their bow and arrow which had never been allowed before. We didn't put any restrictions on it. The DEC didn't want it because they were afraid of people with a disability to be in a park and using a bow and arrow.

The individual who brought that matter to our attention said, quote "My ATV is my legs. Luther was paralyzed from the chest down in a construction accident. This is

important to me. I'm doing everything to make my life the way it was before, to do what I used to do." What he used to do is hunt and fish with his buddies and his friends, and what our legislation was to enable him to do it.

With regard to Senator Gold's comments about egos or that -- this isn't an ego trip for me. I'm blessed. I don't have a child, a member of my family or associate who's paralyzed and who owns an ATV. What we're trying to do is provide access. Last year when the Governor's office was talking about this bill, a member of the Governor's office said, "Remember, the Governor has consistently supported measures that increase access for the disabled and assist them in their ability to lead full lives."

Mr. President, this is not an ego trip. This is reality for those less fortunate than ourselves.

I vote aye.

ACTING PRESIDENT FARLEY: Senator Larkin votes aye.

Continue the roll.
THE SECRETARY: Senator LaValle.
(There was no response.)
Senator Leichter.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Marino, aye.
Senator Markowitz.
SENATOR MARKOWITZ: Yes.
THE SECRETARY: Senator Mendez, excused.
Senator Montgomery.
SENATOR MONTGOMERY: Aye.
THE SECRETARY: Senator Nolan.
(There was no response.)

Senator Nozzolio.
(There was no response.)
Senator Ohrenstein, aye.
Senator Onorato.
SENATOR ONORATO: Aye.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: Aye.
THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: Yes.
THE SECRETARY: Senator Pataki.
(There was no response.)
Senator Paterson.
(There was no response.)
Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Saland.
(There was no response.)
Senator Santiago.
SENATOR SANTIAGO: Yes.
THE SECRETARY: Senator Sears.

(There was no response.)

Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Aye.

THE SECRETARY: Senator Solomon.

(There was no response.)

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

(There was no response.)

Senator Stavisky.

(There was no response.)

Senator Trunzo, excused.

Senator Tully.

(There was no response.)

Senator Velella.

(There was no response.)

Senator Volker.

ACTING PRESIDENT FARLEY: Senator Volker, how do you vote?

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon, excused.

Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT FARLEY: Absentees.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Espada, excused.

Senator Galiber.

(There was no response.)

Senator Gonzalez.

(There was no response.)

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator LaValle.

(There was no response.)
Senator Leichter.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Nolan.
(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Pataki.
(There was no response.)
Senator Paterson.
(There was no response.)
Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Solomon.
(There was no response.)
Senator Stafford.
(There was no response.)
Senator Stavisky.
(There was no response.)

Senator Tully.

(There was no response.)

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Ayes 41, nays 0.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 186, by Senator Cook, Senate Bill Number 2990, an act to amend the Criminal Procedure Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Cook.

SENATOR COOK: Mr. President, this bill provides that in cases where individuals are charged with certain enumerated crimes and cases where those individuals have previously been incarcerated, convicted on such crime or awaiting trial on another charge for one of the enumerated crimes, that the judge is not permitted to grant bail.

A couple of references. I have one statement here. It's noted that 80 percent

of all persons convicted of robbery have at least one prior felony arrest, and that more than 2,000 persons arrested in New York City in 1976 for new crimes are already wanted under bench warrants issued for absconding from recognizance or bail granted on a prior felony charge. This does not include the number arrested for new crimes before absconder warrants were issued on previous pending cases for the number not yet -- who are not yet apprehended.

That statement comes from a report issued February 13th, 1978, by Senator Ohrenstein's office, citing the situation that this attempts to remedy. Another similar type of statement: "Several academic studies on the continuing criminal habits of persons granted pre-trial release revealed startling conclusions.

"The Institute for Law and Social Research found that 26 percent of all felonies committed in the District of Columbia were committed by persons on some form of

conditional release. Another study by the U.S. Attorney's Office of over 500 indicted robbery defendants, reported a 70 percent re-arrest rate while on pre-trial release.

"While property crimes such as burglary evidence the highest recurrence rate, serious crimes against the person are repeated at an alarming rate. Up to 28 percent of all murders, 19 percent of all rapes are committed by persons on conditional release.

"For example --" and this is continuing with a quote -- "in my own state of Massachusetts, former Chief Judge Justice Walter McLoughlin, in a speech two and a half years ago, pointed out that 50 percent of all crime in certain Massachusetts committed -- counties were committed by defendants awaiting trial." That is from Senator Edward Kennedy.

I think that the case in support of this type of measure is well made by persons other than myself and with that, I would recommend its passage.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yeah, this bill which we've had a number of times before, on preventive detention, has been opposed by Senator Dollinger and Galiber and Connor and myself and Leichter, Markowitz, Montgomery Ohrenstein, Paterson, Santiago, Smith and Waldon, and I guess that's it.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 1st day of January.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 186 are Senators Dollinger, Gold, Markowitz, Montgomery, Ohrenstein, Santiago, Smith and Stavisky. Ayes 46, nays 8.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, without objection, I would like to be recorded in the negative on Calendar 153 previously passed.

ACTING PRESIDENT FARLEY: Senator Stavisky will be in the negative on 153, without objection.

THE SECRETARY: Calendar Number 187, by Senator Lack, Senate Bill Number 3498, an act to amend the Penal Law, in relation to possession and sale of fireworks.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Mr. President, this bill repeals the current provisions with respect to possession of fireworks and would substitute in their place, a multi-pronged amendment to the Penal Law which would establish various classifications of utilization of fireworks

which would range from a felony to a Class B misdemeanor.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I believe there's an amendment to this bill at the desk.

ACTING PRESIDENT FARLEY: We have it here.

SENATOR DOLLINGER: Yes, could I waive the reading of the amendment and be heard on the amendment, Mr. President?

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

SENATOR PRESENT: Mr. President, on a point of order.

Senator Dollinger's amendments to Senator Lack's bill are out of order since it violates Rule 6, Section 4(b), in that it is not germane to the original object of Senator Lack's bill which relates to penalties for fireworks, possession of.

SENATOR DOLLINGER: Mr.

President.

SENATOR PRESENT: Therefore, I ask that you rule Senator Dollinger's amendment out of order.

SENATOR DOLLINGER: Mr. President, before the ruling -

ACTING PRESIDENT FARLEY: Just a moment, Senator Dollinger.

SENATOR DOLLINGER: Point of order then, Mr. President. May I just inquire as to whether the issue of germaneness may be debated prior to the ruling of the Chair?

SENATOR GOLD: Yes.

ACTING PRESIDENT FARLEY: Go ahead.

SENATOR DOLLINGER: Prior to the ruling of the Chair, Mr. President, it seems to me that the amendment which I seek to have appended to this bill, which I think is a good bill by the way, and I'll talk about the bill in general when the amendment has been dealt with but the issue is germaneness, that is, is it relevant?

And first of all, this deals with the -- the bill as I understand it, involves a category of what's termed "weapon" and that is a firecracker, fireworks, it says in the sponsor's memo accompanying this bill and I just read it.

Current law does little to deter individuals from engaging in the potentially lucrative business of illicit sales of fireworks. The profits from the illegal sale of fireworks can be substantial. Regardless of the fireworks process -- possession, sold, the maximum penalty is a Class B misdemeanor.

People are killed or maimed each year by fireworks sold illegally in New York. Under the proposed law, specific possession or sale of fireworks would become more serious.

I would simply submit that the amendment which seeks to append assault weapons in the law of the state of New York, you can take the term "assault weapons" and just tie it right to the term "fireworks", just put a little "and" and put the term "assault weapons" and you would have the same exact rationale in

support of the assault weapon ban.

In addition, Mr. President, this bill involves possession of certain weapons, that is fireworks, penalizes that. It creates new categories in increased penalties.

I submit, Mr. President, that all of the provisions of the assault weapon bills that Governor Cuomo has proposed that are contained in this amendment do exactly the same thing. Nothing could be more germane than to amend the Penal Law to restrict access to assault weapons, to permit assault weapons in certain instances.

I submit, Mr. President, that this is -- exactly what the firework prohibition is trying to do we're trying to do for something that is far more dangerous, far more deadly than the ban on fireworks.

Mr. President, I believe it is germane, and I would think that this -- the order of the chair should be that it is germane and the amendment should be sustained on that basis.

ACTING PRESIDENT FARLEY: I thank you, Senator Dollinger, for your persuasive argument but I'm not quite convinced and I rule it's not germane.

SENATOR DOLLINGER: I appeal the ruling of the Chair, Mr. President.

ACTING PRESIDENT FARLEY: There's a motion to appeal the ruling of the Chair.

All in favor of sustaining the Chair will vote aye.

(Response of "Aye".)

Those in favor of overruling the Chair will vote nay.

(Response of "Nay".)

ACTING PRESIDENT FARLEY: I think the ayes have it. The chair is sustained.

SENATOR DOLLINGER: Mr. President, on the bill.

ACTING PRESIDENT FARLEY: On the bill, Senator Dollinger.

SENATOR DOLLINGER: I will attempt to be germane. It seems to me, Mr. President, this bill is a good bill. I commend

Senator Lack for the bill. I hope it passes. I think it does some very, very good things, but I would simply point out, Mr. President, I'm not aware of anybody stepping on the Long Island Rail Road. I'm not aware of anybody throwing firecrackers at people in New York City or throwing firecrackers at people in the city of Rochester and killing them.

With all due respect, this is a good bill. It takes an itty-bitty step in the right direction. Let's get on and do the real bill that moves us completely in the right direction: Restrict access to assault weapons.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of November.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 180...

ACTING PRESIDENT FARLEY: Hold it up for a minute.

Senator Montgomery, I'm sorry.

SENATOR GOLD: Negative on this bill, on the Lack bill.

ACTING PRESIDENT FARLEY: Okay. Senator Montgomery is in the negative on 187.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move that we adjourn until -- somebody else going to say something?

ACTING PRESIDENT FARLEY: Hold on.

SENATOR MONTGOMERY: I have a couple of no votes.

Thank you, Mr. President. I would like unanimous consent to be recorded in the negative on Calendars Number 163 -- 1 - 153.

ACTING PRESIDENT FARLEY: 153.

SENATOR MONTGOMERY: And 180.

ACTING PRESIDENT FARLEY: And 180.

Senator Volker?

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT FARLEY: Did 180 pass? Yes, it did.

Senator Dollinger.

SENATOR DOLLINGER: Just on a point of order, Mr. President. Did we do number 154? I didn't think we had done that. I just want to make sure.

ACTING PRESIDENT FARLEY: No, it did not pass, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Are there any other motions?

(There was no response.)

Seeing none, Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move that we

adjourn until Monday, February 28th at 3:00 p.m., intervening days to be -

ACTING PRESIDENT FARLEY: Hold it up.

Senator Present, we've just got a little housekeeping.

SENATOR PRESENT: Let's do it.

THE SECRETARY: Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, reports the following two bills directly for third reading:

Senate Bill Number 6150, by Senator Goodman, an act to amend the Tax Law.

And Senate Bill Number 6390, by Senator Larkin, Public officers Law and the Village Law.

ACTING PRESIDENT FARLEY: Without objection, reported to third reading.

Senator Present.

SENATOR PRESENT: Now, Mr. President, there being no further business, I move that we adjourn until Monday, February 28th, 3:00 p.m., intervening days to be

legislative days.

ACTING PRESIDENT FARLEY: The Senate stands adjourned until Monday, the regular hour, 3:00 p.m., intervening legislative days.

(Whereupon, at 4:55 p.m., the Senate adjourned.)