ALBANY, NEW YORK

April 12, 1994

3:43 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. The Senators will please find their seats. Will you please rise with me for the Pledge of Allegiance to the Flag.

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

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

(A moment of silence was observed.)

The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, April 11th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Sunday, April 10th, was read and approved. On motion, Senate adjourned.

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

read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

We have a report, Senator Present. Would the Secretary please read it?

THE SECRETARY: Senator Tully, from the Committee on Health, reports the following bill directly for third reading:

Senate Bill Number 6775-A, by Senators - Senator Tully and others, an act to amend the Public Health Law, in relation to virus information.

ACTING PRESIDENT FARLEY: Reported directly to third reading, without objection.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

We have no motions on the floor?

No motions on the floor.

Senator Present -

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: - what's your pleasure?

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

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

(Response of "Aye".)

Those opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

We're ready for the calendar if you are, Senator Present.

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

ACTING PRESIDENT FARLEY: Non-controversial.

THE SECRETARY: On page 5,

Calendar Number 248, by member of the Assembly Connelly, Assembly Bill Number 3254-A, an act to amend the Public Health Law, in relation to extending the good Samaritan liability shield -

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 354, by Senator Cook, Senate Bill Number 3558, an act to amend the Public Health Law -

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 385, by Senator Levy, Senate Bill Number 1305, an act to amend the Criminal Procedure Law, in relation to providing that commission of the traffic infraction "driving while ability impaired" -

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 34.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 391, by Senator Volker -

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 396, by Senator Cook, Senate Bill Number 2287, Environmental Conservation Law -

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 432, by Senator Levy, Senate Bill Number 79-A, an act to amend the Vehicle and Traffic Law and the Education Law.

SENATOR DOLLINGER: Lay it aside for Senator Hoffmann.

ACTING PRESIDENT FARLEY: Lay that bill aside.

ACTING PRESIDENT FARLEY: Senator Present, that's the first time through.

SENATOR PRESENT: Mr. President, I think it would be advisable if we stand at ease for a few moments.

ACTING PRESIDENT FARLEY: The Senate will stand at ease.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, would you recognize Senator Waldon, please.

ACTING PRESIDENT FARLEY: Senator who? Oh, Senator Waldon.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator Present.

My colleagues, my brothers and sisters, in spirit and in fact, Resolution 3106 was unique for me in terms of my time here in the Legislature.

It is a resolution which is commending those who have cooperated in the effort initiated by my office and my staff to help in the transition from a non-Democratic state to a Democratic state in South Africa, to wit, we are collecting books for the children of the school systems of South Africa and, in fact, the 10th Senatorial District has adopted a school, and with the cooperation of the embassy in Washington, Mr. Deconing, we are in the process of trying to put together a container full of books.

The interesting part, when I had a conversation -- I mean, my office had a conversation with the embassy was that there are no books in the Bantu School System. I can tell you that certain encyclopedia companies have given us as many as six sets of encyclopedias. One book company gave us 1000 books. Senator Hoffmann, in her kindness and understanding of the situation, has given us two boxes of books. The State University System out in Long Island has four pallets of books waiting for us to pick

up to send so that children of South Africa will have an opportunity to learn to read, so that they can understand what it means to have a true democracy, to understand that not only will the air they breathe be free, but the intellectual air that they breathe will be free.

So, I wanted to bring it to your attention that this resolution commends those who have helped with this effort, and in the same breath, I want to beseech each and every one of you, you must have some books that you no longer have a need for, and that you will do a great humanitarian thing if you will see that those books get to my office so that we can together in this cooperative effort, get them into the hands of the children of South Africa who will understand better not only freedom but that they have friends here in America and, specifically, in New York State and in this legislative body.

I thank you, Mr. President. I thank you, Senator Present.

ACTING PRESIDENT FARLEY: Senator

Present.

SENATOR PRESENT: Mr. President, can we take up the controversial calendar, please.

ACTING PRESIDENT FARLEY: Controversial. The Secretary will read.

Could we return to motions for a moment, Senator Present?

(Senator Present nods head.)

ACTING PRESIDENT FARLEY: Senator Holland, do you have a motion for us?

SENATOR HOLLAND: Mr. President, I wish to call up Senator Cook's bill, Print Number 2632-A, recalled the Assembly which is now at the desk.

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

THE SECRETARY: By Senator Cook, Senate Bill Number 2632-A, an act to amend the Environmental Conservation Law and the State Finance Law.

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

bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Holland.

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

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

THE SECRETARY: On page 5 of today's calendar, Calendar Number 248, by member of the Assembly Connelly, Assembly Bill Number 3254-A, an act to amend the Public Health Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: Explanation.

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

SENATOR MARCHI: Mr. President, some years ago we passed a good Samaritan provision which would hold harmless a good Samaritan or someone volunteering to help an individual in physical distress absent gross negligence and distance from a hospital or a clinic where such assistance might be rendered.

In 1992, the city of New York enacted Local Law 12 of the Laws of 1992 which required certain businesses, hotels, bars, a number of operators who dealt with the public, to have on hand, resuscitation equipment and other equipment for performing cardiopulmonary resuscitation and particularly mouth-to-mouth breathing by persons who might be available to render it on an emergency basis, only to find out that they were not subject to the original good Samaritan legislation, and then there was also the further -- not having that protection, there was a reluctance on the part of volunteers to provide that assistance.

The -- this would hold the proprietors of a business harmless absent gross

negligence from -- from litigation. It may even be defective -- a defective piece of equipment. This would not exempt the manufacturer of the equipment, but it would exempt those others that were contemplated under the provision of the Laws of 19... Local Law 12 of 1992.

So this would -- this has the - it has a -- the approving memo of the -- of the city of New York and has the support of the American Theaters, Lincoln Center for the Performing Arts, New York State Hospitality and Tourism Association, the New York City Hotel Association, and the opposition -- well, the opposition was in 1993 from the New York State Trial Lawyers Association. I don't know why they would object but they seem to have an objection to this.

In any event, having a good local law in place, I believe that we ought to extend the same rationale that we had adopted earlier on the principle of good Samaritan and not deny treatment where, if I'm to believe the memos that have been furnished to me, that sometimes a

delay of four minutes may mean the loss of life to an individual that -- to an individual required to be hooked up within a given period. Four minutes may be the measuring stick whether that person dies or survives.

I would hope that we will join our brothers in the Assembly to support this legislation.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: I'm sorry. I yield to Senator Solomon.

ACTING PRESIDENT FARLEY: Senator Solomon.

SENATOR SOLOMON: Mr. President, would Senator Marchi yield, please?

SENATOR MARCHI: Yes, Senator.

SENATOR SOLOMON: Senator, are you aware of any situations where any good Samaritans have been named as defendants in lawsuits as a result of -

SENATOR MARCHI: No, I'm not -

SENATOR SOLOMON: -- problems? Have -- Senator -- Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT FARLEY: Senator Marchi will.

SENATOR SOLOMON: Senator, have there been any restaurants or motels or hotels that have been named in lawsuits as a result of their supplying this equipment as of yet?

SENATOR MARCHI: There may be. I can't give you the name of one. I think the principle is certainly a defensible argument if it's to fend off impending litigation and creates an atmosphere where impedance is provided for those who might be weighing the consequences of intervening. I believe that - I don't believe there's any good reason why we shouldn't adopt this legislation.

SENATOR SOLOMON: Would Senator Marchi yield for one question?

ACTING PRESIDENT FARLEY: Senator Marchi, would you yield?

SENATOR MARCHI: Yes, Mr.

President.

SENATOR SOLOMON: Senator, do you know of any one instance where a, quote "good Samaritan" has not intervened because of pending liability up to this date in time?

SENATOR MARCHI: I can't answer yes or no on that, but if the answer was an absolute and total no and it was descriptive of the existing scene, I still believe this legislation would stand on its merits, and I see no good reason for providing an avenue for litigation or a deterrence where a more positive response to an emergency situation is provided.

SENATOR SOLOMON: Thank you.

SENATOR GOLD: Senator Marchi, would you yield to one question?

SENATOR MARCHI: Yes, Senator.

SENATOR GOLD: I'm sorry. I was distracted for a moment, but I don't think Senator Solomon asked this question. I just want to clarify something. Is there any definition or guidance any place, Senator, as to what would be "gross negligence" as opposed to

"regular negligence" in the following situations:

Supposing that one of these entities that had to buy the equipment obtained the equipment and didn't check it periodically. For example, some of this equipment, I think, can go stale. Supposing they have the equipment, and it does go stale and that is the cause of the damage. Now, someone could make an argument that not maintaining the equipment is negligence whereas, obviously, the only way they could be held responsible is if somebody could argue that that was in some way gross negligence. I mean, is there any guidance as to -- as to where that line would be drawn, Senator?

SENATOR MARCHI: Well, I believe you raise an important consideration. If there is a requirement for maintenance, the equipment may, just by the passage of time, become obsolete. There is a commensurate responsi bility on the part of the city of New York, those who -- who have the inspection -

inspectional facilities to require this and the means by which they can respond in a positive way to a circumstance they may have overlooked. They may have that power now, but certainly, I think that a response there would be indicated.

In any event, I see us in a weaker position not having -- not having this remedy at hand, and I see absolutely no advantage leaving the situation as we find it.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: If my distingu ished colleague from Staten Island would yield to just one more question.

The memos, Senator Marchi, are all interesting because, obviously, the entities that have to maintain this equipment are not what one would call the enemies of the people. I mean, the theaters, Lincoln Center and the Hotel Association are entities which, obviously, under the law, must have this equipment, and they do that. On the other hand, the part of

the Trial Lawyers' memo that does concern me - and I understand the Trial Lawyers. They obviously don't like to have these kind of defenses and I appreciate that but, Senator, the issue I raise is one where I think it is an area that maybe we can or we can not handle in this legislation. In other words, assuming that I was sympathetic to the hotels and to the theaters, it seems to me that if you have people who merely buy the equipment, comply with the law and leave it in a dust-filled closet and, God forbid, at a time it's needed it hasn't been maintained, I can see where somebody under existing case law, which I don't pretend to be familiar with, might very easily say that the failure to maintain the equipment is negligence and that, therefore, since it doesn't get to gross negligence, they've complied with the statute by having the equipment. But, in truth and in fact, unless the equipment is maintained, it really isn't living up to what we had hoped when the statutes were created. Isn't that something we can address in words?

SENATOR MARCHI: Mr. President, the Senator has never raised a frivolous objection or argument on the merits, so I'm going to put this over for 24 hours -

SENATOR GOLD: I would be very grateful.

SENATOR MARCHI: -- and ask them to see if there is a -- an answer that is rational in those circumstances.

SENATOR GOLD: I'm very grateful, Senator.

Senator, as usual, you are the ultimate gentleman. I appreciate it.

ACTING PRESIDENT FARLEY: Lay the bill aside.

SENATOR JONES: Excuse me. I wondered if the sponsor -- if I could also ask a question so that perhaps, if he has to research it, he could get mine answered.

ACTING PRESIDENT FARLEY: Senator Marchi, would you yield to a question -

SENATOR MARCHI: Yes.

ACTING PRESIDENT FARLEY: -- from

Senator Jones in regard to your bill that we just laid aside?

SENATOR JONES: You may already know the answer but if you don't, maybe you could get it for me.

I'm curious what kind of equipment we're talking about. Aren't we just talking like a mask and gloves for CPR, or are we talking defibrillators and oxygen?

SENATOR MARCHI: This is equipment that you get this thing going, and it supplies -

SENATOR JONES: An electric -- a defibrillator.

SENATOR MARCHI: So, it's not the very simplest equipment.

SENATOR JONES: Now you've got me concerned. Okay. We'll discuss it tomorrow.

ACTING PRESIDENT FARLEY: The Secretary will continue the controversial calendar.

THE SECRETARY: On page 8, Calendar Number 354, by Senator Cook, Senate

Bill Number 3558, an act to amend the Public Health Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation, Senator Cook.

SENATOR COOK: Lay it aside, please.

ACTING PRESIDENT FARLEY: Lay it aside. Did you say lay it aside?

SENATOR COOK: Lay it aside.

THE SECRETARY: Calendar Number 391, by Senator Volker, Senate Bill Number 4244-A, Civil Practice Law and Rules.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50, nays 2. Senators Farley and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 396, by Senator Cook, Senate Bill Number 2287, Environmental Conservation Law.

SENATOR OPPENHEIMER: Explanation.

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

SENATOR COOK: Mr. President, this is the bill that I have referred to as the "starve the bear" bill, which is probably why the environmentalists are opposed to it, because basically it's intended to keep people from getting lost in the mountains and never being able to find their way to the place where they're supposed to go to bed.

It permits, under the guidance of, in fact, the regulation of the Department of Environmental Conservation, that within the Catskill Park, businesses are enabled to put up directional signs. These are not advertising signs but directional signs at intersections.

I would find it very difficult to tell anyone the directions as to how to find a specific hotel in my district, because when I say "a left turn", you may think that a fork is a left turn; you may think that a 90-degree angle is a left turn, and you get -- you can get hopelessly lost, as I confess I sometimes do myself trying to find things on those country roads.

All this bill says is, when you come to that fork in the road or that intersection, there will be a little -- a little sign that will say "Joe's Motel This Way." It will be a small sign, I assume, a sign anyway that's of dimensions and of a type that's approved by the Department of Environmental Conservation to simply help people find businesses in the park.

SENATOR OPPENHEIMER: If the Senator would yield for a question.

SENATOR COOK: Sure.

ACTING PRESIDENT FARLEY: Senator Cook, will you yield?

SENATOR COOK: Yes.

SENATOR OPPENHEIMER: Is it not true that there are now signs permitted in the region?

SENATOR COOK: Senator -- Mr. President, Senator, the -- there are signs on the major highways, for example, on Route 28, telling you where to exit or what road to get off from, and that's the easy part. The difficulty is when those roads start branching and turning, it's very easy to quickly get lost. I would -- just as -- I would suggest that you ask Senator Galiber to yield, have him stand up and describe to you how you would reach his property from Route 28, and I think that once he gives you that description, you'll understand why you need some signs.

SENATOR OPPENHEIMER: Thank you, Senator.

And, you know, I hope I'll have the good fortune to go and see Senator Galiber's property one day and -- you've gotten into this discussion -- and then I will -- I will foray

forth, and pray for the best and follow the directions that are given to me verbally as best as I can.

It's not that I'm trying to deprive business -- on the bill, Mr. President. It's not that I'm trying to deprive business of the opportunity to conduct business, and I don't like the thought of visiters getting lost trying to find a hotel. However, we do have some signage, and what this bill says is there would be four additional signs for each business. Well, if you multiply that times the number of businesses in the Catskills, you can really end up with a heck of a lot of signs. And the environmentalists and also those people who want to continue to appreciate, as much as possible, the wilderness character of certain of our areas which are diminishing all too quickly, we feel that there has to be a balance struck between the commercial interests of the area and the visual integrity of the area. And it's no question it is a very delicate balance, but we have to do our best to prevent the degradation

of a beautiful, open space that we are trying to maintain the integrity of.

So, the Environmental Planning Lobby, for one, is opposed to this bill, and we have several Senators that have in the past voted against this bill, and those Senators are Connor, Dollinger, Gold, Jones, Leichter, Montgomery, Ohrenstein, Onorato, Smith, Solomon, Stachowski, Stavisky. And on the other side of the aisle, we have Goodman, Hannon, Holland, Lack, Padavan, Spano and Velella.

SENATOR COOK: Mr. President.

ACTING PRESIDENT FARLEY: Senator Cook.

SENATOR COOK: Senator Oppenheimer, I would just like to point out, this is only a one-cigar bill. The little cigars that they put on the signs, it only gets one cigar so -

SENATOR OPPENHEIMER: Well, if my colleague will permit me, this really is not a cigar, though I think it might be appropriate in this instance because it certainly is something

that the EPL would oppose as they oppose cigars, but this is a smoke stack. It is a single smoke stack.

Thank you for permitting me the correction, Mr. President.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 396 are Senators Connor, Dollinger, Gold, Jones, Kruger, Lack, Leichter, Markowitz, Montgomery, Ohrenstein, Onorato, Oppenheimer, Padavan, Smith, Solomon, Stachkowski and Velella. Ayes 36, nays 17.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 432, by -

ACTING PRESIDENT FARLEY: Senator

Kuhl.

SENATOR KUHL: Yes, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Number 391, please?

ACTING PRESIDENT FARLEY: Senator Kuhl will be in the negative on 391.

SENATOR KUHL: Thank you.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: If we have voted on 396, I would like unanimous consent to be voted in the negative on 396.

ACTING PRESIDENT FARLEY: Without objection.

THE SECRETARY: Calendar Number 432, by Senator Levy, Senate Bill Number 79-A, an act to amend the Vehicle and Traffic Law and the Education Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

Senator Present, that concludes the calendar.

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

ACTING PRESIDENT FARLEY: We will stand at ease.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Levy, I would like to announce an immediate conference of the Republicans in Room 332.

ACTING PRESIDENT FARLEY: There will be an immediate conference of the Majority in Room 332, Republican.

SENATOR PRESENT: Mr. President, there being no further business, I move we adjourn until tomorrow at 11:00 a.m.

ACTING PRESIDENT FARLEY: The Senate stands adjourned untill tomorrow at 11:00 a.m.

(Whereupon, at 4:27 p.m., the Senate adjourned.)