ALBANY, NEW YORK

May 23, 1994

5:03 a.m.

REGULAR SESSION

SENATOR MICHAEL F. NOZZOLIO, Acting President

STEPHEN F. SLOAN, Secretary.

P R O C E E D I N G S

ACTING PRESIDENT NOZZOLIO: The Senate will come to order. Please join me in reciting the Pledge of Allegiance.

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

Members of the Senate, we are very pleased today to have with us a visiting clergy, Father Joseph Catanise, who is currently assistant pastor of Holy Trinity Church in Webster, where he also serves as chaplain at Rochester General Hospital.

Recently, Father Catanise, a very close personal friend of mine, has been named Pastor of Dansville, New York.

Welcome, Father Catanise.

FATHER CATANISE: Let us pray.

Good and gracious God, we ask Your blessing upon the people of the state of New York and this Senate which they have chosen.

Loving God, we ask You to open their hearts and their minds to enact laws that

promote and protect the common good.

May their work help to create a just society based upon the principles that all life has value and that every human person has dignity.

Fill them with wisdom and give them courage that they may be true leaders of Your people to face the challenges that are ever before us.

May they enact laws that chal lenge ignorance, prejudice, biases and discrimination of every kind; that create equal opportunities for learning and employment; that promote the tearing down of barriers to the handicapped, and to give access to health care to all, that preserve and protect our environment and that foster the arts and culture. Through their sound governing, may they eradicate the violence that plagues our society and usher in an era of harmony and peace.

We ask all these things in Your name. Amen.

ACTING PRESIDENT NOZZOLIO: Thank you, Father.

The Secretary will read the Journal.

THE SECRETARY: In Senate, Sunday, May 22nd. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Saturday, May 21st, was read and approved. On motion, the Senate adjourned.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT NOZZOLIO: Hearing no objection, the Journal stands approved as read. The order of business:

Senator Stafford.

SENATOR STAFFORD: Could I please interrupt and announce an immediate meeting of the Committee on Finance in Room 332?

ACTING PRESIDENT NOZZOLIO: There will be an immediate meeting of the Committee on Finance in Room 332.

Order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

Amendments are offered to the following Third Reading Calendar bills: By Senator Holland, page 5, Calendar 301, Senate Print 6309-B.

By Senator DeFrancisco, page 15, Calendar 646, Senate Print 6579-A.

By Senator Seward, on page 16, Calendar Number 679, Senate Print 4260-A.

And by Senator Farley, on page 23, Calendar 815, Senate Print 5038.

By Senator Skelos, on page 33, Calendar 967, Senate Print 6733.

And by Senator Daly, on page 35,

Calendar Number 93, Senate Print 5407-B, and I move that these bills retain their place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: The amendments are received.

SENATOR LACK: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Lack.

SENATOR LACK: Mr. President, I apologize for standing up and breaking one of our rules, but I do so only in the spirit that it's a good rule to break, to introduce a friend of mine who is sitting next to me in our chamber.

He is the Speaker of the Oregon House, Speaker Larry Campbell, who is not only a close friend, he's the current Chair of the state and federal Assembly of the National Conference of State Legislators and the president of the National Republican Legislators Association, and I can tell you that Speaker Campbell, who came over here promptly at 3:00 o'clock for session because in Oregon, the 3:00

o'clock session is at 3:00 o'clock, is happy to be here and part of our Senate proceedings today.

And, Mr. President, I would ask you to extend a welcome on behalf of all of us in the house.

ACTING PRESIDENT NOZZOLIO: Thank you, Senator Lack.

Senator Farley.

SENATOR FARLEY: On behalf of the rest of the Senate, I would like to also welcome Speaker Larry Campbell, a colleague that I have served with with the National Republican Legislators as the past president.

Larry is an outstanding Speaker and one that is recognized throughout the United States. He has been very active in our National Conference of State Legislators and it's a real honor to have you here in what the Smithsonian has called, Larry, the most beautiful room in America. Welcome.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT NOZZOLIO:

Senator Gold.

SENATOR GOLD: I heard what Senator Lack said and I want to say that I not only want to welcome the Speaker but welcome his watch, because apparently your watch works better than our clocks in New York, and I also want to welcome him because I understand that while he is now the Speaker in his third year, I believe, he did serve his people in a real capacity for eight years when he carried on the good fight as a minority leader.

ACTING PRESIDENT NOZZOLIO: On behalf of Senator Marino, and all of the members of the Senate, we welcome the distinguished Speaker to the chamber today and hope he enjoys the proceedings.

(Applause.)

ACTING PRESIDENT NOZZOLIO: The Secretary will read substitutions.

THE SECRETARY: On page 13 of today's calendar, Senator Kuhl moves to discharge the Committee on Rules from Assembly Bill Number 8046 and substitute it for the

identical Calendar Number 589.

On page 25, Senator Nozzolio moves to discharge the Committee on Rules from Assembly Bill Number 11348-A and substitute it for the identical Calendar Number 860.

On page 32, Senator Seward moves to discharge the Committee on Rules from Assembly Bill Number 11426 and substitute it for the identical Calendar Number 953.

On page 49, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 10718 and substitute it for the identical Calendar Number 809.

On page 49, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 10720 and substitute it for the identical Calendar Number 810.

On page 42, Senator Holland moves to discharge the Committee on Finance from Assembly Bill Number 11537-A and substitute it for the identical Calendar Number 1077.

ACTING PRESIDENT NOZZOLIO: Substitutions ordered.

Senator Present.

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

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

THE SECRETARY: On page 8, Calendar Number 398, by Senator Marchi, Senate Bill Number 6521-A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT NOZZOLIO: Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 892, by Senator Daly, Senate Bill Number 7860, an act to amend the New York State Urban

Development Corporation Act.

ACTING PRESIDENT NOZZOLIO: Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 902, by Senator Tully, Senate Bill Number 6519, an act to amend Chapter 640 of the Laws of 1990 amending the Public Health Law.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT NOZZOLIO: The

bill is passed.

THE SECRETARY: Calendar Number 922, by Senator Cook, Senate Bill -

SENATOR PRESENT: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 924, by member of the Assembly Colman, Assembly Bill Number 6862-C, an act to amend the Executive Law, in relation to state and local natural and man-made disaster preparedness.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Results.

THE SECRETARY: Ayes 39.

ACTING PRESIDENT NOZZOLIO: The

bill is passed.

THE SECRETARY: Calendar Number 955, by Senator Cook, Senate Bill Number 573-A, an act to amend the Lien Law.

ACTING PRESIDENT NOZZOLIO: Read the last section. There is a local fiscal impact note at the desk. Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Results.

THE SECRETARY: Ayes 39, nays 1, Senator Rath recorded in the negative.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 956, by Senator Skelos, Senate Bill Number 12...

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 1004, by Senator Maltese, Senate Bill Number 3302-A, an act to amend the Vehicle and Traffic Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside by Senator Gold.

THE SECRETARY: Calendar Number 1005, by Senator Lack, Senate Bill Number 4044-A, an act to amend the Public Authorities Law.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside by Senator Smith.

THE SECRETARY: Calendar Number 1031, by Senator Farley, Senate Bill Number 5485, an act to amend the Banking Law.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Ayes 39.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1042, by Senator Kuhl, Senate Bill Number 3539-C -

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

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

SENATOR PRESENT: Also for Senator Johnson's bill, the next one, 1050.

ACTING PRESIDENT NOZZOLIO: Calendar Number 1050 is laid aside for the day.

THE SECRETARY: Calendar Number 1070, by Senator Nozzolio, Senate Bill Number 7581, an act to amend the Navigation Law.

ACTING PRESIDENT NOZZOLIO: Last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1077, substituted earlier today by the Assembly Committee on Rules, Assembly Bill Number 11537-A, an act to legalize, validate and confirm certain proceedings and actions of the town board of the town of Orangetown.

ACTING PRESIDENT NOZZOLIO: Home rule message is at the desk. Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Ayes 39.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

Senator Present.

SENATOR PRESENT: Can we stand at ease for a few moments?

ACTING PRESIDENT NOZZOLIO: The Senate will stand at ease.

(Whereupon, the Senate stood at ease from 5:15 p.m. to 6:00 p.m.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, can we return to the controversial calendar - no, I think you have a report of a standing committee.

ACTING PRESIDENT FARLEY: The Secretary will read the report of the standing Committee on Finance.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: State Director of Probation and Correctional Alternatives, Barbara Broderick, of Albany.

ACTING PRESIDENT FARLEY: Senator Stafford.

SENATOR STAFFORD: Mr. President, it's a pleasure for me to rise and support the nomination of Barbara A. Broderick, and I think -- you fellows hear me all right over there? Good, yeah. I could hear you.

I think too often we don't take note or we don't give our system the credit that it deserves, because this again is a nomination which is an example of the system working and a fine public servant, a professional, being nominated as Director of the Probation and Correctional Alternatives Department.

Ms. Broderick's resume is excellent. She has a fine record, as far as attending formal schools, universities. She's been a consultant, and she is one who I think will really do a job in a department that is needed in our state. Again, I'm talking about some generalities that I don't know that much about, but we talk about prison overcrowding. We talk about double bunking.

I mentioned earlier today that I have a friend who's been in the Correction Department 52 years. He was known in the department and throughout the nation as an excellent warden. He wasn't perfect, but he knew the work, and he said to me after being in the department for 52 years, that as far as he's concerned, between 25 and 30 percent of the people that we incarcerate, we shouldn't be incarcerating. They should be in programs such as probation and correctional alternatives.

Ms. Broderick has worked in the Division of Parole. She's had a top responsi bility there. As I said, she understands the field, and I compliment all, including our chief executive, who have been responsible for her being nominated for State Director of Probation and Correctional Alternatives, and I move her confirmation.

ACTING PRESIDENT FARLEY: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I'm delighted to also speak in support of the nomination of Barbara A. Broderick for Executive Director of the Division of Probation and Correctional Alternatives. I'm impressed with her resume, as I think all of my colleagues are upon reading it.

Since July of 1993, she's been serving as the acting director -- or the executive director. This appointment will make her the full director.

From May of 1984 until July of 1993, she was the Director of Policy Analysis and Information at the Division of Parole where she had responsibility for the operation of the division's policy analysis and information with an enormous responsibility of $10 million in budget, and during that time I had the opportunity to see some of the work that she did, and to help along with a number of people in the Department of Corrections at that time, see the development of a sex offender treatment program in Corrections, and an extremely important component of that program was the

training of parole officers to address the warning signs and recognize the recidivism of warning signs of sex offenders upon release, and while many of my colleagues and most of the general public out there wish that we could keep all sex offenders incarcerated permanently, that's really not an option for us, and it's one of the most difficult things that we have to face as lawmakers, the reality that these people who we find the most loathsome among the criminal element will be back amid society, and we have to find ways to plan for their return and to equip those people in parole and also in probation with ways to better handle them to ensure that they are either getting the treatment they need or that they are returned promptly if they are violators.

In the case of probation it's even more difficult, because part of Ms. Broderick's very difficult job as Director of Probation and Correctional Alternatives is going to be to find programs and work with counties to create the programs for sex offenders, as well

as other offenders who are not sentenced to prison time. Not that we wouldn't like to see them sentenced, but it's sometimes very difficult to make the charges stick, especially when you're dealing with youthful victims, but the best way for us to reduce the crimes of sex offense against women and children in this state is to prevent that from happening in the first place by providing adequate treatment so that we can get those identified sex offenders back on track. It won't work for everyone but let's hope that it's going to work for enough of them that we will reduce the number of sentenced sex offenders winding up in the Department of Corrections further down the road, and obviously that's the best way to reduce the number of victims in this state.

So I am very delighted that we have somebody who is willing to take on the extremely difficult task at a time of budget cuts and increased needs for the correctional system on all levels. Dealing with the communities is probably one of the hardest in

networking, but Barbara Broderick has demon strated a wonderful ability to do that and a great degree of resourcefulness. So I look forward to seeing her attain enormous success in that job.

Congratulations, Barbara.

ACTING PRESIDENT FARLEY: The ranking member of the Committee on Finance, Joseph Galiber.

SENATOR GALIBER: Thank you, Mr. President. He ignored me before.

Mr. President, there are rare occasions in this body when we have an opportunity to confirm a nomination that the Governor of this great state of ours sends up. Sometimes we get some clinkers, to use the vernacular.

Barbara Broderick comes to us today with an excellent resume, but resumes don't always do it. We can look at resumes and they're fine, but you have to have built into that resume, the ability to get it done, and Barbara is capable of getting it done. I want

to congratulate her family who is with her today. You've done an excellent job, and we have been the primary beneficiaries of your excellent work.

Barbara comes to us at a time when our entire criminal justice system is failing us, and that we have to revamp it, and she comes to us at a time when the prison population is so crowded that we're thinking in terms of alternatives to incarceration. She comes to us at a time when there's a need for the programs that were mentioned before, programs where probation is dealt out by a sentencing judge or to a plea bargaining with the district attorney, prosecutor, if you will, who has that responsibility, so there's an early opportunity to keep people out of our system.

However, if we give the case loads to the probation department that are too heavy, we miss a wonderful opportunity, because built into those programs are some that we can save. Can't save them all. We know that. We here in this body have a responsibility to give

to Ms. Broderick the tools with which to do this, so that we won't have just case loads out there, or we won't have just programs out there.

We know that our prison popu lation is getting to the point where it's almost what they refer to as a "zero sum" and when it reaches that point, it's going to be a question of one in and one out. We want to make sure they let the right person out, and if -- we can accomplish that if we're careful about who we put in.

I would not want to see, Ms. Broderick, in your capacity that you've earned, and rightly so, in the time that you have been there -- this is a relatively new agency as we measure things in government. 1985. That's new. That's not an old agency, so there's a number of experimentals -- experiments going on.

Someone mentioned in our Finance Committee meeting this afternoon about work release. It wasn't really relative but in a

sense it's an example of what I'm sure you will not let happen. What we did, we almost ruined a good program which is work release. We ruined a program that can work. We ruined it because the overcrowdedness in our prisons and our institutions here in this state got to the point where they were just letting people out with no supervision, no guidance, no understanding. They were floating around out there, and then when someone does absconder and as many -- the finger is pointed at someone and we go about the business of changing our work release program.

Ms. Broderick, you won't let that happen in probation in the new capacity that you will be serving in because you have the ability and the background and the experience, if you will, to see to it to the best of your ability and resource that we give you that you see that these programs work.

And, Mr. President, I'm happy to second the nomination of a very qualified person who I believe in troubled times will help to be an asset to our criminal justice system in the

state of New York.

ACTING PRESIDENT FARLEY: On the nomination, all in favor say aye.

(Response of "Aye".)

Those opposed, nay.

(There was no response.)

The nominee is confirmed.

It's my understanding that Barbara Broderick is in the gallery with her family. Barbara, on behalf of the New York State Senate and personally as your neighboring Senator, let me congratulate you for the fine job that you've been doing. Congratulations on being confirmed by the New York State Senate. We're very proud of you and the job that you're doing. Congratulations.

(Applause.)

You also got got a great hand from your family up there.

MS. BRODERICK: I knew I would.

ACTING PRESIDENT FARLEY: Thank you.

The Secretary will read the rest

of the nominees.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Member of the New York State Hospital Review and Planning Council: Patricia Joy Numann, M.D., of Syracuse and William F. Streck, M.D., of Cooperstown;

Member of the Small Business Advisory Board: Clarence L. Dufort, of Glenville and Catherine Maiorisi, of New York City;

Member of the Council on Human Blood and Transfusion Services: Alicia Garcia, M.D., of Staten Island and Morton Spivack, M.D., of New York City;

Member of the Mental Health Services Council: Gail B. Nayowith, of New York City;

Member of the State Health Research Council: Verne M. Chapman, Ph.D., of East Aurora;

Member of the State Medical

Advisory Committee to the Department of Social Services: Ana O. Dumois, Ph.D., of New York City;

Member of the Board of Visitors of the Roswell Park Memorial Institute: Patricia Joy Numann, M.D., of Syracuse.

ACTING PRESIDENT FARLEY: On the nominations, all in favor please say aye.

(Response of "Aye".)

Those opposed, nay.

(There was no response.)

The nominees are confirmed.

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

SENATOR PRESENT: Sure.

ACTING PRESIDENT FARLEY: There's some motions on the floor.

Senator Libous, you have a motion for us?

SENATOR LIBOUS: Thank you, Mr. President.

On page 50, I offer the following amendments to Calendar Number 854,

Senate Print 7485, and ask that said bill retain its place -

ACTING PRESIDENT FARLEY: Without objection.

SENATOR LIBOUS: -- on the Third Reading Calendar. Mr. President, I have one other one, if I may.

On page 49, Calendar Number 847, Senate Print 6927-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection. Thank you, Senator.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT FARLEY: Senator Spano.

SENATOR SPANO: Remove the star on Calendar 809 and 810.

ACTING PRESIDENT FARLEY: 809 and 810 are starred at the request of the sponsor.

SENATOR SPANO: Remove the stars.

ACTING PRESIDENT FARLEY: Remove the stars. I'm sorry. Correction.

Senator Present.

SENATOR PRESENT: Mr. President, let's try the controversial calendar.

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

THE SECRETARY: On page 28, Calendar Number 892, by Senator Daly, Senate Bill Number 7860, an act to amend the New York State Urban Development Corporation Act.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47, nays 1, Senator Hannon recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 956, by Senator Skelos, Senate Bill Number 1240-A, an act to amend the General Obligations Law.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 1004, by Senator Maltese, Senate Bill Number 3302-A, an act to amend the Vehicle and Traffic Law.

SENATOR GOLD: Lay it aside.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 1005, by Senator Lack, Senate Bill Number 4044-A, an act to amend the Public Authorities Law, in relation to creating commuter railroad police departments.

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 48.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present, that's it for -

SENATOR PRESENT: Mr. President, I ask that we stand at ease again, please.

ACTING PRESIDENT FARLEY: The stand will stand at ease.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President.

I understand that 1005 slipped through. Is that bill still in the house?

ACTING PRESIDENT FARLEY: It's out of the house. It flew right out of here.

SENATOR LEICHTER: It slipped all the way out of the house?

ACTING PRESIDENT FARLEY: Well,

it passed with overwhelming support.

SENATOR LEICHTER: Mr. President, after first congratulating the desk for its expeditious work -

ACTING PRESIDENT FARLEY: They're very efficient up here.

SENATOR LEICHTER: -- may I please be -- may I have unanimous consent to be recorded in the negative?

ACTING PRESIDENT FARLEY: Without objection, Senator Leichter will be in the negative on 2270 -

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Stafford.

SENATOR STAFFORD: Please, could I announce an immediate meeting of the Committee on Finance in Room 332?

(Whereupon, the Senate stood at ease.)

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

ACTING PRESIDENT SPANO: The Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President, can we return to reports of standing com mittees?

ACTING PRESIDENT SPANO: The Secretary will read a report of standing committees.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following two bills directly for third reading: Senate Bill Number 8502, by the Senate Committee on Rules, an act relating to making appropri ations to the support of the operating expenses of the New York City Transit Authority.

Also, Senate Bill Number 8504, by the Committee on Rules, an act to provide for payments to municipalities and to providers of medical services under the Medical Assistance Program. Both bills reported directly for third reading.

ACTING PRESIDENT SPANO: Without

objection, third reading.

Senator Present.

SENATOR PRESENT: Mr. President, is there a message -- messages of necessity on 1080?

ACTING PRESIDENT SPANO: No, they're not at the desk.

SENATOR PRESENT: Are you sabotaging this? Call up 1080, please.

ACTING PRESIDENT SPANO: The Secretary will read Calendar 1080.

THE SECRETARY: Calendar Number 1080, by the Senate Committee on Rules, Senate Bill Number 8502, an act relating to making an appropriation to support the operating expenses of the New York City Transit Authority.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Now, may I ask, is there a message of necessity or a message of appropriation at the desk for this bill?

ACTING PRESIDENT SPANO: There

are no messages at the desk for this bill.

SENATOR GOLD: Can I ask you to hold one second, please? I'm sorry.

ACTING PRESIDENT SPANO: Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

Unless Senator Gold has a message over there, I would like to -- you have a message, Senator Gold?

SENATOR GOLD: You want to speak on this bill?

SENATOR PADAVAN: Yes.

SENATOR GOLD: I have no objection.

SENATOR PADAVAN: I am concerned, Mr. President, about the fact of your response to the Majority Leader indicating there is no message. I think it's important for the body here to know what particular bill we're talking about and what the consequences of not acting upon it today are.

This bill represents a $46

million appropriation of dedicated revenues to MTA, specifically the Transit Authority, as well as the Manhattan and Bronx Surface Transit Authority, and the Staten Island Rapid Transit Operating Authority, as well as an $18 million plus appropriation for CHPS which includes $4 million for the city of New York.

Now, we're advised by the MTA that unless these appropriations are received forthwith, they will be required to develop some interim financing which will cost us money. These are payroll appropriations. There are no discretion -- there is no discretion associated with these expenditures, and I cannot fathom any reason, particularly the fact that we have, week after week, dealt with emergency situations as the need would arise and this certainly falls in that category.

SENATOR GOLD: Mr. President.

SENATOR PADAVAN: I will be finished in a minute. You wanted to ask me a question? I will be finished in a minute.

So I would urge the Governor or

anyone else who may be within the sound of our voice, to send us that message as promptly as possible, hopefully before this day ends so that these funds can flow to the MTA and to those authorities under their jurisdiction.

I believe I was asked to yield to a question.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yeah, Mr. President.

I appreciate Senator Padavan explaining the bill. I would just like to ask a question if you would yield, Senator. The bill is dated, I believe May 23rd. Senator, do you know when the bill got back from the printer?

SENATOR PADAVAN: Senator, I do not know, but I think it's -- if I can answer that question fully. When it got back from the printer is irrelevant to the fact that there is a justifiable, established, confirmed need today. Now, whether that bill got back an hour ago or a day ago or whenever, doesn't change

that fact. We are in a crisis situation with respect to this particular matter, and it has to be viewed in that context, and the printing of the bill in terms of time frame is irrelevant.

SENATOR GOLD: Would the Senator yield to a question?

ACTING PRESIDENT SPANO: Senator Padavan, would you continue to yield?

SENATOR PADAVAN: I'm sorry. Yes, Senator.

SENATOR GOLD: Senator, I'm not really sure about this stuff. Is it possible for the Governor to issue a message of necessity before the bill exists and is in print?

SENATOR PADAVAN: Is it possible?

SENATOR GOLD: Yeah.

SENATOR PADAVAN: In this particular scenario, it was because as of last Thursday, we're advised that the Governor's office discussed with Finance staff and others in both houses, the fact that he would be sending up this bill so that -- and he has not

-- with a message, so obviously, he's aware of it, knew of its content, and the filling in of a number, if that would be the thing you're talking about is irrelevant again.

SENATOR GOLD: Would the Senator yield to a question?

ACTING PRESIDENT SPANO: Senator Padavan, will you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT SPANO: The Senator yields.

SENATOR GOLD: Senator, I'm just asking. My understanding, just so we have the facts out on the table, is that the bill that was discussed, if there was such a discussion - and I understand there was some talk of a Governor's bill -- was not this bill. It had - that this bill has other elements in it than were discussed with the Governor so, Senator, I can't believe you're suggesting that the Governor should prepare messages of necessity, have them signed, have language in them that has no relevance to the bill and just fill in the

numbers at the last minute.

My understanding, Senator Padavan, is that when a bill is in existence, the bill is submitted to the Governor, the Governor's counsel or whoever looks at the bill, sees what it is and the impact, and then the Governor makes a decision on the message of necessity. Don't you think that's a prudent way to act?

SENATOR PADAVAN: Look, Senator, prudence and necessity sometimes are not necessarily coincident. The fact remains that the Governor had an opportunity and gave us full indication that he would be sending a bill up with regard to the MTA and its appropriation with a message today. He did not do so, which came as somewhat of a disappointment to all of us, particularly those of us from the city of New York who are involved with the MTA and the Transit Authority and the other authorities listed.

Now, we had to draft this bill, and I think we did so in a responsible manner.

If there is something in this bill that the Governor did not anticipate, I'm unaware of it, but there's nothing in this bill that I can see that would not be provided in the normal course of events had we passed a budget, which we have not done to this date.

So if your question is, does the Governor have to know what's in this bill to send us a message, the answer is yes. Does he know? The answer is also yes. Has he suggested we take something out? To my knowledge, no. Has he sent up his own bill with a message? Again, the answer is no. So here we are with the only game in town that provides the resources that are necessary, and there is no message.

Now, I don't think the failure is on our -- is on our part. I think we're doing what we are expected to do.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yeah, Mr.

President, on the bill which, to begin with sounds kind of silly, although maybe not. Maybe that message will come flying in by the time we finish the discussion.

Mr. President, I certainly don't have a problem with meeting needs as we go along. I'm as frustrated as so many other people are, the budget delays and we don't have to go into all of that but, Mr. President, the -- I am informed that this bill was returned to the Senate at 4:00 o'clock today, and I have no idea whether or not at 4:00 o'clock, 4:05, 4:30 or at at any point, whether the bill was or was not submitted to the Governor for a message. I don't know whether the Governor's counsel has communicated to the Senate as to what his intentions are. It would seem to me that it would be a logical thing to do to have somebody from the counsel's office in -- on your side of the aisle call the Governor's office and find out, we either are or are not getting a message. If the Governor doesn't give a message, then we know we can leave here. If he

says he's sending one, we might stay, but without getting involved as to right or wrong between the Governor, this house, the Assembly or anybody else, I certainly think that the way adults conduct their lives is to do logical things.

Now, the bills have been reported out. Whether it's the Governor's bill or not, obviously it's not since there are things in here which the Governor apparently told people that he would not put in, but it would seem to me that the proper way, the non-political way, the way that doesn't set up straw people is for somebody on your side of the aisle to make a simple call downstairs and then let us all know whether or not the Governor says no, then you make all the political speeches you want. If the Governor says yes, then we can wait and get it, but other than doing that, I think we make a charade.

If people, Senator Padavan, have the need for this money, the Democrats are here. We are here. While there's a republican

convention in New York, your people are here. The Senate has been doing work today and I'm glad of that, but at this point in time, I don't understand what we're doing. I would be grateful if the Majority Leader's office would call down and then tell us all, we're either getting a message or not, and then we can either leave here or wait and handle this in some dignified manner.

SENATOR PADAVAN: Mr. President, if I may respond to what I believe was a question from Senator Gold, and I would like to advise him, as I think I did, perhaps not with the precision that he requires. At 4:30 this afternoon, the bill before us was presented to the counsel in the Governor's office. They were made fully aware of its content, and a request was made for a message of necessity. That's two and a half hours ago. So, therefore, I think we answered part of Senator Gold's question. "When was this presented to the Governor?"

The second part of his question is, "What was the response? Did the Governor

say yes or did he say no?" And the answer to that question is they said neither. "Stay tuned, we'll let you know", and we're still waiting. So I think again to repeat myself, I believe the Senate and its fiscal committees did what we would expect them to do in an orderly, appropriate manner, recognizing the emergency that we're facing and doing it to the best of their ability.

SENATOR GALIBER: Mr. President.

ACTING PRESIDENT SPANO: Senator Levy.

SENATOR LEVY: Yeah, Mr. President.

Let me just supplement what Senator Padavan said. We have all on a bipartisan basis worked very, very hard to hold the fare for 1994 and hopefully 1995 for the Transit Authority, and we have a $26 million hold to begin with based upon a determination by the city that they're not going to make their historic contribution on the operating side which puts pressure on the agreement for 1994

for the fare.

If we don't do this bill tonight as Senator Padavan indicated, by the time that we leave here tonight, what's going to happen is that the MTA is going to have to do short-term financing, is going to have a signifi- cant fiscal impact and is going to add to the city's $26 million renege on the operating side.

I am told that the financing that the MTA will have to do to be able to meet their payroll will have at least a $4 million-plus impact. So that underscores the necessity to act as it relates to the Transit Authority's payroll.

But, Senator Gold, in regard to the questions that you posed to Senator Padavan, let's go through the chronology of how we and the Assembly really are briefed on what the problem is. We didn't go down to the second floor. The Assembly didn't go down to the second floor. On Thursday, the Governor asked the staffs from each house to meet with the Governor's staff to talk about this acute

problem of the need to fill this hole to meet the Transit Authority's payroll.

So, Senator Gold, if you're saying that we are in the predicament that we are in here tonight because there is certain language in that bill that the Governor may not like, where's the Governor's bill? He's the one that said that there was a major problem, called the staffs down, said we have to deal -- we have to deal with the Transit Authority's payroll. That was Thursday night. If he had sent up a bill and it was acceptable to both houses, we wouldn't need a message. The bill would have been introduced, and with the legislative days, Friday, Saturday, and Sunday, we would all be out having dinner now and not standing around talking about a message that's not forthcoming. The Governor recognized the urgency of meeting the Transit Authority's payroll. Where is his bill, so it could have been introduced Thursday or Friday and passed today?

So I have to tell you that - that I'm really -- I'm not only surprised but

I'm mystified by the fact that we don't have a bill from the second floor to pay the Transit Authority's payroll so that the MTA doesn't have to go out tomorrow and borrow to meet that payroll. And another important part of this bill, and it also impacts the city, that has to do with meeting the first CHPS payment on the operating side and given the harsh, intolerable winter and the expenditures that localities never, ever anticipated, given the fact that nobody could anticipate this winter, they need that CHPS funding, the CHPS operating funding, and that's a part of this bill.

So this bill not only helps the Transit Authority, the city get CHPS money, but it also helps every other locality in this state, and we really ought to get that message up here right away, so that if the Governor's listening, I hope he'll sign off on that message, send it up here so we can pass this bill so the MTA doesn't have to borrow from the Transit Authority and we can get the monies to all of the localities for CHPS operating.

ACTING PRESIDENT SPANO: Senator Galiber.

SENATOR GALIBER: Senator, would you yield to a question?

SENATOR LEVY: Yes.

SENATOR GALIBER: Senator, we found this bill on our desks, as Senator Gold pointed out, just about 4:00, 5:00 o'clock, 4:30, whatever the case may be. If the aid to locality bill had passed, which obviously has not yet, we recognize this has been for four years, the appropriations have been there, the monies have been appropriated, they have been scheduled out. What is there about this bill that would not have been in the aid to localities? I guess what I'm suggesting is that if, in fact, the Governor wants this, and we do also, by the way, we're at a distinct dis advantage, Senator, and I'll come back to the question, because we're not part of the negotiations that go on down on the second floor or wherever these negotiations take place.

But the fact of the matter is, is

there really a sense of urgency that we have to pass this today? We recognize that there are contractors and there are persons out there that we are also concerned with and we want to see paid.

Before we had our Finance Committee meeting, I asked the chairman of Finance whether or not we could put this bill over, if no more than just later on this evening, but the fact that you have given us information in regard to the fact that you've been down negotiating with the Governor or someone on your staff -

SENATOR LEVY: Staffs have.

SENATOR GALIBER: When I say "you", I know we have very little to do with all that goes on here, unfortunately. Staff people, and that's to their credit have it, but they have been negotiating. What is in this bill that is not in the Governor's bill, because if the Governor had a bill downstairs and this isn't different or had added something to it, we would have a message of necessity.

What I suggest, Senator, in all due respect, is that what you're doing here - because there's no message over in the other house and they acted irresponsible in my judgment last week when they went home. There's no message over there. This almost borders on play-acting. It's almost hypocrisy because you know very well that if the Governor does not have his input in it, we can be as dramatic as we possibly can be. The fact of the matter is, Senator, and I -- the question is -

SENATOR LEVY: I would like to respond.

SENATOR GALIBER: All right. The question is -- I'll give you enough to respond and I know you will. The question -- the bottom line is, whether this bill has to be passed at ten minutes past 7:00, and what is in this bill that the Governor, his staff people, do not want which we passed some years ago and everything is in place -- an aid to locality bill had come here, it would have been passed -- what have you put in the bill that's suspect that we have some

question about today?

SENATOR LEVY: Okay. Let me answer both questions. Number one, you asked what is the difference between this bill and the Governor's bill. There is no Governor's bill. There is none. The Governor called -- the Governor's people called the meeting. The Governor has never sent a bill up here. So what we did was to put our bill together to deal with the two problems. You can't take this bill and match it up against another bill because there is no bill. He hasn't sent a bill up.

ACTING PRESIDENT SPANO: Senator Galiber.

SENATOR GALIBER: Would the Senator yield on just that one question?

ACTING PRESIDENT SPANO: The Senator yields.

SENATOR GALIBER: Senator, to the best of your knowledge -- we're mere Senators, but to the best of your knowledge, the staff people who did the negotiations, would you have us believe that those staff persons and the

Governor's people, though they may not physically have a bill, does not have the input in that bill, that your staff wasn't aware of the thinking of the Governor in regard to this, that the Governor isn't sensitive to the fact that we're paying people or we're not paying the contractors? Are you suggesting that he was down playing golf somewhere -

SENATOR LEVY: No.

SENATOR GALIBER: -- and knew nothing at all about this? So when you say technically, he doesn't have a bill, it may not be printed because he prints bills with responsibility. He doesn't print them at 4:00 o'clock and present it to us at 5:00 o'clock.

SENATOR LEVY: Senator, I think I made it clear that the Governor asked the staffs to come down for a briefing last Thursday. There hasn't been a negotiation. There has been a briefing that emanated from the executive talking about the urgency of meeting the Transit Authority's payroll, and if you believe the MTA -- and on occasion, I really haven't believed

everything that they have always told me.

SENATOR GALIBER: You fouled up a lot of money once or twice in your lifetime because you didn't believe them, almost to a fault, but you held that money back.

SENATOR LEVY: Well, the bottom line is that if you believe the MTA and you believe the Transit Authority, they say -- if this legislation is not passed and not signed, they are saying tomorrow they are going out and borrowing $46 million. So that is a question of credibility. Obviously, the Governor believed them or he would have not called the staffs down for a briefing to talk about the problem last Thursday.

SENATOR GALIBER: Senator, you know for a fact that if this piece of legislation with no bill -- message of necessity here, no message of necessity over there, it still takes the two houses -- I'm not being facetious, but it's just that time of the evening, very frankly -- you think in reality that this bill is going to go anywhere? Do you

think in reality that this bill, if not passed today is going to have the impact that you have suggested or is it just a guesstimate on your part as to what's going to happen?

SENATOR LEVY: All I can tell you, Senator, is, and I think it was last week or it may have been the week before, the Transit Authority needed $26 million, and they told us if they didn't get the $26 million, they weren't going to meet the payroll, and we passed the bill to give them the $26 million to make the payroll, and the Governor signed it into law.

SENATOR GALIBER: All right. Fine.

SENATOR LEVY: So we got an instant replay here.

SENATOR GALIBER: Let me go - I'm sorry, Mr. President. Let me ask you this question. Then, what is in the bill that we passed last week for the same purpose that is in this bill -- not in this bill this week? In other words, was there a change in what you're asking for this week?

SENATOR LEVY: Yeah, yeah. Let me ask -

SENATOR GALIBER: Then that's where the clinker is.

SENATOR LEVY: You asked me a question.

SENATOR GALIBER: First tell me what's in the bill.

SENATOR LEVY: The first instance is the bill that we passed last week was the bill the Governor sent up to deal with the problem, and we were briefed last week, Senator Galiber -

SENATOR GALIBER: I'm listening. At least I am. I'm not sure about anybody else.

SENATOR LEVY: The bill came out to pay the Transit Authority, so the bottom line is having represented, starting Thursday, the second floor having represented starting Thursday, that there was a need to meet the Transit Authority payroll or there had to be a borrowing, I wouldn't want to gamble on the fact

that the Authority would misrepresent a -- the "drop dead" date in a meeting.

SENATOR GALIBER: Let me try again. What I am suggesting, if we pass this, we have passed a bill which, frankly, is frightening to me, $300 million every week to pay off, what is it, Medicaid, the same bill basically?

You're saying to me or to us that last week we did a similar thing, so people could be paid.

SENATOR LEVY: For the Transit Authority.

SENATOR GALIBER: For the Transit Authority. Basically, is that the same bill that we have before us here?

SENATOR LEVY: No. As I indicated to you, all of the localities in this state have been waiting for their first payment of CHPS operating.

SENATOR GALIBER: O.K.

SENATOR LEVY: And we feel that we want to respond to the Transit Authority's

need tonight based upon their representation the way we did last week, but we are also saying, Senator, that the localities of the state of New York need their CHPS operating fund.

SENATOR GALIBER: O.K. Fine.

SENATOR LEVY: And it's a part of my bill.

SENATOR GALIBER: O.K. Fine. Let me ask one other question. If, in fact, we took the CHPS portion, if we took the CHPS portion out of this bill, would it be the same bill that we passed last week?

SENATOR LEVY: No, it wouldn't be, Senator. It would be a $46 million and not a $26 million bill.

SENATOR GALIBER: O.K.

SENATOR LEVY: And it would be our bill and not the Governor's bill because the Governor hasn't sent a bill up.

SENATOR GALIBER: But what we're really saying is, save the difference in the amount, the -- there is no difference from the bill this week and last week except for the CHPS

portion.

SENATOR LEVY: Sure, there is. The bill last week, Senator, the bill last week was a Governor's bill. There is no bill from the Governor to deal with this problem.

SENATOR GALIBER: I -

ACTING PRESIDENT SPANO: Senator Galiber on the bill.

SENATOR GALIBER: In all due respect, Senator, you haven't really answered the question; danced on me, and I don't think that's fair. I'm too new for you to dance on me; wait until I've been around a while, but you're dancing on me.

What you're really saying to us is that you're sneaking in something that doesn't have the same urgency, in my judgment, as Senator Padavan talked about and that is the CHPS portion of it, outside of the pride of authorship to say, Well, this is our bill, not the Governor's bill.

When we passed a piece of legislation last week -- and you correct me if

I'm wrong -- with a different amount which is the Governor's bill, but the verbiage would be the same, I guess, the intent would be the same, and that is to pay the employees and pay the contractors and take care of the people's business of the state of New York in these various counties.

ACTING PRESIDENT SPANO: Senator Levy, do you wish to be recognized?

SENATOR LEVY: Yes. Do you want me to respond to that?

SENATOR GALIBER: Well, if you give me just -

ACTING PRESIDENT SPANO: Senator Galiber, did you ask Senator Levy to yield?

SENATOR GALIBER: No.

ACTING PRESIDENT SPANO: Senator Galiber on the bill.

SENATOR GALIBER: Senator, I tried before and you weren't responding to me, so let me continue. The fact of the matter is that save that CHPS portion that you have in the bill, and that may in the real world be the

reason why you have no message from the Governor because I don't like being hoodwinked and maybe the Governor doesn't like being hoodwinked.

There are separations of branches of government. You can't take over these sensitive areas and vitiate the other branch of government because on the second floor things aren't working out. You can't write a bill and arbitrarily and capriciously put it where there's a need -- mind you, I don't disagree with you -- a need, but not the sense of urgency as you would have us believe.

What I'm suggesting, Mr. President, is that we could pass this piece of legislation, amend it, take out the CHPS portion. There's no real necessity to pass that this evening, and then wait, because otherwise all you have is a political piece of legisla tion. It's not going to pass here. There's no message. There's no message here, and all you can do is sit out and talk about how the Governor acted irresponsible in an election year and didn't send us up a bill. That's all this

is all about.

ACTING PRESIDENT SPANO: Senator Levy.

SENATOR LEVY: Is there a message at the desk?

ACTING PRESIDENT SPANO: No, there is still no message at the desk, Senator Levy.

Senator Present.

SENATOR PRESENT: Mr. President, I ask that Calendar 1080 be laid aside. I'm advised that there will not be a message on this bill.

ACTING PRESIDENT SPANO: Lay aside 1080.

SENATOR PRESENT: Now, would you call up 1081?

ACTING PRESIDENT SPANO: Secretary will read Calendar 1081.

THE SECRETARY: Calendar Number 1081, by the Senate Committee on Rules, Senate Bill Number 8504, an act to provide for payments to municipalities and to providers of medical

services under the Medical Assistance Program.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity, a message of appropriation on 1081?

ACTING PRESIDENT SPANO: There are no messages at the desk for Calendar 1081, Mr. President.

Senator Tully.

SENATOR TULLY: Yes, Mr. President.

For each of the past several weeks, we've been making emergency appropria tions to make medical assistance payments to facilities and medical service providers. Just as in the case of the last bill, this week the Governor has not yet sent us such a bill, so we prepared a bill to make these weekly payments. If we do not do so, providers do not get paid, payrolls are not met and services are not provided to the Medicaid recipients, those most in need, those least able to help themselves.

Mr. President, I'm very hopeful that Governor Cuomo will exercise a leadership role and will expedite resolution of this payment for social service. Say what you might about this Governor, this is one of the things he's never done, and I would hope that tonight we're not going to see that happen.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yeah. Senator Present yield to a question?

ACTING PRESIDENT SPANO: Senator Present, will you yield to a question?

SENATOR PRESENT: Yes.

SENATOR GOLD: Senator, you were very gracious a moment ago and told us that we're not to expect a message on Calendar 1080. By any chance, do you have any information on 1081 as to whether or not we will get a message?

SENATOR PRESENT: Yes. I would like to advice you that I'm advised that we will not get a message, so reluctantly I would like

to have this Calendar Number 1081 withdrawn.

ACTING PRESIDENT SPANO: Lay aside Calendar 1081.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Do you have any housekeeping?

ACTING PRESIDENT SPANO: Any housekeeping?

Senator Present.

SENATOR PRESENT: Mr. Cornell, do you have something you'd like to do? Nothing?

Mr. President, there being no further business, I move that we adjourn until tomorrow at 3:00 p.m.

ACTING PRESIDENT SPANO: Senate stands adjourned until tomorrow 3:00 p.m.)

(Whereupon at 7:21 p.m, the Senate adjourned.)