

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

ALBANY, NEW YORK

June 30, 1994

11:44 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

1 At 11:15 a.m....

2 SENATOR PRESENT: It's 11:15. I
3 would urge all members of the Senate to come
4 promptly to the chamber. 11:15; the session was
5 to have started at 11:00 a.m. sharp. Please,
6 members of the Senate, come promptly to the
7 Senate chamber.

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

9 ACTING PRESIDENT KUHL: The
10 Senate will come to order. Ask the members to
11 take their places, staff to take their places,
12 people in the gallery please rise and join in
13 the Pledge of Allegiance to the Flag.

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

16 In the absence of clergy, I'd ask
17 that we bow our heads in a moment of silence.

18 (A moment of silence was
19 observed.)

20 Reading of the Journal.

21 THE SECRETARY: In Senate,
22 Wednesday, June 29th. The Senate met pursuant
23 to adjournment, Senator Kuhl in the Chair upon

1 designation of the Temporary President. Prayer
2 by the Reverend Otto Vogt of St. Paul of the
3 Cross, Honeoye Falls, New York. The Journal of
4 Tuesday, June 28th, was read and approved. On
5 motion, Senate adjourned.

6 ACTING PRESIDENT KUHL: Hearing
7 no objection, the Journal stands approved as
8 read.

9 Presentation of petitions.
10 Messages from the Assembly.
11 Messages from the Governor.
12 Reports of standing committees.
13 Reports of select committees.
14 Communications and reports from
15 state officers.

16 Motions and resolutions.
17 Senator Cook.

18 SENATOR COOK: Mr. President, is
19 there a resolution at the desk?

20 ACTING PRESIDENT KUHL: There is
21 a privileged resolution at the desk, Senator
22 Cook. Would you like its title read?

23 SENATOR COOK: Read the whole

1 thing, if you would.

2 ACTING PRESIDENT KUHL: Secretary
3 will read the privileged resolution in its
4 entirety.

5 THE SECRETARY: Legislative
6 Resolution, by Senators Cook and Nolan.
7 Legislative Resolution paying tribute to W.
8 Gordon Morris, Jr., upon the occasion of his
9 retirement on June 29th, 1994.

10 WHEREAS, this legislative body
11 believes that persons who have given outstanding
12 service to their community and New York State
13 should be recognized;

14 W. Gordon Morris, Jr. has given
15 to his community and the state of New York the
16 very best in all of the traits that comprise our
17 nation's best persons;

18 W. Gordon Morris, Jr. has been an
19 asset of the highest level in the New York State
20 Senate and in the office of Senator Charles D.
21 Cook;

22 W. Gordon Morris, Jr. has gained
23 the admiration and respect of his fellow office

1 workers and all with whom he has worked in the
2 New York State Legislature;

3 W. Gordon Morris, Jr. has served
4 with distinction in the Elsmere Fire Company for
5 over 25 years, including three years as Company
6 President and 20 years in the positions of
7 Elsmere Fire District Commissioner, Secretary
8 and Treasurer;

9 W. Gordon Morris, Jr. has served
10 for 28 years as an active member of the
11 Bethlehem Chamber of Commerce, five years as a
12 member of the Kiwanis Club of Albany and five
13 years as a member of the Kiwanis Club of Delmar,
14 receiving their Distinguished Service Award;

15 W. Gordon Morris, Jr. has served
16 on numerous committees for the Bethlehem Central
17 School District, including the Budget Advisory
18 Committee and the Middle School Steering
19 Committee, and is a Past President of the high
20 school Parent-Teachers Organization;

21 W. Gordon Morris, Jr. has served
22 in numerous political capacities including
23 Republican Committeeman, executive member of

1 Senator Walter Langley's Campaign Committee and
2 as a coordinator of numerous campaigns in the
3 town of Bethlehem;

4 W. Gordon Morris, Jr. was elected
5 in 1978 to be a member of the Albany County
6 Legislature, where he served with distinction
7 until 1992;

8 W. Gordon Morris, Jr. was the
9 Minority Leader of the Albany County Legislature
10 from 1981 to 1990, where he elected -- where he
11 acted with courage, decency and in the best
12 interests of his constituents and the residents
13 of Albany County;

14 W. Gordon Morris, Jr. has been
15 married to Lee C. Morris since 1950 and has two
16 children, William G. Morris III and Christy Lee
17 Morris Greene; W. Gordon Morris, Jr. has

18
19 enriched and enhanced the lives of his friends,
20 family, neighbors, the citizens of the Capital
21 District and all those who know him.

22 NOW, THEREFORE, BE IT RESOLVED
23 that this legislative body pause in its

1 deliberations to recognize W. Gordon Morris, Jr.
2 for his outstanding contributions to society and
3 this legislative body; and

4 BE IT FURTHER RESOLVED that
5 copies of this resolution, suitably engrossed,
6 be transmitted to W. Gordon Morris, Jr. and Lee
7 C. Morris.

8 ACTING PRESIDENT KUHL: The Chair
9 recognizes Senator Cook on the resolution.

10 SENATOR COOK: Mr. President, not
11 to prolong this unduly, but Gordon Morris is an
12 example of the best of our Senate staff. He has
13 brought not just competence but a particular
14 personal flavor to the work that he does and
15 he's been particularly valuable to me because he
16 knows far more people in this Capitol than I do
17 and, as you can appreciate, that is a great
18 benefit, if you will, to have a staff person
19 who's acquainted with people on that basis, and
20 the reason that it's valuable is because they
21 know that Gordon is at the basic level totally
22 honest, that he is the personification of
23 integrity, that he -- that from this grows his

1 ability to get things done and to work with
2 people, and we are just very pleased to have him
3 here today; and he's about to take off some time
4 before the end of the day and do other things
5 with his wife, Lee, and we just want to wish him
6 very well.

7 Thank you.

8 ACTING PRESIDENT KUHL: The Chair
9 recognizes Senator Farley on the resolution.

10 SENATOR FARLEY: Thank you, Mr.
11 President.

12 I have mixed emotions voting for
13 this resolution, because I don't want to see
14 this young fellow retire. Gordon Morris is one
15 of the most decent people, and I'll tell you
16 he's getting out at the top of his career
17 because he's done so much for Albany County and
18 he's been a public servant and one of the most
19 decent people that I've ever known.

20 I wish him well. I wish him all
21 the very best. I'll tell you, you're losing a
22 brick in your organization there, Senator Cook,
23 and, Gordon, I wish you and your family and your

1 wife all the very, very best, and I think this
2 resolution speaks for itself in that it
3 illustrates what a remarkable public servant
4 this man has rendered to the state of New York
5 and to his home town and his county.

6 I am pleased to support this and
7 wish Gordon Morris well.

8 ACTING PRESIDENT KUHL: Question
9 is on the resolution. All those in favor
10 signify by saying aye.

11 (Response of "Aye.")

12 Opposed nay.

13 (There was no response.)

14 The resolution is unanimously
15 adopted.

16 Gordon, it's my pleasure to wish
17 you well as the presiding officer in the Senate
18 on behalf of Senator Cook, Senator Marino and
19 all the rest of the Senators, and we thank you
20 for your dedicated service not only to your
21 community but certainly to the state Senate.
22 All of us who sit here as members certainly
23 understand what Senator Cook said when he said

1 that you personify the typical employee. We all
2 wish we had all of our employees who did as well
3 as you did.

4 So thank you for your service to
5 the New York State Senate.

6 (Applause.)

7 SENATOR DiCARLO: Mr. President.

8 ACTING PRESIDENT KUHL: Senator
9 DiCarlo.

10 SENATOR DiCARLO: Yes, Mr.
11 President. I have two resolutions at the desk
12 and I ask that the titles be read and that they
13 be opened up to sponsorship, 4193. O.K.

14 ACTING PRESIDENT KUHL: Senator
15 DiCarlo, we'll attempt to find out where they
16 are, and we'll get back to you later on in the
17 session.

18 SENATOR DiCARLO: I have some
19 other work to do.

20 ACTING PRESIDENT KUHL: Senator
21 DiCarlo for a motion.

22 SENATOR DiCARLO: On page 36, I
23 offer the following amendments to Calendar 1461,

1 Senate print 8479-A, on behalf of Senator
2 Maltese, and request that the bill retain its
3 place on the Third Reading Calendar.

4 ACTING PRESIDENT KUHL:
5 Amendments are received and adopted; bill will
6 retain its place on the Third Reading Calendar.

7 Senator Present, we have some
8 substitutions to read if that's acceptable.

9 SENATOR PRESENT: Please.

10 ACTING PRESIDENT KUHL: Secretary
11 will read the substitutions.

12 THE SECRETARY: On page 6 of
13 today's calendar, Senator Volker moves to
14 discharge the Committee on Rules from Assembly
15 Bill Number 10853 and substitute it for the
16 identical Third Reading 764.

17 On page 34, Senator Cook moves to
18 discharge the Committee on Rules from Assembly
19 Bill Number 1090 and substitute it for the
20 identical Third Reading 1444.

21 On page 34, Senator Saland moves
22 to discharge the Committee on Judiciary from
23 Assembly Bill Number 1678 and substitute it for

1 the identical Third Reading 1447.

2 On page 35, Senator Maltese moves
3 to discharge the Committee on Rules from
4 Assembly Bill Number 8075-A and substitute it
5 for the identical Calendar Number 1450.

6 On page 35, Senator Volker moves
7 to discharge the Committee on Rules from
8 Assembly Bill Number 10681 and substitute it for
9 the identical Third Reading 1454.

10 On page 36, Senator Smith moves
11 to discharge the Committee on Cities from
12 Assembly Bill Number 9575 and substitute it for
13 the identical Third Reading 1455.

14 On page 36, Senator Saland moves
15 to discharge the Committee on Rules from
16 Assembly Bill Number 10905 and substitute it for
17 the identical Third Reading 1456.

18 On page 37, Senator Kuhl moves to
19 discharge the Committee on Rules from Assembly
20 Bill Number 11618 and substitute it for the
21 identical Calendar Number 1466.

22 On page 37, Senator Marino moves
23 to discharge the Committee on Rules from

1 Assembly Bill Number 12093 and substitute it for
2 the identical Third Reading 1467.

3 ACTING PRESIDENT KUHL: All
4 substitutions or ordered.

5 Senator Present, that brings us
6 to the calendar.

7 SENATOR PRESENT: Mr. President,
8 can we stand at ease for a few moments.

9 ACTING PRESIDENT KUHL: Senate
10 will stand at ease for a couple of moments.

11 SENATOR LIBOUS: Mr. President.

12 ACTING PRESIDENT KUHL: The Chair
13 recognizes Senator Libous for a motion.

14 SENATOR LIBOUS: Mr. President,
15 on behalf of Senator Goodman, I'd like to place
16 a sponsor's star on Calendar Number 888, Senate
17 Print Number 6973, and also on behalf of Senator
18 Goodman, I'd like to remove a sponsor's star on
19 Calendar Number 1240, Senate Print Number
20 8389-A.

21 ACTING PRESIDENT KUHL: Sponsor's
22 star will be placed on Calendar Number 888,
23 sponsor's star removed on 1240. 1240.

1 The Senate will continue to stand
2 at ease.

3 (The Senate stood at ease until
4 12:06 p.m.)

5 ACTING PRESIDENT KUHL: Senate
6 will come to order. Members take their places,
7 staff their places.

8 The Chair recognizes Senator
9 Present.

10 SENATOR PRESENT: Mr. President,
11 I believe we're ready for the non-controversial
12 calendar.

13 ACTING PRESIDENT KUHL: Secretary
14 will read the non-controversial calendar.

15 THE SECRETARY: On page 4 of
16 today's calendar, Calendar Number 80, by Senator
17 Johnson, Senate Bill Number 2802-B, an act to
18 amend the Education Law.

19 ACTING PRESIDENT KUHL: Secretary
20 will read the last section.

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

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 40.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 108, by Senator Libous, Senate Bill Number
8 4473-A, with an Assembly Reprint Number of
9 30004, an act to amend the Social Services Law.

10 ACTING PRESIDENT KUHL: Secretary
11 will read the last section.

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

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 40.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 224, by member of the Assembly King, Assembly
22 Bill Number 9005-B, creation of the Westport
23 Fire District in the town of Westport.

1 ACTING PRESIDENT KUHL: There's a
2 home rule message at the desk. Secretary will
3 read the last section.

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

6 ACTING PRESIDENT KUHL: Call the
7 roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 40.

10 ACTING PRESIDENT KUHL: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 261, by Senator Daly, Senate Bill Number -

14 SENATOR GOLD: Lay aside.

15 ACTING PRESIDENT KUHL: Lay the
16 bill aside.

17 THE SECRETARY: Calendar Number
18 293, by Senator Levy, Senate Bill Number 184-A,
19 an act to amend the Vehicle and Traffic Law.

20 SENATOR GOLD: Lay it aside.

21 ACTING PRESIDENT KUHL: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number

1 414, by Senator Tully, Senate Bill Number
2 4484-B, an act to amend the Education Law.

3 ACTING PRESIDENT KUHL: Secretary
4 will read the last section.

5 SENATOR GOLD: Lay aside,
6 please.

7 ACTING PRESIDENT KUHL: Lay the
8 bill aside.

9 THE SECRETARY: Calendar Number
10 434, by Senator Levy, Senate Bill Number 190, an
11 act to amend the Vehicle and Traffic Law.

12 ACTING PRESIDENT KUHL: Secretary
13 will read the last section.

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 40.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 599, by member of the Assembly Tonko, Assembly

1 Bill Number 9919-A, with a Senate Reprint Number
2 of 21008, an act to amend the Insurance Law.

3 ACTING PRESIDENT KUHL: Read the
4 last section.

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

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 42.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 653, by Senator Hannon, Senate Bill Number
15 276-B, an act to amend the Public Housing Law.

16 ACTING PRESIDENT KUHL: The
17 Secretary will read the last section.

18 SENATOR GOLD: Lay aside.

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside.

21 THE SECRETARY: Calendar Number
22 698, by Senator Volker, Senate Bill Number 7573,
23 an act to amend the Penal Law.

1 SENATOR GOLD: Lay it aside
2 temporarily.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar Number
6 774, by Senator Saland, Senate Bill Number 4660
7 A, an act to amend the Family Court Act.

8 ACTING PRESIDENT KUHL: Read the
9 last section.

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 42.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 788, by Senator Cook, Senate Bill Number 7871-A,
20 an act to amend the Education Law, in relation
21 to efficiency study grants.

22 ACTING PRESIDENT KUHL: Secretary
23 will read the last section.

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 42.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 894, by Senator Rath, Senate Bill Number 7054-C,
11 an act to amend the State Administrative
12 Procedure Act.

13 SENATOR GOLD: Lay it aside,
14 please.

15 ACTING PRESIDENT KUHL: Lay the
16 bill aside.

17 THE SECRETARY: Calendar Number
18 896.

19 SENATOR GOLD: Lay aside,
20 please.

21 ACTING PRESIDENT KUHL: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number

1 951, by member of the Assembly Vitaliano,
2 Assembly Bill Number 10836, an act to amend the
3 Public Service Law and the Transportation Law.

4 ACTING PRESIDENT KUHL: Secretary
5 will read the last section.

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 42.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 984, by Senator Wright, Senate Bill Number
16 7418-A, an act to amend the Highway Law.

17 ACTING PRESIDENT KUHL: Secretary
18 will read the last section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 42.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 1105, by Senator Stafford, Senate Bill Number
6 7970-A, proposing -

7 SENATOR GOLD: Lay aside,
8 please.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 1107, by Senator Stafford, Senate Bill Number
13 8031-A, proposing an amendment to the
14 Constitution, in relation to the exchange of
15 certain forest preserve land.

16 ACTING PRESIDENT KUHL: Question
17 is on the resolution. Secretary will read the
18 roll, or call the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 43.

21 ACTING PRESIDENT KUHL: The
22 resolution is adopted.

23 THE SECRETARY: Calendar Number

1 1187, by Senator Rath, Senate Bill Number
2 8002-B, an act to amend the State Administrative
3 Procedure Act.

4 ACTING PRESIDENT KUHL: Secretary
5 will read the last section.

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 43.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 1188, by Senator Skelos, Senate Bill Number
16 8167, authorize the Town of Hempstead in Nassau
17 County to lease certain park lands.

18 ACTING PRESIDENT KUHL: There's a
19 home rule message at the desk. Secretary will
20 read the last section.

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

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 43.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 1261, by Senator Larkin, Senate Bill Number
8 1902-C, an act to amend the Agriculture and
9 Markets Law.

10 SENATOR GOLD: Lay it aside,
11 please.

12 ACTING PRESIDENT KUHL: Lay the
13 bill aside.

14 THE SECRETARY: Calendar Number
15 1287, by Senator Rath, Senate Bill Number 8605,
16 an act to amend the State Administrative
17 Procedure Act.

18 SENATOR PRESENT: Lay aside.

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside.

21 THE SECRETARY: Calendar Number
22 1318, by Senator Holland.

23 SENATOR HOLLAND: Lay aside for

1 the day, please.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside for the day.

4 THE SECRETARY: Calendar Number
5 1323, by the Senate Committee on Rules.

6 SENATOR GOLD: Lay aside,
7 please.

8 ACTING PRESIDENT KUHL: Lay the
9 bill aside.

10 THE SECRETARY: Calendar Number
11 1333, by Senator Saland, Senate Bill Number
12 6504, State Finance Law.

13 ACTING PRESIDENT KUHL: Secretary
14 will read the last section.

15 SENATOR GOLD: Hold on a minute.
16 Hold on one second. Last section.

17 ACTING PRESIDENT KUHL: Last
18 section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 43.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 1334, by Senator -

6 SENATOR GOLD: Lay aside.

7 ACTING PRESIDENT KUHL: Lay the
8 bill aside.

9 THE SECRETARY: Calendar Number
10 1337, by Senator Johnson, Senate Bill Number
11 6851-A, Environmental Conservation Law and the
12 State Finance Law.

13 ACTING PRESIDENT KUHL: Secretary
14 will read the last section.

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 43.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 1345, by Senator Skelos, Senate Bill Number
2 8452-A, an act to amend the Vehicle and Traffic
3 Law.

4 ACTING PRESIDENT KUHL: Read the
5 last section.

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 43.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 1386, by Senator Tully, Senate Bill -

16 SENATOR TULLY: Lay aside for the
17 day.

18 ACTING PRESIDENT KUHL: Lay the
19 bill aside.

20 THE SECRETARY: Calendar Number
21 1395, by Senator Velella, Senate Bill Number
22 7195-A, an act to amend the Insurance Law.

23 ACTING PRESIDENT KUHL: Secretary

1 will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 43.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 1396, by Senator Kuhl, Senate Bill Number
12 7753-A, an act to amend the Agriculture and
13 Markets Law.

14 ACTING PRESIDENT KUHL: Secretary
15 will read the last section.

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 45.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 1407, by Senator Volker.

3 SENATOR PRESENT: Lay aside.

4 ACTING PRESIDENT KUHL: Lay the
5 bill aside.

6 THE SECRETARY: Calendar Number
7 1410, by Senator Stafford.

8 SENATOR PRESENT: Lay it aside.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 1420, by Senator Bruno, Senate Bill Number
13 7494-B, Economic Development Law and the
14 Executive Law.

15 SENATOR LEICHTER: Lay aside.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside.

18 THE SECRETARY: Calendar Number
19 1422, by member of the Assembly Luster, Assembly
20 Bill Number 9275-A, an act to amend the Labor
21 Law.

22 SENATOR GOLD: Lay aside,
23 please.

1 ACTING PRESIDENT KUHL: Lay the
2 bill aside.

3 THE SECRETARY: Calendar Number
4 1426, by the Assembly Committee on Rules,
5 Assembly Bill Number 11603-A, an act to amend
6 the Vehicle and Traffic Law.

7 ACTING PRESIDENT KUHL: Secretary
8 will read the last section.

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 46.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 1427, by Senator Pataki.

19 SENATOR GOLD: Lay it aside,
20 please.

21 ACTING PRESIDENT KUHL: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number

1 1428, by Senator Pataki, Senate Bill Number
2 7808, an act to amend the Criminal Procedure
3 Law.

4 ACTING PRESIDENT KUHL: Secretary
5 will read the last section.

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

8 SENATOR GOLD: Lay aside.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 1432, by Senator DiCarlo, Senate Bill Number
13 8405-A, an act to amend the Social Services
14 Law.

15 ACTING PRESIDENT KUHL: Secretary
16 will read the last section.

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 46.

23 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 1434, by Senator Sears, Senate Bill Number
4 8544-B, an act to amend the Public Authorities
5 Law and the Executive Law.

6 ACTING PRESIDENT KUHL: Read the
7 last section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 46.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 1435, by Senator Sears, Senate Bill Number
18 8553-B, an act to amend the Public Authorities
19 Law.

20 ACTING PRESIDENT KUHL: Read the
21 last section.

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 45, nays
5 one, Senator Seward recorded in the negative.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 1437, by the Assembly Committee on Rules,
10 Assembly Bill Number 11994, an act to amend the
11 Local Finance Law.

12 ACTING PRESIDENT KUHL: There's a
13 home rule message at the desk. Secretary will
14 read the last section.

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 46.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 1439, by Senator Stavisky, Senate Bill Number
2 426-A, an act to amend the Penal Law.

3 ACTING PRESIDENT KUHL: Read the
4 last section.

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

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 46.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 1440, by Senator Saland, Senate Bill Number
15 885-A, an act to amend the Public Health Law and
16 the Executive Law.

17 SENATOR GOLD: Lay it aside.

18 ACTING PRESIDENT KUHL: Lay the
19 bill aside.

20 THE SECRETARY: Calendar Number
21 1441, by Senator Hannon, Senate Bill Number
22 2237-B, an act to amend the Public Health Law.

23 ACTING PRESIDENT KUHL: Read the

1 last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 46.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 1442, by Senator Johnson, Senate Bill Number
12 2553-A, an act to amend the State Finance Law.

13 ACTING PRESIDENT KUHL: Read the
14 last section.

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 46.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 1443, by Senator Mendez, Senate Bill Number
2 2565-A, an act to amend the Mental Hygiene Law.

3 ACTING PRESIDENT KUHL: Secretary
4 will read the last section.

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

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 46.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 1444, substituted earlier today, by member of
15 the Assembly Cook, Assembly Bill Number 1090, an
16 act to amend the Social Services Law.

17 ACTING PRESIDENT KUHL: Read the
18 last section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 46.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 1445, by Senator Present, Senate Bill Number
6 4711-B, State Administrative Procedure Act.

7 ACTING PRESIDENT KUHL: Read the
8 last section.

9 SENATOR GOLD: Lay aside,
10 please.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 1447, substituted earlier today by member of the
15 Assembly Kaufman, Assembly Bill Number 1678, an
16 act to amend the Real Property Law.

17 ACTING PRESIDENT KUHL: Secretary
18 will read the last section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 46.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 1448, by Senator Skelos, Senate Bill Number
6 5994-A, an act to amend the Public Health Law.

7 ACTING PRESIDENT KUHL: Read the
8 last section.

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 46.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 1449, by Senator Saland, Senate Bill Number
19 6506-B.

20 SENATOR GOLD: Lay aside.

21 ACTING PRESIDENT KUHL: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number

1 1450, substituted earlier today, by the Assembly
2 Committee on Rules, Assembly Bill Number 8075-A,
3 city of New York to reconvey its interest in
4 certain real property.

5 ACTING PRESIDENT KUHL: There's a
6 home rule message at the desk. Secretary will
7 read the last section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 47.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 1451, by Senator LaValle, Senate Bill Number
18 6759, an act to amend the State Finance Law.

19 ACTING PRESIDENT KUHL: Secretary
20 will read the last section.

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

23 SENATOR LEICHTER: Lay it aside,

1 please.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside.

4 THE SECRETARY: Calendar Number
5 1452, by Senator Present, Senate Bill Number
6 6884, an act to amend the Public Authorities
7 Law.

8 ACTING PRESIDENT KUHL: Read the
9 last section.

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 48.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 1453, by Senator Trunzo, Senate Bill Number
20 6948-A, an act to amend the Civil Service Law.

21 ACTING PRESIDENT KUHL: Secretary
22 will read the last section.

23 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 48.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 1454, substituted earlier today, by member of
10 the Assembly Pordum, Assembly Bill Number
11 10681.

12 SENATOR GOLD: Lay aside,
13 please.

14 ACTING PRESIDENT KUHL: Lay the
15 bill aside.

16 THE SECRETARY: Calendar Number
17 1455, substituted earlier today, by member of
18 the Assembly Cook, Assembly Bill Number 9575,
19 New York to reconvey its interest in certain
20 real property.

21 ACTING PRESIDENT KUHL: There's a
22 home rule message at the desk. Secretary will
23 read the last section.

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 49.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 1456, substituted earlier to day, by member of
11 the Assembly Vitaliano, Assembly Bill Number
12 10905, an act to amend the Family Court Act.

13 ACTING PRESIDENT KUHL: Secretary
14 will read the last section.

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 49.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 1457, by Senator Skelos, Senate Bill Number
2 8070-B, an act to amend the Estates, Powers and
3 Trusts Law.

4 SENATOR PRESENT: Lay it aside,
5 please.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 1458, by Senator Levy, Senate Bill Number
10 8229-A, an act to amend the Real Property Tax
11 Law.

12 ACTING PRESIDENT KUHL: Secretary
13 will read the last section.

14 THE SECRETARY: Section 2. This
15 act shall take effect -

16 SENATOR GOLD: Lay it aside.

17 ACTING PRESIDENT KUHL: Lay the
18 bill aside.

19 THE SECRETARY: Calendar Number
20 1459, by Senator Trunzo, Senate Bill Number
21 8255-A, an act to amend the Retirement and
22 Social Security Law.

23 ACTING PRESIDENT KUHL: Secretary

1 will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 SENATOR GOLD: Lay it aside,
7 please.

8 ACTING PRESIDENT KUHL: Lay the
9 bill aside.

10 THE SECRETARY: Calendar Number
11 1460, by Senator Sears, Senate Bill Number
12 8321-B, an act to amend Chapter 147 of the Laws
13 of 1994, amending the General Business Law.

14 ACTING PRESIDENT KUHL: Secretary
15 will read the last section.

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 49.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 1462, by Senator Lack, Senate Bill Number 8527,
3 an act in relation to appointment of certain
4 non-judicial officers and employees.

5 ACTING PRESIDENT KUHL: Secretary
6 will read the last section.

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 49.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 1463, by Senator DiCarlo, Senate Bill Number
17 860...

18 SENATOR GOLD: Hold on.

19 ACTING PRESIDENT KUHL: Senator
20 Gold?

21 SENATOR GOLD: Yeah, the last
22 bill that we dealt with, was that '61 or '62.

23 ACTING PRESIDENT KUHL: 1462.

1 SENATOR GOLD: '61 was amended,
2 is that it?

3 ACTING PRESIDENT KUHL: '61 was
4 amended, that's right.

5 SENATOR GOLD: All right. In
6 that case, would you just reconsider the vote by
7 which Calendar 1462 just passed?

8 ACTING PRESIDENT KUHL: Question
9 is on the motion to reconsider the vote by which
10 1462 passed the Senate. Secretary will call the
11 roll on reconsideration.

12 (The Secretary called the roll on
13 reconsideration.)

14 ACTING PRESIDENT KUHL: Yes,
15 Senator Gold.

16 SENATOR GOLD: Would you just lay
17 it aside?

18 ACTING PRESIDENT KUHL: Lay that
19 bill aside.

20 The Chair recognizes Senator
21 Wright.

22 SENATOR WRIGHT: Mr. President, I
23 would request reconsideration of Calendar Number

1 1460.

2 ACTING PRESIDENT KUHL: The
3 question is on the motion to reconsider the vote
4 by which Calendar Number 1460 passed the
5 Senate. The Secretary will call the roll on
6 reconsideration.

7 (The Secretary called the roll on
8 reconsideration.)

9 THE SECRETARY: Ayes 49.

10 ACTING PRESIDENT KUHL: Bill is
11 before the house. Senator Wright? You wish it
12 to be laid aside?

13 SENATOR WRIGHT: Lay it aside.

14 ACTING PRESIDENT KUHL: Bill is
15 laid aside.

16 Secretary will continue to call
17 the non-controversial calendar commencing with
18 Calendar Number 1463.

19 THE SECRETARY: Calendar Number
20 1463, by Senator DiCarlo, Senate Bill Number
21 8602, an act to amend the Vehicle and Traffic
22 Law.

23 ACTING PRESIDENT KUHL: Secretary

1 -- Secretary will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 49.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 1464, by Senator Cook, Senate Bill Number 8653,
12 relation to making an additional apportionment
13 of building aid for the Ellenville Central
14 School.

15 SENATOR LEICHTER: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay -
17 lay the bill aside.

18 THE SECRETARY: Calendar Number
19 1465, by Senator Maltese, Senate Bill Number
20 8677, an act to amend the Vehicle and Traffic
21 Law.

22 ACTING PRESIDENT KUHL: Read the
23 last section.

1 SENATOR PRESENT: Lay it aside.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside.

4 THE SECRETARY: Calendar Number
5 1466, substituted earlier today, by the Assembly
6 Committee on Rules, Assembly Bill Number 11618,
7 an act to amend the Vehicle and Traffic Law, in
8 relation to maximum dimensions of vehicles.

9 ACTING PRESIDENT KUHL: Secretary
10 will read the last section.

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 49.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 1467, substituted earlier today, by the Assembly
21 Committee on Rules, Assembly Bill Number 12093,
22 an act to amend the Public Authorities Law.

23 ACTING PRESIDENT KUHL: The

1 Secretary will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 50.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 1468, by Senator Spano.

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

14 ACTING PRESIDENT KUHL: Lay the
15 bill aside for the day.

16 THE SECRETARY: Calendar Number
17 1469, by Senator Stafford, Senate Bill Number
18 8770, Racing, Pari-mutuel Wagering and Breeding
19 Law.

20 ACTING PRESIDENT KUHL: Secretary
21 will read the last section.

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT KUHL: Announce
5 the results when tabulated.

6 THE SECRETARY: Ayes 48, nays 2,
7 Senators Padavan and Tully recorded in the
8 negative; also Senator Saland in the negative.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 Senator Present, that completes
12 the non-controversial calling. What's your
13 pleasure?

14 SENATOR PRESENT: Let's take up
15 the controversial calendar, regular order.

16 ACTING PRESIDENT KUHL: Secretary
17 will read the controversial calendar.

18 THE SECRETARY: On page 5,
19 Calendar Number 261, by Senator Daly, Senate
20 Bill Number 4583-E, an act to amend the Real
21 Property Law, in relation to establishing a New
22 York State Real Estate Board.

23 SENATOR PADAVAN: Yeah. Will the

1 Senator yield? Will the Senator yield to just a
2 question or two?

3 ACTING PRESIDENT KUHL: Senator
4 Daly, do you yield to Senator Padavan?

5 SENATOR DALY: I certainly will.

6 ACTING PRESIDENT KUHL: Senator
7 yields.

8 SENATOR PADAVAN: Senator, just a
9 technical question.

10 SENATOR DALY: M-m h-m-m.

11 SENATOR PADAVAN: I see the
12 calendar says 4583-E, in our desks, the bill
13 that is in there is "D". Would you tell us what
14 the difference is?

15 SENATOR DALY: Yes, I'd be happy
16 to, Senator.

17 We have changed language.
18 Actually the "E" version is a result of a
19 three-way negotiation between the Secretary of
20 State's office, the Assembly and the Senate, and
21 we've made several changes.

22 One, the bill now establishes
23 within the Department of State a real estate

1 board consisting of 14 members and the Secretary
2 of State. We've changed the language to clearly
3 indicate -- clearly indicate that a majority of
4 the members of the board have to be
5 non-realtors.

6 There was a question as to the
7 intent of the "D" version was to have a majority
8 of the members not to be realtors. We cleared
9 the language -- we clarified the language to
10 make sure that no one could question that a
11 majority of the board will be non-realtors.
12 Nine will be appointed by the Governor, six will
13 be appointed by the Legislature, two by the
14 Majority Leaders and Speaker, one by the
15 Minority Leader of each house.

16 We've also tightened up the
17 language in the section of the law that you're
18 quite concerned about, Senator, and I'll read
19 that for you.

20 Under -- on line 45, page 3, it
21 says the Secretary of State, and not the state
22 board of real estate established under sections
23 442 (i) and 442 (j) of this article, shall adopt

1 such rules and regulations as the Secretary may
2 determine are necessary for the administration,
3 enforcement of Section 442 (h).

4 SENATOR PADAVAN: Will the
5 Senator yield just to one question?

6 ACTING PRESIDENT KUHL: Senator
7 Daly, do you yield to another question? Senator
8 yields.

9 SENATOR PADAVAN: Did I hear you
10 say a moment ago that this "E" print is a result
11 of three-way negotiations?

12 SENATOR DALY: Yes.

13 SENATOR PADAVAN: Does that mean
14 that this bill has the concurrence of the
15 Secretary of State?

16 SENATOR DALY: I have nothing in
17 writing to tell you that, Senator. I can just
18 tell you that her chief counsel, Mr. Baldwin,
19 worked with the Assembly and with the Senate in
20 changing the language in this legislation and
21 we've had no -- I've had no calls from the
22 Secretary of State. I take for granted, since
23 her counsel was in the negotiations, that this

1 is acceptable, but we've heard nothing, you
2 know, in all honesty we've heard nothing from
3 the Secretary of State since the negotiations
4 were complete.

5 SENATOR PADAVAN: Well, in all
6 candor, Mr. President.

7 ACTING PRESIDENT KUHL: Senator
8 Daly, do you continue to yield?

9 SENATOR DALY: Yes, I will, Mr.
10 President.

11 ACTING PRESIDENT KUHL: Senator
12 Daly continues to yield.

13 SENATOR PADAVAN: In all candor,
14 I have no obviously reason to doubt, and I
15 concur with the logic of your conclusion,
16 namely, that if they were involved in making
17 changes, but the problem that I have and perhaps
18 others do, is that we have a very recent letter
19 from the Secretary of State -- I don't have it
20 here to give you the date -- in opposition to
21 this bill, and would it be possible to allow
22 just a brief period of time to find out whether
23 the Secretary of State has indicated that she

1 now approves this bill by virtue of what you
2 have stated as a matter of fact, there were
3 negotiations that involved her counsel?

4 SENATOR DALY: I'd be happy to,
5 but I'll make one more point which may satisfy
6 you.

7 SENATOR PADAVAN: Please.

8 SENATOR DALY: We took the
9 language that the Secretary of State's office
10 gave us for the 442 (h). That is the language
11 that -- we accepted their language, Senator.

12 ACTING PRESIDENT KUHL: The Chair
13 recognizes Senator Gold.

14 SENATOR GOLD: No, all I was
15 going to say was, with Senator Daly's
16 permission, this bill has gone through a number
17 of prints, and what I'm told is that it's
18 probably fine in its present state, but not to
19 be facetious, these bills are still warm. They
20 -- and we would like some opportunity just to
21 check them out, and I think Senator Padavan has
22 a good idea.

23 I don't think there's going to be

1 a problem, but it might be worthwhile if we
2 handled it just a little later in the day.

3 SENATOR DALY: Mr. President.

4 SENATOR GOLD: I want you to
5 understand, Senator Daly, I'm not indicating
6 that we have a problem.

7 SENATOR DALY: I fully understand
8 that.

9 ACTING PRESIDENT KUHL: Senator
10 Daly?

11 SENATOR DALY: Out of courtesy to
12 my two colleagues, lay the bill aside.

13 ACTING PRESIDENT KUHL: Senator
14 Daly is asking for the bill to be laid aside.
15 Calendar Number 261 will be laid aside
16 temporarily.

17 THE SECRETARY: Calendar Number
18 293, by Senator Levy, Senate Bill Number 184-A,
19 an act to amend the Vehicle and Traffic Law.

20 SENATOR GOLD: Explanation.

21 SENATOR PRESENT: Lay it aside
22 temporarily.

23 ACTING PRESIDENT KUHL: Lay

1 Calendar Number 293 aside temporarily.

2 THE SECRETARY: Calendar Number
3 414, by Senator Tully, Senate Bill Number
4 4484-B, an act to amend the Education Law, in
5 relation to the definition of dental assistant.

6 ACTING PRESIDENT KUHL: The Chair
7 recognizes Senator Gold.

8 SENATOR GOLD: Would Senator
9 Tully yield to a question?

10 ACTING PRESIDENT KUHL: Senator
11 Tully, do you yield?

12 SENATOR TULLY: Yes, Mr.
13 President.

14 ACTING PRESIDENT KUHL: Senator
15 Tully yields.

16 SENATOR GOLD: Senator Tully, my
17 notes indicate that on the "A" print -

18 ACTING PRESIDENT KUHL: Senator
19 Gold I may interrupt for a minute. It's awfully
20 noisy in here. I think you're probably having
21 as hard time hearing as I am. Ladies and
22 gentlemen, can we have a little order in the
23 chamber, please. Discussions in the back of the

1 chamber, could we take them outside of the
2 chamber. Staff members please sit down in your
3 seats, Senators take their places. We're in for
4 a long day, makes it a lot easier, a lot
5 quicker, if we can hear each other in our points
6 to be made. Thank you.

7 Senator Gold.

8 SENATOR GOLD: Thank you, Mr.
9 President.

10 Senator Tully, my notes indicate
11 that, on the "A" print of this bill, the Dental
12 Hygienists Association of New York State was
13 opposed. Now, you've got a "B" print, and I was
14 wondering if you could tell us what the "B"
15 print changed, and does that, in effect, deal
16 with the memo of the hygienists?

17 SENATOR TULLY: The answer to
18 that, Mr. President, is yes, but they still are
19 opposed.

20 SENATOR GOLD: All right. Well,
21 could you tell us, though, what the "B" print
22 did do?

23 SENATOR TULLY: Well, I'll read

1 them for you.

2 On page 1, line 3, the word
3 "certified" is inserted.

4 On page 1, line 8, "applying
5 topical anesthetics" is removed.

6 On page 2, line 7, "facility" is
7 changed to "office," and on page 7, lines 15 to
8 "B" there are -- 15 to 17, there are additional
9 changes, which basically indicates that what
10 dental hygienists do, dental assistants can do
11 as well. Actually, the reverse, what dental
12 assistants can do, dental hygienists can do.
13 But my teeth are starting to bother me a little.

14 SENATOR GOLD: Well, I'm not
15 going to argue with anybody who had an ace on
16 his birthday.

17 But, Senator, from what I
18 understand, they have not withdrawn the
19 opposition; is that correct?

20 SENATOR TULLY: That's correct,
21 Mr. President, and I think, even in the face of
22 that, Assemblyman Silver assures us that it will
23 pass in the Assembly as well.

1 SENATOR GOLD: Thank you.

2 ACTING PRESIDENT KUHL: Secretary
3 will read the last section.

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

6 ACTING PRESIDENT KUHL: Call the
7 roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT KUHL: Announce
10 the results when tabulated.

11 THE SECRETARY: Ayes 50, nays
12 one, Senator DeFrancisco recorded in the
13 negative.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 653, by Senator Hannon, Senate Bill Number
18 276-B, an act to amend the Public Housing Law.

19 SENATOR GOLD: Explanation.

20 ACTING PRESIDENT KUHL: Senator
21 Hannon, an explanation has been asked for on
22 Calendar Number 653 by Senator Gold.

23 SENATOR HANNON: This would put

1 into law an index to be set by the Commissioner
2 of Taxation and Finance for the interest rates
3 that would be paid on judgments or accrued
4 claims by state, local government and by public
5 authorities. Currently, it's at a fixed rate.

6 ACTING PRESIDENT KUHL: Senator
7 Gold.

8 SENATOR GOLD: Yeah, just for the
9 information of the members, there is a memo in
10 support from NYCOM, and the New York State Trial
11 Lawyers has a memorandum in opposition.
12 Obviously, the lowering of the interest rate
13 affects the value of the judgments.

14 ACTING PRESIDENT KUHL: Secretary
15 will read the last section.

16 Senator -

17 SENATOR HANNON: Senator, the
18 Trial Lawyers' memo is on the unamended bill.

19 SENATOR GOLD: That is true.

20 SENATOR HANNON: We have an
21 agreement by the Minority floor leader that the
22 memo in opposition was on the unamended bill.

23 SENATOR GOLD: Yeah. Mr.

1 President.

2 ACTING PRESIDENT KUHL: Senator
3 Gold.

4 SENATOR GOLD: Senator Hannon is
5 absolutely accurate.

6 Will you yield to one question?

7 SENATOR HANNON: Yes, sir.

8 ACTING PRESIDENT KUHL: Senator
9 Hannon yields.

10 SENATOR GOLD: Yeah. Is there
11 anything in the "B" print that would affect
12 their original objection? Their objection was
13 to the issue of lowering the interest rate, as I
14 understand it, and what that would do to the
15 value of judgments.

16 SENATOR HANNON: There is -- I
17 don't think so, and in any event we put both a
18 floor and a ceiling on the range of the index.
19 The floor would be four and a half percent and
20 the -- four and one-quarter percent and the
21 ceiling would be nine percent.

22 ACTING PRESIDENT KUHL: Secretary
23 will read the last section.

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 51.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 698, by Senator Volker, Senate Bill Number 7573,
11 an act to amend the Penal Law.

12 ACTING PRESIDENT KUHL: Secretary
13 will read the last section.

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 51.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 894, by Senator Rath, Senate Bill Number 7054-C,

1 an act to amend the State Administrative
2 Procedure Act.

3 SENATOR GOLD: Will the Senator
4 yield to one question?

5 ACTING PRESIDENT KUHL: Senator
6 Rath, do you yield to Senator Gold?

7 SENATOR RATH: Yes.

8 ACTING PRESIDENT KUHL: Senator
9 yields.

10 SENATOR GOLD: Yeah. Senator,
11 there was one of these one-liners from
12 Department of Environmental Conservation on the
13 "A" print. I was wondering whether or not the
14 "C" print was done with any consultation with
15 them or addressing any of their concerns?

16 SENATOR RATH: Yes. What came of
17 this as we went along with the Assembly ARRC,
18 and as you can see we're in a "C" print on this,
19 what is now going to be necessary is that all
20 efforts that are made to identify conflicting
21 regulations with other state agencies will be
22 documented, not just as they are stated that
23 they are conflicting, but efforts to resolve the

1 conflict, so that's basically what the differ
2 ence is, and you'll note that this was passed
3 unanimately June 1st here in this chamber and
4 then, when we went to negotiate with the
5 Assembly ARRC, some of these were developed and
6 we are awaiting momentarily a number from
7 Assemblyman Kaufman. He has agreed and is
8 working this on the floor over in the Assembly.

9 SENATOR GOLD: Thank you,
10 Senator.

11 ACTING PRESIDENT KUHL: Secretary
12 will read the last section.

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 51.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 896, by Senator Rath, Senate Bill Number 7443-B,
23 an act to amend the State Administrative

1 Procedure Act.

2 SENATOR GOLD: Last section.

3 ACTING PRESIDENT KUHL: Secretary
4 will read the last section.

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

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 51.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 1105, by Senator Stafford, Senate Bill Number
15 7970-A, proposing an amendment to the
16 Constitution, in relation to the use of certain
17 forest preserve land.

18 SENATOR GOLD: Explanation.

19 SENATOR OPPENHEIMER:
20 Explanation.

21 SENATOR PRESENT: Lay the bill
22 aside temporarily.

23 ACTING PRESIDENT KUHL: Lay the

1 bill aside temporarily.

2 THE SECRETARY: Calendar Number
3 1261, by Senator Larkin, Senate Bill Number
4 1902-C, an act to amend the Agriculture and
5 Markets Law.

6 SENATOR GOLD: Hold on a second.

7 ACTING PRESIDENT KUHL: Secretary
8 will read the last section.

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 51.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 1287, by Senator Rath.

19 SENATOR PRESENT: Lay it aside.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside temporarily.

22 THE SECRETARY: Calendar Number
23 1323, by the Senate Committee on Rules.

1 SENATOR PRESENT: Lay it aside
2 temporarily.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside temporarily.

5 THE SECRETARY: Calendar Number
6 1334, by Senator Saland, Senate Bill Number
7 6505-A, an act to amend the State Finance Law.

8 SENATOR LEICHTER: Explanation.

9 ACTING PRESIDENT KUHL: Senator
10 Saland, an explanation of Calendar Number 1334
11 has been asked for by Senator Gold.

12 SENATOR SALAND: Thank you, Mr.
13 President. Mr. President, let me just find my
14 correct folder here, if you'll indulge me a
15 moment.

16 What this bill does is basically
17 to expand the competitive bidding process to a
18 number of previously exempted entities. It
19 provides for agencies, boards, divisions,
20 councils and public authorities to be subject to
21 the same competitive bidding requirements that
22 currently apply to the executive branch.

23 There is an exemption provided

1 for the Power Authority and the purpose of that
2 exemption is that the Power Authority finds
3 itself in a rather unique situation where public
4 safety may, from time to time, dictate some
5 rather rapid action on their part such as a
6 problem at a facility where a facility goes
7 down, particularly if it's a nuclear facility
8 and they immediately have to go out and procure
9 or secure equipment and be able to get that
10 facility back on line.

11 ACTING PRESIDENT KUHL: Senator
12 Leichter, why do you rise?

13 SENATOR LEICHTER: Mr. President,
14 I have an amendment at the desk. I don't want
15 to interrupt Senator Saland if he's still
16 continuing his explanation and actually, I want
17 to ask him before I get to the amendment, I also
18 want to ask a question. I don't know; is this a
19 good time to do that?

20 SENATOR SALAND: Certainly,
21 Senator.

22 ACTING PRESIDENT KUHL: Senator
23 Saland, do you yield -- Senator Saland, do you

1 yield to a question from Senator Leichter?

2 SENATOR SALAND: Yes, Mr.

3 President.

4 ACTING PRESIDENT KUHL: Senator
5 yields, Senator Leichter.

6 SENATOR LEICHTER: Senator, I
7 understand that you've amended this bill now to
8 exempt the Power Authority from this requirement
9 of public bidding; is that correct?

10 SENATOR SALAND: Yes, Senator
11 Leichter.

12 SENATOR LEICHTER: Could you tell
13 us why that was done?

14 SENATOR SALAND: Well, I did that
15 in my explanation, but permit me again. The
16 Power Authority from time to time finds itself
17 in a very unique type of a situation where
18 public safety dictates that it immediately
19 acquire sometimes very unique equipment, major
20 equipment, equipment necessary when a facility
21 may go down, and that has occurred. If it's a
22 nuclear facility, obviously, there's tremendous
23 concern for public safety, and we certainly

1 can't take the time to do a competitive bidding
2 procedure. Public safety would certainly be
3 elevated to a level that would require us to by
4 pass that.

5 SENATOR LEICHTER: Senator,
6 request if you'd be good enough to yield to
7 another question.

8 ACTING PRESIDENT KUHL: Senator
9 Saland, do you continue to yield?

10 SENATOR SALAND: Yes, Mr.
11 President.

12 ACTING PRESIDENT KUHL: Senator
13 does.

14 SENATOR LEICHTER: In the law
15 that you're amending, isn't there presently an
16 exemption where there is a matter of public
17 safety? I believe that all of the public
18 bidding requirements are always subject to
19 exemptions where there's a matter of public
20 safety.

21 SENATOR SALAND: You're correct
22 in part, Senator. There is a -- a procedure by
23 which there is an exemption available to you if

1 you make an application, and I believe that's to
2 OGS. We feel that, if you have a nuclear
3 facility just by way of example that's gone
4 down, time is of the essence. Whatever has to
5 be done has to be done as rapidly as possible,
6 without really, in light of the public safety
7 element, going to OGS to -- to secure approval.

8 SENATOR LEICHTER: O.K. If it's
9 convenient for you, I'm going to offer up my
10 amendment at this time.

11 SENATOR SALAND: Certainly.

12 SENATOR LEICHTER: Mr. President,
13 I believe there's an amendment at the desk.

14 ACTING PRESIDENT KUHL: Senator
15 Leichter, the Secretary indicates to me that
16 there is an amendment at the desk. You're
17 asking that the reading be waived, that you have
18 an opportunity to explain it.

19 SENATOR LEICHTER: Right.

20 ACTING PRESIDENT KUHL: Senator
21 Leichter to explain his amendment.

22 SENATOR LEICHTER: Fine. Thank
23 you very much.

1 I happen to feel, and I think
2 many members on this side of the aisle believe
3 that public bidding is a good thing and we
4 support the idea of extending public bidding,
5 and what this amendment does is to extend -
6 what Senator Saland is trying to do to reach
7 more public bodies and require public bidding,
8 and we include in our -- in our bill, every
9 agency, board, commission, division, council,
10 office, regulating district or bureau or public
11 authority or public benefit corporation.

12 Senator Saland's bill is limited
13 to certain authorities or public bodies where
14 there is an appointment by the Governor. It
15 doesn't reach a lot of local authorities who
16 engage in purchasing goods and services.
17 Furthermore, as the colloquy between Senator
18 Saland has just shown, he has now exempted the
19 New York Power Authority and, frankly, for
20 reasons I can not understand because, while he's
21 perfectly correct when he states that there may
22 be emergencies, as he conceded, the law now
23 provides that, if you have an emergency, there's

1 a procedure by which there's independent
2 verification that the emergency exists and that
3 you are then freed from the requirement of
4 public bidding.

5 Senator Saland says, Well,
6 suppose you've got a problem with a nuclear
7 reactor. You got to go out and buy a bolt or
8 whatever you need to buy, but you could do that,
9 and it's not a lengthy procedure. The whole
10 idea is that you want some agency or some body,
11 an independent body, determining whether the
12 emergency really exists.

13 I mean I could see instances
14 where the State Police, which is under the
15 requirement of public bidding may say, We're out
16 of bullets. Well, they can get an exemption.
17 There can be any number of agency situations
18 where there's an emergency every bit as serious
19 as with the Power Authority, and I really don't
20 understand why the Power Authority is being
21 exempted. Indeed, until recently, when there
22 was a change in the leadership of the Power
23 Authority, that was an authority that you very

1 much wanted to put under public bidding, because
2 there seemed to be a number of inappropriate
3 actions that had been done by that agency.

4 But if public bidding is a good
5 idea, and I think we're committed to it, if
6 we're in favor of Senator Saland's approach
7 which is extend public bidding not just to state
8 agencies, make it applicable to all authorities,
9 local authorities, local bodies, why wouldn't we
10 want to see that public bidding is universally
11 applied in New York State, that we want to say
12 to the taxpayers of this state, we have taken
13 every possible step to see that the procurement
14 of goods and services by public bodies is going
15 to be done in the most efficient and cost
16 effective way, which is public bidding?

17 ACTING PRESIDENT KUHL: Senator
18 Leichter, could I interrupt you for just a
19 minute for a technical equipment change. Thank
20 you for your indulgence.

21 Thank you, Senator Leichter.
22 Senator Leichter on the amendment.

23 SENATOR LEICHTER: Yes. Let's,

1 if public bidding is right and we believe it's
2 right, it doesn't belong just to the state
3 government, it doesn't belong just with public
4 bodies where the Governor has an appointment,
5 it's a -- it's a principle, it's a practice that
6 ought to be applied to the Power Authority and
7 it ought to be applied to any public benefit
8 corporation.

9 Mr. President, I move the
10 amendment.

11 SENATOR SALAND: Mr. President,
12 on the amendment.

13 ACTING PRESIDENT KUHL: Senator
14 Saland, on the amendment.

15 SENATOR SALAND: Mr. President, I
16 certainly am pleased that at least Senator
17 Leichter and I start off from the same basic
18 premise, being concerned about the fact that
19 these public entities be subjected to
20 competitive bidding.

21 My assumption is that, if we had
22 the time to sit down and look at the General
23 Municipal Law, that Senator Leichter and I would

1 probably be in substantial agreement that the
2 General Municipal Law has certainly made
3 adequate provision for local governments being
4 subjected to competitive bidding. I would
5 assume that there are comparable provisions in
6 other portions of our statutes to cover counties
7 and the like, and if somehow or other they're
8 less than adequate, I'd be more than happy to
9 look at those as well.

10 This amendment deals with one
11 bill in a series of bills that I've introduced
12 in response to what I thought was a drastic need
13 to reform the current contract bidding processes
14 in our state, and I would point out that the
15 language that deals with gubernatorial
16 appointments is, at least as was intended and I
17 believe is present here intended to deal with
18 public authorities or public benefit corps. All
19 agencies, boards, commissions, divisions,
20 councils, and everything preceding that language
21 would be required to comply, and what we're
22 attempting to do is to limit the involvement to
23 those areas in which those boards and

1 authorities were actually engaged in some type
2 of state activity where there was -- where they
3 were not relatively benign enterprises or
4 authorities that had little or no state
5 involvement.

6 ACTING PRESIDENT KUHL: The Chair
7 recognizes Senator Gold on the amendment.

8 SENATOR GOLD: Thank you. Mr.
9 President -- first, Senator Saland, the reason
10 for that is, I think Senator Leichter already
11 pointed out is there is no provision in the law
12 in that area, but I want to just say one thing,
13 Senator Saland.

14 This bill, and not necessarily
15 through your fault, but this bill shows why our
16 committee systems do not work in the New York
17 State Senate, because this bill which talks
18 about being referred to the Finance Committee,
19 was discussed in the Rules Committee when it was
20 reported out, and we pointed out in the Rules
21 Committee that there should be some expansion.

22 Now, Senator Saland says he'd be
23 willing to meet with Senator Leichter and go

1 through the laws. That's what we're supposed to
2 be doing. Maybe I'm missing the boat here. I
3 read the Constitution pretty good, and I read
4 the Legislative Law. That's what we're supposed
5 to be doing is taking an idea by Senator Saland
6 which deals with an area and bring it before a
7 committee, and then, lo and behold, we have the
8 mind of Leichter and the mind of Mary Ellen
9 Jones and others who can go into this process
10 and, lo and behold, we have a bill that has it
11 all, and that's what we're talking about.

12 Now, Senator Saland, I don't know
13 whether this bill is a so-called two-house bill
14 at this late date, and I hear that we're moving
15 towards adjournment, but my suggestion, Senator
16 Saland is, if it is not, in fact, a two-house
17 bill, we ought to adopt the amendment and then
18 the amendment is out there on the table as an
19 improved version of the Saland bill and then we
20 have a legislature that's operating and working,
21 but to stand up and say -- and it's not only
22 you, Senator Saland; this is something we hear
23 every day from members of the Republican side,

1 Well, if you think that's a good idea, then you
2 put in a bill and, you know, I put in my idea,
3 you put in your idea. That really isn't the way
4 we believe a Legislature ought to work and, as I
5 pointed out before, if that's the way
6 legislatures should work, there isn't one of
7 your Republican colleagues in the New York -- in
8 the United States House of Representatives that
9 would have anything to do. But it's not the way
10 legislative bodies work. People come together
11 and they give their ideas and you approve
12 legislation.

13 So I really would urge very
14 seriously that the Leichter amendment improves
15 an idea which is put before us by Senator
16 Saland. Senator Saland gets a lot of credit for
17 bringing the idea before us. It doesn't get
18 diminished if somebody else in this house has
19 some idea that builds upon it. So I would urge
20 very strongly that we adopt the Leichter
21 amendment, set some precedent around here, and
22 then move on to the next bill.

23 ACTING PRESIDENT KUHL: Question

1 is on the amendment. All those in favor of
2 adopting the amendment signify by saying aye.

3 (Response of "Aye.")

4 Opposed nay.

5 (Response of "Nay.")

6 That was a close one again, but
7 the nays won. Amendment is defeated.

8 Is there any Senator wishing to
9 speak on the bill? Hearing none, the Secretary
10 will read the last section.

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 53.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 The Chair recognizes Senator
20 Present.

21 SENATOR PRESENT: Mr. President,
22 could we call up Calendar 1323.

23 ACTING PRESIDENT KUHL: Secretary

1 will read Calendar Number 1323.

2 THE SECRETARY: Calendar Number
3 1323, by the Senate Committee on Rules, Senate
4 Bill Number 8641, an act to amend the Insurance
5 Law, in relation to continuing the purpose and
6 extending the existence of the Medical
7 Malpractice Insurance Association.

8 SENATOR SOLOMON: Explanation.
9 Explanation.

10 SENATOR VELELLA: Oh.

11 ACTING PRESIDENT KUHL: Senator
12 Velella, an explanation has been asked of
13 Calendar Number 1323 by Senator Solomon.

14 SENATOR VELELLA: Yes. This bill
15 is an annual bill that we extend the second tier
16 of medical malpractice insurance. This would be
17 a two-year renewal so that we wouldn't have to
18 deal with it every year. It extends the
19 existence of the MMIA, and it opens up the
20 market to those people who are writing primary
21 insurance to the degree that they write that
22 primary insurance to be able to sell to doctors
23 that second tier of medical coverage which is

1 provided for free of charge to the doctors, that
2 second million dollars of coverage.

3 ACTING PRESIDENT KUHL: The Chair
4 recognizes Senator Solomon.

5 SENATOR SOLOMON: Thank you, Mr.
6 President.

7 Senator Velella, let's take note
8 of the time, because I said five minutes.

9 SENATOR VELELLA: Could you speak
10 up. I couldn't -

11 SENATOR SOLOMON: I just want to
12 take note of the time.

13 Senator -- Mr. President, will
14 Senator Velella yield?

15 SENATOR VELELLA: Yes.

16 ACTING PRESIDENT KUHL: Senator
17 Velella, do you yield?

18 SENATOR VELELLA: Yes.

19 ACTING PRESIDENT KUHL: Senator
20 yields.

21 SENATOR SOLOMON: Senator, can
22 you tell me why we're removing, since we started
23 the experimental period last year and we limited

1 it to three percent, why we now have to limit
2 the three percent total premium?

3 SENATOR VELELLA: Why we have to
4 eliminate it?

5 SENATOR SOLOMON: Yes.

6 SENATOR VELELLA: Yes. Well,
7 when we did this originally, we broke ground
8 because this had been a monopoly for a few
9 companies who were making a tremendous amount of
10 money. In its wisdom last year, the Senate
11 decided we ought to start to open this market up
12 to other companies so that there would be some
13 fair competition and allow companies that write
14 primary coverage to also write the extra excess
15 coverage.

16 Three percent was the number we
17 had arrived at through negotiation last year.
18 Since then, Medical -- Medical Mutual -- Medical
19 Liability Mutual has been approved to write the
20 business. PRI has a pending application;
21 Academic Health has been rejected, and Frontier
22 has chosen not to apply for this benefit because
23 what's happened in the marketplace is -- and

1 this is one of the reasons why PRI was delayed
2 and has just filed an application -- one of the
3 reasons is that studying the opportunity or the
4 business experience and the actuarial reports,
5 three percent of the market was really
6 questionable as to whether or not it could turn
7 a profit.

8 We have decided -- I have decided
9 in this bill that what we ought to do is open
10 the market up to everybody who wants to compete
11 fairly and on an equal basis up to the amount of
12 primary insurance that they write. If they
13 write the primary policy, they ought to be able
14 to offer to write the excess policy and put
15 every company on an equal footing.

16 The Superintendent is examining
17 each of these applicants. Obviously one was
18 rejected, so there are standards, and it would
19 make the marketplace, in my opinion, much more
20 competitive and, hopefully, bring down some of
21 the rates that we see in malpractice insurance.

22 SENATOR SOLOMON: M-m h-m-m.

23 Mr. President, if Senator Velella

1 will yield for one more question.

2 ACTING PRESIDENT KUHL: Senator
3 Velella, you continue to yield?

4 SENATOR VELELLA: Yes.

5 ACTING PRESIDENT KUHL: Senator
6 Velella yields.

7 SENATOR SOLOMON: Senator,
8 doesn't this bill have the possibility of
9 leading to "cherry picking" where, in fact, the
10 not-for-profit insurers such as MMIA and HANYS
11 are, in effect, left with the higher risks and
12 the likelihood that the premiums won't be
13 sufficient to cover losses?

14 SENATOR VELELLA: I always get a
15 little nervous reaction to the word "cherry
16 picking" because that prompted us to take some
17 actions about two years ago that I think maybe
18 we would have been wiser if we had not taken to
19 try and eliminate "cherry picking;" but in this
20 particular case, I really think the contrary is
21 true because each company that would wish to
22 write the excess policy would be limited to
23 writing the policy for those people that they

1 have the primary insurance on. So they have
2 already made the rational decision to accept
3 this person as a risk. It's just that they're
4 limited, that their risk is up to one million
5 dollars, the first million dollars. If they now
6 decide and are given the permission to write the
7 second layer of coverage, they're going to be
8 primarily responsible for that first million
9 where the big risk is; so I don't think you're
10 going to see any "cherry picking" in this
11 situation. I think the motivation is to just
12 write the extra risk and keep the people that
13 you've already determined are your clients are
14 your customers.

15 SENATOR SOLOMON: All right. On
16 the bill.

17 ACTING PRESIDENT KUHL: Senator
18 Solomon, on the bill.

19 SENATOR SOLOMON: Unfortunately
20 that's exactly what's going to happen under this
21 program. We're going to have some of the
22 privates such as PRI picking the better risks
23 and leaving the not-for-profit, the HANY and

1 MMIA with those that are in the riskier
2 practice.

3 It could also impact that second
4 tier of coverage where HANYS and MMIA have been
5 picking up, in fact, much of the cost of that
6 second tier of coverage from the excess that
7 they've earned in the past.

8 I really question this bill.
9 We've been dealing with this subject now, I
10 guess this must be the fourth year in a row that
11 we've been dealing with this form of bill in one
12 way or another, and I think what this bill could
13 lead to, if it's implemented in its current
14 form, is an additional problem with the medical
15 malpractice crisis, especially for that second
16 tier of coverage, that second one million
17 dollars worth of coverage which the hospital has
18 to provide now for their insureds, and you've
19 all received calls and you've seen the doctors
20 up here. I can tell you now, if this bill
21 passes in its current form, we'll have an
22 additional impact on malpractice insurance
23 rates, a negative impact, and we'll be back here

1 again next year.

2 So I suggest a no vote. Thank
3 you.

4 ACTING PRESIDENT KUHL: Secretary
5 will read the last section.

6 Senator Dollinger, you wish to
7 speak? The Chair recognizes Senator Dollinger
8 on the bill.

9 SENATOR DOLLINGER: Senator
10 Velella yield to a question, make sure I
11 understand the bill.

12 ACTING PRESIDENT KUHL: Senator
13 Velella yield?

14 SENATOR VELELLA: Yes.

15 ACTING PRESIDENT KUHL: Senator
16 Velella yields.

17 SENATOR DOLLINGER: I just have
18 two. As I understand it, the MMIA has a pool, a
19 fund of cash available. Didn't we tap into that
20 last year during the budget process?

21 SENATOR VELELLA: We've done some
22 pretty questionable things with that money, yes,
23 I agree. They were only precipitated by the

1 extreme emergencies in the state of New York
2 but, yes, we've tapped into that money where
3 maybe we shouldn't have, but it was necessary.

4 SENATOR DOLLINGER: O.K. And we
5 put some dry appropriations back into it is my
6 recollection again?

7 SENATOR VELELLA: No, or did we?
8 There's an appropriation of 300 million put back
9 in.

10 SENATOR DOLLINGER: O.K. But we
11 didn't fund that. We just sort of -

12 SENATOR VELELLA: No, it was dry.

13 SENATOR DOLLINGER: O.K. Again
14 through you, Mr. President, if Senator Velella
15 will continue to yield. What is the current
16 status of the fund as far as cash and its -- the
17 reason why I raise this, Senator, is because in
18 a discussion in the Health Committee with
19 Senator Tully, one of the representatives from
20 the New York State Medical Society suggested
21 that the fund was actually underfunded because
22 the claims filed against it already exceeded the
23 amount of assets in the fund and yet, as I

1 recall, during our discussion a year ago when we
2 did that dry appropriation, the suggestion was
3 made that there was about a billion dollars in
4 the fund and that it had never really been
5 tapped to cover excess. So I'm just -- I'm
6 interested in the solvency of the fund.

7 SENATOR VELELLA: Senator, from
8 my limited experience, this is one of the most
9 lucrative insurance writing policies that are
10 out there. There's a tremendous amount of
11 profit made from this insurance, and I'm advised
12 that the present status of the fund is in excess
13 of 75 -- \$75 million, over surplus.

14 SENATOR DOLLINGER: Now, is that
15 surplus calculated 75 million beyond the claims
16 that have been -

17 SENATOR VELELLA: Yes. That's
18 beyond because they have reserves for claims
19 that come in.

20 SENATOR DOLLINGER: Again,
21 through you, Mr. President, if Senator Velella
22 will continue to yield.

23 ACTING PRESIDENT KUHL: Senator

1 Velella, you continue to yield?

2 SENATOR VELELLA: Yes.

3 ACTING PRESIDENT KUHL: The
4 Senator continues to yield.

5 SENATOR DOLLINGER: So I can
6 verify the comment made by the Medical Society
7 what's the value of the claims that have been
8 made against the fund?

9 SENATOR VELELLA: Oh, I don't
10 know the value of the claims. All I know is
11 that when claims are made, they're required to
12 set aside reserves, and over and above those
13 reserves, they have a \$75 million surplus.

14 SENATOR DOLLINGER: O.K.

15 SENATOR VELELLA: I couldn't give
16 you the amount that would be in claims.

17 SENATOR DOLLINGER: O.K. I was
18 concerned, through you, Mr. President, about the
19 status and the solvency since Mr. -- Dr. Ellman
20 from the Medical Society had suggested that the
21 fund might have been insolvent. I thought if
22 that was the case, we might have to do something
23 more than just simply extend it, but to your

1 knowledge, Senator, we're still in the black on
2 the fund vis-a-vis the amount of cash in there
3 offset by the amount of claims made against it?

4 SENATOR VELELLA: We're still in
5 the black. There is a \$75 million surplus and,
6 as I've just been advised by counsel, the claims
7 on that excess coverage, not the first million
8 coverage.

9 SENATOR DOLLINGER: Right.

10 SENATOR VELELLA: That second
11 million that we provide free of charge to the
12 doctors are very minimal and are totally
13 reserved and that this is an excess of funds of
14 75 million. Now, please don't run out and spend
15 it, O.K.?

16 SENATOR DOLLINGER: Right.

17 SENATOR VELELLA: But it's there.

18 SENATOR DOLLINGER: But actually
19 -- again through you, Mr. President. One of
20 the -

21 ACTING PRESIDENT KUHL: Senator
22 Velella, you continue to yield?

23 SENATOR VELELLA: Yes.

1 ACTING PRESIDENT KUHL: Senator
2 yields.

3 SENATOR DOLLINGER: One of the
4 questions I have is not whether we go out and
5 spend it, but whether, if we do have that excess
6 reserve, we can begin to reduce the contribution
7 in it, so since we've got that money there, we
8 can reduce the contribution, reduce the cost to
9 the people who are paying the premiums and
10 selling them, and give a little bit back. Is
11 that possible?

12 SENATOR VELELLA: Senator, I
13 would support your concept, but I am not an
14 actuary, and I don't profess to be, and I would
15 say that I would leave that kind of a decision
16 up to the actuaries and the insurance
17 professionals to decide if the surplus is so
18 much that it might be a time to reduce premium
19 or what anticipated -- and again this is guess
20 work -- what anticipated claims might be. That
21 anybody could speculate to. So I wouldn't want
22 to substitute my judgment for people who are
23 trained actuaries in that area.

1 SENATOR DOLLINGER: O.K. That
2 actually ties in with the final observation I'd
3 just make, and I now see given one of the other
4 questions I was going to ask, Mr. President, was
5 why we were just rolling it over for two years,
6 but I think Senator Velella has provided the
7 answer, which is at some point we might sit down
8 and look at whether the excess that we've
9 collected could be rebated in the form of
10 reduction in premiums or reduction in cost at
11 some time in the future. I assume we can do
12 that when the two-year extension expires with
13 the next session of this Legislature and sit
14 down and review those kinds of issues.

15 SENATOR VELELLA: Certainly we
16 can do that, Senator, but to put your mind at
17 rest, I have just been given a statistic that
18 might make it a little easier for you and I to
19 accept. Since 1985 and through 1993 there were
20 only \$30 million in claims paid out from this
21 excess fund, so from 1985 to 1993 we paid out 30
22 million. We have a surplus over and above
23 reserves of 75 million. Not being an actuary, I

1 would think we're in pretty sound shape.

2 SENATOR DOLLINGER: O.K. O.K.

3 That was my question. I thank Senator Velella.

4 ACTING PRESIDENT KUHL: Secretary
5 will read the last section.

6 THE SECRETARY: Section 6. This
7 act shall take effect July 1.

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT KUHL: Senator
12 Skelos to explain his vote.

13 SENATOR SKELOS: Mr. President,
14 I'd like to have unanimous consent to abstain.

15 ACTING PRESIDENT KUHL: Without
16 objection, Senator Skelos will be marked as
17 abstaining.

18 Announce the results when
19 tabulated.

20 THE SECRETARY: Ayes 51, nays 2,
21 Senators Paterson and Solomon recorded in the
22 negative.

23 ACTING PRESIDENT KUHL: The Chair

1 recognizes Senator Present.

2 The bill is passed.

3 SENATOR PRESENT: Mr. President,
4 can we take up Calendar 293.

5 ACTING PRESIDENT KUHL: The last
6 bill was passed.

7 SENATOR LEVY: Could we just lay
8 it aside for a couple minutes. O.K.? Thank
9 you.

10 SENATOR PRESENT: Two minutes!
11 Lay it aside. Go on to the regular order.

12 ACTING PRESIDENT KUHL: Calendar
13 293 will be laid aside. Secretary will read the
14 controversial calendar in regular order.

15 THE SECRETARY: Calendar Number
16 1386, by Senator Tully, Senate Bill Number 8739,
17 an act to amend the Public Health Law.

18 SENATOR PRESENT: Lay it aside
19 temporarily.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside temporarily.

22 THE SECRETARY: Calendar Number
23 1407, by Senator Volker, Senate Bill Number

1 8606, establish a moratorium on requiring any
2 disconnection from the Letchworth State Park
3 water line.

4 SENATOR GOLD: Explanation.

5 ACTING PRESIDENT KUHL: An
6 explanation has been asked for, Senator
7 Present.

8 SENATOR PRESENT: Lay it aside
9 temporarily.

10 ACTING PRESIDENT KUHL: Lay the
11 bill aside temporarily.

12 THE SECRETARY: Calendar Number
13 1410, by Senator Stafford.

14 SENATOR PRESENT: Lay it aside
15 temporarily.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside temporarily.

18 THE SECRETARY: Calendar Number
19 1420, by Senator Bruno.

20 SENATOR PRESENT: Lay it aside
21 for the day.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside for the day.

1 THE SECRETARY: Calendar Number
2 1422, by member of the Assembly Luster, Assembly
3 Bill Number 9275-A, an act to amend the Labor
4 Law.

5 ACTING PRESIDENT KUHL: Secretary
6 will read the last section.

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 53.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 1427, by Senator Pataki.

17 ACTING PRESIDENT KUHL: Lay the
18 bill aside.

19 THE SECRETARY: Calendar Number
20 1428, by Senator Pataki, Senate Bill Number
21 7808, an act to amend the Criminal Procedure
22 Law.

23 SENATOR GOLD: Explanation.

1 SENATOR PRESENT: Lay it aside.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside.

4 THE SECRETARY: Calendar Number
5 1440, by Senator Saland, Senate Bill Number
6 885-A, an act to amend the Public Health Law and
7 the Executive Law.

8 SENATOR GOLD: Explanation.

9 ACTING PRESIDENT KUHL: Senator
10 Saland, an explanation has been asked for on
11 Calendar Number 1440 by Senator Gold.

12 SENATOR SALAND: Thank you, Mr.
13 President.

14 Mr. President, this bill is a
15 bill which, in many respects is similar, if not
16 substantially similar to a bill that we passed
17 here in this house, I believe either two or
18 three years ago with some 50-some-odd votes.

19 What this bill would do would be
20 to create a mechanism in compliance with federal
21 law that would enable a victim who has been the
22 subject of a -- of a sexual offense to request
23 the court to have her and sometimes his

1 assailant tested to determine if that person was
2 HIV positive.

3 The bill uses a "reasonable
4 cause" standard. The importance of this bill is
5 that, if we do not adopt such a bill by
6 September 30th of this year, our state will lose
7 ten percent of its federal drug monies pursuant
8 to what I believe is the Edward Byrne Memorial
9 local, and I believe state law enforcement
10 program that the federal government maintains.
11 What that means in this year is a loss of some
12 \$2.2 million. In fact, that \$2.2 million has
13 effectively been taken from New York. We have
14 the ability to get that money should we enact
15 legislation prior to September 30, and I fear
16 that the likelihood of our having the
17 opportunity to do that, if we don't do it within
18 the next couple of days, may well be beyond our
19 ability.

20 Not only do we lose that money,
21 but thereafter, forever more, barring a change
22 in the federal legislation, we will always lose
23 ten percent of our drug money, always lose ten

1 percent of the Byrne monies. I don't know how
2 many countless of millions that will amount to
3 as we continue to suffer those ten percent
4 losses.

5 Some thirty...

6 SENATOR LEICHTER: Mr. President.

7 SENATOR SALAND: ... seven
8 states, as I understand it, most recently, maybe
9 as recently as two weeks ago, had adopted this
10 legislation or some form of this legislation.
11 New York is one of the few holdouts. This...

12 SENATOR LEICHTER: Mr.
13 President.

14 ACTING PRESIDENT KUHL: Senator
15 Leichter, why do you rise?

16 SENATOR LEICHTER: Can I ask a
17 question of Senator Saland?

18 ACTING PRESIDENT KUHL: Senator
19 Saland, do you yield to a question from Senator
20 Leichter?

21 SENATOR LEICHTER: You want to
22 finish?

23 SENATOR SALAND: May I just

1 conclude, and I'll be more than happy to
2 entertain any questions, Senator Leichter.

3 SENATOR LEICHTER: Sure.

4 SENATOR SALAND: This bill, I
5 fear, has been ensnared in the controversy that
6 always surrounds the AIDS controversy. This
7 bill is not a bill which is intended to do
8 anything but be a victims' rights bill and to
9 entitle victims to have the ability where they
10 should choose to make application to a court in
11 an appropriate case to get an order of that
12 court to have their assailant tested.

13 The bill which is about, I
14 believe, four pages long, five pages, has a
15 number of provisions in it dealing with
16 confidentiality, dealing with counseling,
17 dealing with a host of other topics which I
18 think make it a very balanced bill.

19 Thank you, Mr. President. I
20 apologize for not yielding to you.

21 ACTING PRESIDENT KUHL: Senator
22 Saland, will you yield to Senator Leichter's
23 questions?

1 SENATOR SALAND: Yes.

2 ACTING PRESIDENT KUHL: Senator
3 Leichter, Senator Saland yields.

4 SENATOR LEICHTER: I was just
5 trying to correct, I believe, a statement that
6 you made as regards our need to pass this bill
7 to comply with federal law which really goes to
8 the heart of the problem that I have with this
9 bill, and I think some others have with it.

10 Federal law, as I understand it,
11 and as I'm advised, requires that we provide
12 that somebody who is convicted -- convicted
13 under state law of a sexual offense which could
14 conceivably transmit the HIV virus, be tested.

15 Your bill goes far beyond that.
16 Your bill provides for testing of people who
17 have not been convicted. Am I not correct,
18 Senator, that we do not have to pass a bill
19 which requires that persons who are not
20 convicted, who only are indicted, charged with a
21 sexual crime, be tested and that's what your
22 bill does.

23 SENATOR SALAND: Permit me, if I

1 convicted defendant is no longer presumed
2 innocent and has fewer procedural rights there's
3 two problems with waiting for conviction."

4 Again I'm speaking for the
5 Governor's Task Force here; this is not Senator
6 Steve Saland.

7 "One, extensive delay is
8 inevitable because it can take weeks for
9 conviction by plea and months for conviction by
10 verdict; and two, there are a number of
11 acquittals and dismissals where the defendant
12 may have nevertheless infected the victim. In
13 either case, conviction is not an adequate
14 triggering event. For similar reasons,
15 indictment is not a good marker. Indictments
16 can be delayed, particularly where a defendant
17 is at liberty. Furthermore, a prosecutor may be
18 unable to obtain an indictment for reasons
19 unrelated to whether the accused -- the accused
20 is the true perpetrator."

21 This came to my attention -- the
22 whole issue came to my attention about four or
23 five years ago, Senator, when it was reported in

1 New York City media and in one account by a
2 legal periodical, of assailants using their
3 refusal to take an HIV test as a means to obtain
4 a plea bargain. I found that to be grossly
5 unconscionable.

6 What this bill does, it says
7 there is a reasonable cause standard. Convic
8 tion is one of the standards. Reasonable cause
9 is another one of the standards. This can occur
10 pre-conviction. The federal government talks in
11 terms of conviction. The Governor's Task Force
12 and experience dictates that to wait for
13 conviction is to leave people who have been
14 victimized at risk.

15 Why should you have to undergo
16 the kind of extraordinarily inhumane, traumatic
17 indignities that one must as a victim of an act
18 of sexual offense, wait for that conviction
19 which may well take not months but in excess of
20 a year and perhaps more than a year, may take
21 years, quite literally, when this procedure only
22 in case of reasonable cause, only where there's
23 confidentiality ensured, only where there is

1 this counseling assured for both victim and
2 assailant.

3 There's nothing unreasonable
4 about this bill. It's a victims' rights bill,
5 and I think, and I can't tell you what 37 other
6 states have done other than to be in compliance
7 with the federal law, and I would be certainly
8 surprised to find out that a goodly number of
9 those 37 states have not also adopted standards
10 that didn't require merely conviction.

11 SENATOR LEICHTER: Senator, you
12 gave a very persuasive explanation of why your
13 bill will include people who have not been
14 convicted, but I think in that answer you also
15 conceded the question or the point that I made
16 to a question, which is that federal law does
17 not require the testing of people who are
18 charged with a sexual crime but who have not
19 been convicted, and I -- I think -

20 SENATOR SALAND: And I think I
21 addressed that, and I think I acknowledged that
22 my understanding of the federal law, which has
23 been out there by the way for four years,

1 Senator Leichter -- this is not a surprise. The
2 enabling legislation that gave the "drop dead"
3 date of September 30 of this year was on the
4 federal books some four years ago. Everybody
5 has known this is coming. You may recall when
6 the Governor gave us his budget this January, in
7 his Article VII bills, he had a bill for HIV
8 testing.

9 Within 24 hours, a statement was
10 issued by his press officer that it was in there
11 by mistake. I beg to differ. It wasn't a
12 mistake. It was a \$2.2 million item that was
13 intended to be in the budget, was there where it
14 belonged, and then for reasons that are rather
15 easy to surmise, namely, the kinds of pressure
16 that some people can bring in response to HIV
17 related issues, he backed off.

18 It's a victims' rights bill, pure
19 and simple and, if the federal standard is
20 conviction, then where the hell has the bill
21 been for four years we've known it's coming?
22 I've been laboring in the trenches for three of
23 those four years with this bill. Where is the

1 Governor's response? Where is the program bill
2 that should have come out when he gave us his
3 budget, when he said it was in there by mistake?
4 You don't print mistakes like that.

5 SENATOR LEICHTER: Senator, I -
6 I understand you, but I -- I didn't know whether
7 you were finished. If you are, I'd like to just
8 make a couple comments on the bill.

9 ACTING PRESIDENT KUHL: Senator
10 Leichter, on the bill.

11 SENATOR LEICHTER: I thank my
12 good friend, Senator Saland, who is articulate
13 and reasonable as always.

14 Let me just say that obviously
15 this is a very emotionally charged issue and not
16 only do we have enormous sympathy, each and
17 every one of us for crime victims, but
18 particularly when it's a crime as horrible as
19 rape, and it compounds the situation when
20 there's a possibility that somebody was not only
21 victimized by being raped, but might possibly
22 have contracted AIDS.

23 But I would hope that our strong

1 sympathy and feelings for the victim does not
2 lead us into passing a bill which I think is
3 mistaken, doesn't help the victim, does not help
4 the victim, and I think raises some very serious
5 constitutional issues. And, Senator Saland, I
6 know there are times when we might like to say,
7 Well, the Constitution, it can't mean that, it
8 can't do that, it's wrong, but the wonderful
9 thing about the Constitution, and I know you
10 appreciate it and love it and respect it as I
11 do, is that it, by giving protection even to
12 people, horrible people, we really protect those
13 that we want to protect, which is the
14 overwhelming majority of people; and if there's
15 anything that is basic to our jurisprudence and
16 that sets us off from so many other countries,
17 is that we have this wonderful presumption of
18 innocence and until you're convicted, until
19 you're convicted, you're not subject to
20 governmental intrusion, which is perfectly
21 proper when somebody has been convicted; and
22 what this bill does and where I think it goes
23 too far, and Senator Saland has admitted that

1 federal law does not require us to go as far as
2 he does, is to say that somebody who is just
3 charged with a crime can be tested for the AIDS
4 virus, and that, I just think, is wrong under
5 all circumstances, and even though he's got a
6 probable cause, probable cause is not the same
7 as being found guilty by a jury beyond a
8 reasonable doubt or confessing to the crime.

9 Now, the Governor's Task Force,
10 to which you refer, made certain arguments -
11 and I think they're legitimate arguments why
12 there'd be some advantage to testing prior to
13 conviction, the problem that if you have to wait
14 until there is a trial some time passes -- but
15 there is an answer and, frankly, it's the only
16 really effective answer for the victim, and that
17 is the victim has to be tested, because even if
18 you test the perpetrator or the alleged
19 perpetrator of the crime, and he or she should
20 test positive, you've got to test the victim,
21 because there obviously is no inevitability that
22 somebody who was -- who's HIV positive,
23 therefore, transmitted the virus, and really,

1 the only safe thing to do for any victim is to
2 have the victim tested, and it's a terrible
3 thing to require that, and so on, but if that
4 concern exists, you're going to have to
5 inevitably test the victim, and that's why in my
6 belief that this bill can be postured as a
7 victims' rights bill, but it's really not the
8 answer to victims. You mislead victims if
9 they're going to rely solely and exclusively on
10 testing of the perpetrator of the sexual crime.

11 ACTING PRESIDENT FARLEY: Senator
12 Saland.

13 SENATOR SALAND: Mr. President,
14 I'd like to take the liberty of calling Senator
15 Leichter's attention to Section 4 of the bill,
16 it's on page 3, and that section talks about
17 what the application for an order to compel a
18 person to undergo a HIV test shall require, and
19 if you look at subsection (d), I believe it
20 takes care of all of Senator Leichter's
21 concerns.

22 As I said earlier in my opening
23 remarks, this bill is intended to balance the

1 need for confidentiality, the rights of
2 confidentiality of the accused, with the
3 interests of the victim to know, and if you read
4 subsection (d), what it says is that the
5 applicant, as part of his or her application,
6 shall state that they've received counseling by
7 a physician or a public health official,
8 understands the limitation of the information
9 obtained through the testing, goes on to list a
10 host of other things, and says "*** the need for
11 the applicant to undergo HIV-related testing to
12 definitively determine his or her HIV status."

13 Now, this is not a mere shot in
14 the dark. This is not something that's thrown
15 out to posture. This is something that we've
16 dealt with before. We even go so far as to
17 provide for compensation for the cost of the
18 testing and counseling for the victim under the
19 current victims' rights legislation that's in
20 the last section of this proposed bill.

21 I believe, Senator Leichter, in a
22 genuine good faith effort, we've tried to
23 balance the equity here. I don't believe that

1 you could argue that this is so unique inasmuch
2 as there are state laws in this state and other
3 states that permit, for instance, the drawing of
4 blood in DWI cases, without the consent and
5 without the -- without the need for either an
6 indictment or a conviction. This is not
7 unique.

8 SENATOR LEICHTER: Senator, let
9 me just say that -

10 ACTING PRESIDENT FARLEY: Senator
11 Leichter.

12 SENATOR LEICHTER: And maybe it's
13 that I didn't articulate my concerns that
14 clearly, but in no respect do the provisions
15 that you've referred me to, deal, overcome or
16 answer my objection.

17 My objection is a basic
18 constitutional objection that I don't think that
19 we have the right, nor do I think we should even
20 if we had the right, treat somebody who has not
21 been convicted of a crime as if he had been
22 convicted, and that is really my objection, and
23 the point that I made, Senator, is that the

1 applicant, or the victim of the crime, the only
2 way that he or she can be sure that they have
3 not been infected is to be tested themselves
4 and, while your bill says, well, that they have
5 to receive counseling, and so on, we know that
6 counseling doesn't always lead to the right
7 action by individuals, and actually, in the -
8 insofar as you give people a sense of confidence
9 that somehow or other, by the testing of the
10 perpetrator or alleged perpetrator, that that's
11 going to answer the question of whether the
12 victim is HIV positive, that, of course, is not
13 the case. The only thing that you could find, I
14 assume, that if the perpetrator is not HIV
15 positive, then the victim will not be HIV
16 positive as a result of that particular
17 incident. But if the perpetrator does test HIV
18 positive, you've got to test the victim in any
19 event. There's no way that you can then start a
20 course of treatment as if the person was HIV
21 positive without knowing it.

22 So really, the only answer is to
23 test the victim, and that's really what all our

1 aim and effort ought to seek to do is to
2 provide, well, you're going to have counseling
3 and so on, doesn't help the victim, and it
4 obviously doesn't overcome what I see as a
5 constitutional defect in your bill.

6 But I was interested, Senator, as
7 I leafed through the statements of opposition, a
8 memorandum of opposition from Victims' Services,
9 Victims' Services, says this bill is not in the
10 interests of the victims.

11 SENATOR SALAND: Excuse me,
12 Senator Leichter. Would you yield?

13 ACTING PRESIDENT FARLEY: Senator
14 Leichter, would you yield?

15 SENATOR SALAND: I can only -
16 let me do this in the form of a question. I can
17 assume that -- am I correct in assuming you've
18 read the bill?

19 SENATOR LEICHTER: I've read the
20 bill.

21 SENATOR SALAND: You've read the
22 bill. And notwithstanding the language so lines
23 30 through 32 of the bill which talks in terms

1 of, again, the need for the applicant to undergo
2 HIV-related testing to definitively determine
3 his or her HIV status, you still maintain that
4 that's not an a component of this legislation,
5 and I can only assume that Victims' Services has
6 read the bill, if they've read it at all, as
7 closely as some of the people who have advised
8 you have read the bill, because it's clear, I
9 mean, we're apparently talking at each other and
10 not talking to each other, but it's certainly as
11 part and parcel of any application, you must
12 have undergone that entire program and you must
13 have been advised and you must acknowledge the
14 importance that you must be tested yourself. Of
15 course, I know that. Of course, you know that.
16 But that's not what this is about, and that's
17 smoke screen, and I dare say that those folks
18 much like the same folks that you and I deal
19 with all the time, if ten percent of them read
20 the bill or -- it's probably amazing.

21 What they probably did is they
22 responded to a phone call and they said, Get out
23 a memo in opposition, and there's the memo

1 because, if they read the bill, it's addressed
2 right in the bill. The constitutional argument,
3 this is as unconstitutional as taking blood from
4 somebody involved in a DWI, before that person
5 has gotten hours away from the scene of the
6 accident.

7 SENATOR LEICHTER: Yes, yes.

8 Senator, let me just -

9 ACTING PRESIDENT FARLEY: Senator
10 Leichter.

11 SENATOR LEICHTER: Let me just
12 say, in some ways I wish we were addressing
13 Judge Saland, because I think you'd make a
14 wonderful judge, not that I'm urging in any
15 respect that you leave this body. But, Senator,
16 it's so clear to you, well, the Association of
17 the Bar of the city of New York, one of the most
18 prestigious bar groups, and I think that gives
19 very careful attention and reads your -- all the
20 bills that they comment so, certainly read your
21 bill, says, Involuntary HIV testing of suspects
22 is unconstitutional. This is the Association of
23 the Bar of the city of New York. It's not the

1 final word, because you and I know the final
2 word is the Supreme Court, and that sometimes
3 changes depending who's sitting on the court and
4 the nature of the argument, and so on, and
5 you're not as foolish, and I'm not as foolish as
6 to say definitively absolutely this is
7 unconstitutional, absolutely constitutional, but
8 I just want to say some very good legal minds
9 who have been -- who have a record of being
10 extremely careful and thoughtful, have said this
11 is unconstitutional, and to say that the
12 Victims' Services, well, they couldn't have read
13 the bill and so on, they start off and they say,
14 Victims' Services has grappled with a
15 complicated and difficult issue of mandatory HIV
16 testing of rapists for several years.

17 They've thought about it.

18 They've looked at your bill. They've considered
19 it. They've read these provisions, and they've
20 come to the same conclusions, frankly, that I
21 did, that your provisions are not in the
22 interest of victims. They're not required by
23 federal law. You don't help us deal with

1 federal law by putting forward a bill that has a
2 real serious question as to its
3 constitutionality.

4 What happens if we pass your
5 bill, Senator Saland, and, as the Association of
6 the Bar believes, the bill will be declared
7 unconstitutional? Then we're in violation of
8 the federal law. There's an easy way to comply
9 with the federal law, and I would certainly
10 support that bill if somebody is convicted,
11 convicted of a sexual act which could
12 conceivably transmit the AIDS virus, require
13 testing. Even then, I don't think it does that
14 much for the victim, because you really ought to
15 counsel the victim to be tested. But if you
16 pass that sort of bill, no question it's
17 constitutional; no question it complies with the
18 federal law.

19 You, for some reason, had to
20 reach for more, and I think in reaching for
21 more, you have jeopardized the state's position
22 on the federal law, because I think you've put
23 forward a bill that is constitutionally

1 defective and a bill, frankly, that does not do
2 for victims what you would like to do for
3 victims.

4 SENATOR GOLD: Mr. President.

5 ACTING PRESIDENT FARLEY: Senator
6 Gold.

7 SENATOR GOLD: Mr. President,
8 would Senator Saland yield to one short
9 question?

10 ACTING PRESIDENT FARLEY: Senator
11 Saland, would you yield?

12 SENATOR SALAND: Surely, Senator
13 Gold.

14 ACTING PRESIDENT FARLEY: Yes, he
15 will.

16 SENATOR GOLD: Senator, I
17 understand that the federal law also requires
18 referral for appropriate health care and support
19 services. Now, does your bill do that?

20 SENATOR SALAND: Our bill
21 provides as part and parcel of the application
22 process, that those victims would have counsel
23 ed for all of the HIV-related support services

1 and as part of the application you have to
2 allege that you've received that counseling.
3 That's tantamount to the referral. We also
4 provide in the last section for certain of those
5 expenses associated to be covered through the
6 Victims' Compensation Board.

7 SENATOR GOLD: Mr. President, on
8 the bill.

9 ACTING PRESIDENT FARLEY: On the
10 bill, Senator Gold.

11 SENATOR GOLD: My very
12 distinguished colleague, Senator Leichter, hit
13 an awful lot of the points, but I'd just like to
14 make a few comments.

15 First of all, when we get
16 elected, there's nothing in the process which
17 claims that we are supposed to know it all and
18 we don't know it all, and we rely an awful lot
19 on the opinions of people in various fields.

20 So, for example, we've had
21 legislation today dealing with dental hygien
22 ists, and we get opinions from dental
23 assistants, dental hygienists, and these people

1 have input. There was a bill earlier today
2 dealing with insurance and malpractice, and we
3 get input.

4 This is a bill where there is
5 input. Now, the Association of the Bar of the
6 city of New York is opposed and Senator Leichter
7 gave most of their argument. You could say,
8 well, there are some lawyers that may not
9 agree. There's also opposition, however, from a
10 group called the New York State Coalition
11 Against Sexual Assault. Now, this is a group
12 that is concerned about victims. This is a
13 victims' group, and their memo explains why the
14 proposed legislation is not good for survivors.

15 Now, the survivors, as I
16 understand it, Senator Saland, are also people
17 who we call victims. In other words, the bill
18 isn't good for victims. Now, I understand,
19 Senator Saland, that the victims are the people
20 who you are most concerned with. There's no
21 doubt in my mind. Certainly, in treating -- in
22 requiring the testing to be done, the memo that
23 you provided says you're doing it because you

1 want to help the victim.

2 Well, this organization which
3 represents victims, says that the bill is not
4 good for victims. So I don't know why we're
5 doin' it.

6 Now, you said to Senator Leichter
7 that we already have in the law testing, blood
8 testing, in drunk driving cases. Well, Senator
9 Saland, as everyone here knows, if someone is
10 going to be charged with drunk driving, that
11 involves a certain amount of alcohol in their
12 blood and, therefore, that test is directly
13 relevant to evidence that would be submitted at
14 a trial.

15 If someone commits a sexual
16 assault upon someone else, that sexual assault
17 is as disgusting, as illegal if the person has
18 HIV or doesn't. The HIV issue is not part of
19 the evidence that goes with the trial. So
20 there's really two completely different
21 rationales for doing the testing.

22 The blood alcohol issue is -- is
23 one which is involved with the evidence of the

1 prosecution of that case. In this situation,
2 Senator, you're making an invasion which doesn't
3 say that there was or was not a sexual assault,
4 but only tries to determine the presence of
5 HIV.

6 I'm not going to repeat all that
7 Senator Leichter said, because he just did it
8 too well. The fact is that you are not helping
9 the victim. The only real help that a victim
10 can get is for that victim to have testing of
11 their own. The testing of the perpetrator -
12 and it's not even the perpetrator, the accused
13 perpetrator -- may or may not be accurate. It
14 may or may not tell the story, but the basic -
15 the basic part of the information I have against
16 me is when the victims' rights organizations
17 say, Don't pass it. It doesn't help victims.

18 You know, there's another bill
19 which we're going to get to dealing with whether
20 or not there should be plea bargaining in rape
21 cases and that's another one you say, Oh, my
22 God, plea bargaining. You don't want to let
23 these bums get away with it, and I asked the

1 question in the Rules Committee, is there a
2 memorandum supporting this bill by the district
3 attorney, and the answer is no. I was told no,
4 anyway, and I could understand why: Because
5 while it sounds terrific for lay people to talk
6 about that, there are a lot of DAs out there who
7 believe they have people in jail who committed
8 rape, who they could not have convicted of rape
9 first, and they were able to plea bargain and
10 get that bum off the street for a period of
11 time. So while it says it's terrific to end it
12 and it sounds politically good, those in the
13 field are not telling us to do it.

14 Senator Saland, I believe that
15 Senator Leichter pointed out that we already
16 have a law that carries us as far as we ought to
17 be able to go. You have been asked by
18 memorandum by victims' groups not to pass this.
19 If you don't want to listen to us, I urge you to
20 listen to the groups that are organized on
21 behalf of the victims and not pass the
22 legislation.

23 ACTING PRESIDENT FARLEY: Senator

1 Dollinger, then Senator Connor.

2 SENATOR DOLLINGER: Mr.
3 President, will Senator Saland yield to a
4 question?

5 ACTING PRESIDENT FARLEY: Senator
6 Saland, would you yield to a question from
7 Senator Dollinger?

8 SENATOR SALAND: Yes, Mr.
9 President.

10 SENATOR DOLLINGER: I share a
11 number of the concerns of my colleagues, and I'm
12 still wrestling with how to vote on this bill,
13 but my question is, who is going to represent
14 the victim in this civil court proceeding to
15 require that the test occur, and how will they
16 be able to pay for the cost of that proceeding,
17 wherever it goes?

18 SENATOR SALAND: Well, let me
19 help you with your -- with your grappling if I
20 can, because I -- I just want to come back and
21 touch a couple of things that you may be
22 troubled by -

23 SENATOR DOLLINGER: Yeah.

1 SENATOR SALAND: -- that perhaps
2 you're being needlessly troubled, and then I'll
3 try, in part, to answer your question.

4 SENATOR DOLLINGER: O.K. Please
5 do.

6 SENATOR SALAND: I don't believe
7 you were in the chamber when I read from the
8 Governor's Task Force on Rape and Sexual
9 Assault. Were you present at that time?

10 SENATOR DOLLINGER: I was there.
11 I was present.

12 SENATOR SALAND: You were?

13 SENATOR DOLLINGER: Yes.

14 SENATOR SALAND: O.K. That
15 recommendation really exceeded my recommendation
16 as contained in this language. That
17 recommendation talked about a civil procedure
18 which would occur even before indictment.

19 SENATOR DOLLINGER: Right.

20 SENATOR SALAND: The triggering
21 in mine, the earlier stage triggering is a
22 indictment.

23 Now, the 20 or 30 people who were

1 involved in that process were people who, and I
2 certainly would be happy to share with you the
3 names, there was a list of some people who I
4 recognized as being luminaries of sorts, they
5 were troubled as I am troubled. I'm not quite
6 sure if they have were troubled by some of the
7 things such as the attempt to use the refusal to
8 take a test as a means for plea bargaining to a
9 lesser degree of a crime.

10 I find that very troublesome, and
11 I'm sure we all do. Perhaps I'm more troubled
12 by it than others and maybe my reaction to it is
13 not the same reaction as others might have, but
14 the constitutional questions which may be
15 troubling you -

16 SENATOR DOLLINGER: Actually, I
17 can put you at rest. The constitutional issues
18 don't trouble me as much as they trouble Senator
19 Leichter. I understand his position. I also
20 believe that this is a somewhat clouded issue of
21 constitutional judgment and, from my point of
22 view, in a clouded area the Legislature is sort
23 of free to tiptoe as close to the constitutional

1 line as it chooses. If we step over the line,
2 the courts have the ability to tell us we
3 haven't done that, and I agree with Senator
4 Leichter that the controlling precedent in the
5 Supreme Court may suggest that this steps over
6 the line, I don't know, but I don't think that
7 we should necessarily pre-judge as a legislative
8 body the question of whether we violated the
9 Constitution. If we step way over the line, and
10 we're all -- it seems clear that the
11 Constitution has been violated, then as a
12 Legislature, I think we might want to step back,
13 but if it's a somewhat gray area as this area I
14 think is -

15 SENATOR SALAND: Let me -

16 SENATOR DOLLINGER: -- I'm
17 willing to let the Legislature tiptoe around
18 that line.

19 SENATOR SALAND: And I appreciate
20 that.

21 ACTING PRESIDENT FARLEY: Senator
22 Saland.

23 SENATOR SALAND: I very much

1 appreciate that, Senator, and let me just leave
2 that particular point by just coming back to,
3 again, what's in this bill as distinguished from
4 characterizations offered that don't necessarily
5 reflect the content of the bill, and I know how
6 carefully you are given to reading bills, and
7 I'm sure you're aware of this.

8 What this bill says is, there is
9 complete confidentiality as to the assailant.
10 There is no proceeding, civil or criminal, in
11 which whatever is done by way of that testing
12 can that information be admitted.

13 SENATOR DOLLINGER: Right.

14 SENATOR SALAND: So I would think
15 that, under those circumstances -- and again,
16 let's not -- I will not try to be a member of
17 that other branch, the judiciary, but I would
18 think to the extent that there were some
19 constitutional concerns, that that right of
20 confidentiality is adequate to avoid that
21 question, and I think it's been substantially
22 ignored in all the commentary and in the memos.

23 Now, with regard to the

1 application, the application would be brought
2 on, whether the requirements are such that it
3 could be brought on pro se would probably be too
4 difficult. I would assume that the application
5 would be made through counsel. Whether it would
6 be made through some type of -- of organized
7 group such as, you know, a Legal Aid or public
8 service type of thing, I don't know. I would
9 assume that there could be some costs associated
10 with it.

11 As we negotiate this bill, there
12 -- as of yesterday, there were still
13 negotiations going on. That certainly is a
14 valid consideration and one which we would try
15 to incorporate. Whether we could accomplish,
16 much as we have surcharges imposed in certain
17 situations, the ability to surcharge where, in
18 fact, there is subsequently a conviction or as
19 part of a plea bargain that certainly could be
20 accomplished as well, but going back to some of
21 the arguments that were raised in opposition
22 here, to the extent that an individual, a woman
23 or a man, because obviously there are reports of

1 men and children who have been violated as well,
2 seek that information, that would certainly be a
3 factor for them to -- to consider.

4 I, for one, you know, would think
5 it would be certainly something very
6 appropriately within their realm and if, for
7 some reason or other, that financial burden
8 absent some ability to access free legal
9 services or pro bono legal services can't be
10 accomplished, then it should appropriately be a
11 subject of negotiation.

12 SENATOR DOLLINGER: Mr.
13 President.

14 ACTING PRESIDENT FARLEY: Senator
15 Dollinger.

16 SENATOR DOLLINGER: On the bill.

17 ACTING PRESIDENT FARLEY: On the
18 bill.

19 SENATOR DOLLINGER: I addressed
20 this issue in the Health Committee about these
21 instances in which we create rights on the part
22 of people who are either victims in the criminal
23 justice process or other parts of the -

1 wherever else they are in the system, we give
2 them certain legal rights through the creation
3 of a statute like this.

4 We allow them -- if this bill
5 passes and becomes law, we allow them to require
6 that this defendant give a sample, blood sample,
7 to be tested for HIV. But what I understand,
8 and this is where I -- I caution Senator Saland,
9 I caution all of us that the -- it's not a self
10 effectuating process. The mere filing fee to
11 bring an action in Supreme Court to cover the
12 cost is \$275 in this state. The cost in legal
13 fees to meet all of those requirements, to
14 prepare the affidavits to show, as your bill
15 outlines in Section 4 on page 3, which contains
16 many detailed evidentiary issues about has the
17 victim received HIV counseling, have they
18 received a HIV test, have they taken all the
19 steps that are described here, this is not an
20 easy petition to prepare for the court.

21 I think it could be enormously
22 expensive, and I think that the -- the pro bono
23 agencies, who already are overrun with, frankly,

1 all kinds of pro bono needs in our increasingly
2 costly criminal justice system, will find this
3 extremely difficult to do this in an efficient
4 and easy or relatively inexpensive fashion.

5 I also think that the other
6 question that comes up is who represents the
7 alleged defendant? Who raises the issue that
8 there is no reasonable cause? Who defends him,
9 the public defender who is representing him in
10 the criminal process, or would he have to secure
11 private counsel for this action which will be
12 brought in Supreme Court while there's a
13 criminal complaint pending in the County Court?

14 If there is no defense for the
15 alleged perpetrator in this disclosure of an HIV
16 test, then I think you may run into one of the
17 issues that Senator Leichter raised, which is
18 the issue of effective assistance of counsel
19 since this could have some effect on the
20 criminal proceeding. That is the disclosure
21 voluntarily or the disclosure by court order of
22 the HIV test, and the results. So I think by
23 using a civil justice system to achieve this

1 goal, you create a dilemma for the victim who is
2 going to go to a lawyer and say, How much will
3 it cost to find out whether I've been exposed,
4 and the answer from a private counsel will be
5 \$2500 or more. If it's appealed, it's going to
6 cost you more.

7 Who's going to represent the
8 defendant? Well, the defendant may not have
9 representation in the civil action, and then I
10 think you may run into a constitutional problem
11 in the question of whether the civil court
12 action, if the compulsion to produce evidence,
13 whether that affects the criminal action, and
14 the consequence of all this, Senator, is that
15 the cost -- the legal costs in this whole thing
16 could explode.

17 What does that mean for the
18 victim? If your concern is for the victim, as I
19 understand everyone else's concern is for the
20 victim, I think of the victim is going to have a
21 huge disincentive to use this system because
22 it's going to be so costly for them to use it
23 and I think that the promise that this bill

1 might hold for Senator Saland, as you've
2 articulated, for those who are victims, my fear
3 is that without a way to fund, without a way to
4 provide the dollars to make this a reality, this
5 will remain a piece of paper with a promise, but
6 for many of the poor people of this state, they
7 will never get an opportunity to realize the
8 benefit of it unless we over-strain our already
9 substantially over-strained pro bono services
10 for lawyers.

11 I think there's some promise in
12 this bill. I agree there's some potential
13 constitutional difficulties. I think of, as we
14 walk that fine line as a legislative body
15 exercising our legislative power, I'm willing to
16 do it even though there maybe some
17 constitutional questions.

18 But the real question is, as a
19 practical matter, does it work? Is there money
20 to make it work for victims? And I don't see it
21 at this stage. I have -- again I haven't
22 figured out how to vote yet, but I -- I see a
23 promise that this bill holds, but I don't see

1 that we're going to have a civil justice system
2 that will make it work.

3 ACTING PRESIDENT FARLEY: Senator
4 Connor.

5 SENATOR CONNOR: Thank you, Mr.
6 President.

7 Let me just add one note to
8 follow up, because I -- I certainly agree with
9 some of the things Senator Dollinger said, but
10 you know, Mr. President, Senator Saland said,
11 well, maybe the victim could get Legal Aid or
12 some organization like that. I mean I have to
13 say, by and large, there will be a conflict of
14 interest, because I would expect in a lot of
15 cases the alleged perpetrator is represented by
16 the Legal Aid Society or pro bono counsel, and
17 they obviously can't represent the victim
18 against their own clients in any other capacity.
19 So the concern that Senator Dollinger raises
20 about the expense, the -- for the victim and the
21 access to this procedure is a very, very real
22 one, and we can't just shrug and say, Well,
23 Legal Aid may represent them. Legal Aid

1 represents defendants usually, not victims.

2 The -- so once again, this bill
3 has the potential or one similar to it, of
4 providing rights to victims of these kinds of
5 assaults only if they can afford to pay for it,
6 and I'm sure the statistics show why we have a
7 pro bono 18-B counsel program or Legal Aid
8 Society, that while perhaps a disproportionate
9 number of those accused of crimes may be poor, I
10 think the statistics also show that a dis
11 proportionate number of the victims of crimes in
12 all categories are poor people, be they men or
13 women.

14 But aside from that, my
15 observation about this bill -- and let me just
16 say I have had a great concern since I first
17 became aware of the existence of AIDS and the
18 concept of someone being HIV positive after they
19 came up with the testing and the whole approach
20 of government, on a federal as well as a state
21 level, to this health crisis.

22 My concern was that, for a
23 variety of reasons, our whole approach to this

1 public health problem has been politically
2 driven, and I have spoken to physicians who have
3 said that to me, Senator, we're years into it
4 now, but so much of the approach to dealing with
5 this problem, which is a public health problem,
6 has been politically driven, and I say that on
7 both sides of it.

8 I think generally the public
9 consciousness, certainly the federal government
10 was very slow to recognize the real threat to
11 all of our people posed by this health epidemic
12 in the beginning, perhaps because it was viewed
13 as a rare disease that seemed to exist in
14 certain limited communities in our society.
15 There was a political viewpoint that, well, it
16 doesn't threaten society-at-large. We now know
17 as a matter of fact, rather than political view,
18 that that was simply erroneous.

19 AIDS, the HIV virus, is a threat
20 to all of us, all of our families, rich, poor,
21 and in between; black, white, Puerto Rican and
22 Hispanic, Asian; women, men, young, old, it's
23 there, and I have to confess that some perhaps

1 on the other side of the coin, some of the
2 initial response to how to deal with this public
3 health crisis -- and I suppose I say mea culpa
4 for this -- was also politically driven by a
5 concern, maybe in some cases an over-concern for
6 some of the groups that felt most threatened by
7 it and most neglected by government's lack of an
8 initial response.

9 So there became a "politically
10 correct way" -- and I use that in quotes,
11 politically correct way to deal with this health
12 crisis. But we are now years down the road. I
13 am open to anything that makes sense from a
14 public health standpoint, from a practical
15 standpoint, and certainly in the area with which
16 this bill deals certainly from a standpoint of
17 benefiting and assuring victims that they will
18 be able to do all they can to protect their
19 health after the fact of an attack like this.

20 ACTING PRESIDENT FARLEY: Read
21 the last section.

22 SENATOR CONNOR: One second, Mr.
23 President.

1 I first read this bill thinking,
2 well, I want to protect the victims here, absol
3 utely want to protect the victims. I don't want
4 to get caught up in any larger issues like, is
5 this really backing off from confidential AIDS
6 testing? Is this really backing off from a
7 policy judgment we made about voluntary testing
8 versus involuntary testing at large?

9 I don't care what the politically
10 correct view is; if this is good for victims,
11 I'm for it. My first reaction, Senator.

12 But I've read the bill. I have
13 read the bill. I've read the memos. One of the
14 first ones in was the Civil Liberties Union. I
15 think I have pretty good standing there at least
16 from my -- the way I look at it with the Civil
17 Liberties Union in terms of my record. But I
18 looked at it. At first glance, my first
19 reaction was I'm not so sure about this
20 constitutional point. As Senator Dollinger
21 said, it's not clear cut, way over the line.

22 I'm not -- I'm not putting down
23 -- I'm not playing law professor/Supreme Court

1 judge where victims are concerned. Let the
2 courts worry about it. So despite my great
3 personal affection for the Civil Liberties
4 Union, given their standpoint, and I respect
5 them for having a viewpoint on every issue that
6 they take a stand on; so I'm not so concerned
7 about their view of it. I'm not concerned about
8 the politically correct view of it.

9 But then I read on, and I read
10 what victims' organizations say, and I realized
11 that this bill holds out false promises for the
12 most vulnerable victims possible, a false
13 promise. It raises false concerns. It perhaps
14 could falsely reassure a victim. There is only
15 one course for the victim of a sexual assault
16 where the victim has been exposed to bodily
17 fluids, and that is to follow the protocol of
18 the victim being tested periodically for an HIV
19 reaction, periodically over a long period of
20 time, since the insidious nature of this
21 infection and disease is that it does have a
22 long time before -- at least six months before
23 antibodies are present and can be measured and,

1 of course, as we know can have many, many, many
2 years before the victim is actually -- becomes
3 actually a person characterized as having the
4 disease of AIDS, and to rely on a test of the
5 alleged perpetrator, not even convicted in some
6 cases, but I have to say as we all point out,
7 our system is fallible, if I were a victim, I
8 wouldn't take any great assurances that the guy
9 who got convicted and is sitting in jail is
10 testing clear two years later. I would want to
11 worry about my own health status, and this
12 answers -- this doesn't answer the problem, and
13 that's why victims' groups have opposed it.

14 So I just want to make it clear,
15 Mr. President. I don't care what the
16 politically correct response to any kind of HIV
17 testing or not testing issue is, and there are
18 others around this Capitol. I care, though,
19 here about, are we really helping the victims?
20 And the victims say no. So I must say no to
21 this bill.

22 Come back with a better bill.
23 Come back with something that does reassure the

1 victims, that the people who are most involved
2 with the victims say this will be helpful, this
3 will not mislead, this will protect victims'
4 health, and I'll support it and I won't worry so
5 much about the fine lines of constitutionality,
6 because we are dealing with a health crisis and
7 we're dealing with victims' rights here and this
8 is very important to me.

9 But this bill, I must say no.

10 ACTING PRESIDENT FARLEY: Read
11 the last section.

12 SENATOR SALAND: If I may briefly
13 just close debate, Mr. President.

14 ACTING PRESIDENT FARLEY: Close
15 debate, Senator Saland.

16 SENATOR SALAND: Perhaps it was
17 unfortunate that the concerns that were address
18 ed by my colleagues, I should have addressed
19 earlier and maybe I should have provided them
20 with the statements of the victims'
21 organizations and the victims and survivors at a
22 press conference that was conducted by myself
23 and Assemblyman Kaufman earlier this month.

1 There were at least, I believe,
2 three survivors who spoke, two of whom were
3 survivors of rape, one of whom was the -- the
4 sister of a woman who had been raped and
5 murdered as had her brother-in-law, her sister's
6 husband, or perhaps it was her boyfriend.

7 Justice For All, an advocacy
8 group, was one of the groups that was there very
9 much in support of this legislation, and there
10 were perhaps others and perhaps we should have
11 asked them to have left memos. So let me assure
12 you that, at the very least, there may be a
13 divergence among victims' rights organizations.

14 I do believe that any reading on
15 this bill will tell you that no -- this is not a
16 panacea, nor it intended to be a panacea and
17 some who might somehow or other portray that to
18 be my intent are either misreading my intent or
19 attempting to do me an injustice. This is an
20 attempt to -

21 ACTING PRESIDENT FARLEY: Senator
22 Mendez, why do you rise?

23 SENATOR MENDEZ: To ask if

1 Senator -

2 ACTING PRESIDENT FARLEY: He's
3 closing debate.

4 SENATOR MENDEZ: I know, but I
5 was wondering if he would just yield for a
6 couple of questions. I know you're closing, Mr.
7 Saland -- Senator Saland.

8 SENATOR SALAND: Certainly,
9 Senator.

10 SENATOR MENDEZ: In your
11 presentation earlier, you had mentioned that at
12 this point in time there are many accused
13 rapists that they are using their denial of
14 being tested for AIDS as a tool for plea
15 bargaining. Are you sure that is happening?

16 SENATOR SALAND: I'm aware of at
17 least two reported incidents, one reported in
18 one of your New York City newspapers, the other
19 in a legal periodical. One, I believe, involved
20 a young woman at Columbia University. I don't
21 recall who the other victim was.

22 SENATOR MENDEZ: Thank you.
23 Thank you.

1 Mr. President, just two seconds,
2 on the bill. I rise in support of this bill. I
3 think that. For too long, much too long the
4 crime of rape has been continuously used in plea
5 bargaining where this crime signals to take a
6 lesser sentence and rape has not been dealt with
7 for too long, as already -- as a horrendous
8 crime.

9 I think that the bill that
10 Senator Saland is presenting for us to consider
11 for a vote is a very well balanced bill, and I
12 think also it is a victims' bill. Why? Because
13 a woman that suffers the traumatic experience of
14 rape, on top of that for that woman to be
15 wondering whether or not that horrendous human
16 being is infected with AIDS, that in itself,
17 just the effect itself, will reduce the level of
18 anxiety that that poor woman or child will be
19 having for a long while.

20 So, given the reality of the
21 circumstances, I think that this bill represents
22 the best that we can do for women and children
23 that are raped so very often and so very

1 violently by so many -- by so many horrible
2 criminals.

3 Thank you, Mr. President.

4 ACTING PRESIDENT FARLEY: Senator
5 Saland.

6 SENATOR SALAND: Thank you, Mr.
7 President.

8 As I started to say, I would be
9 less than honest if somehow or other I said this
10 was going to fix an entire -- in its entirety
11 either the problem of violence that occurs by
12 way of violent sexual acts upon victims and
13 survivors or that in and of itself this is going
14 to remedy the problem of those who are
15 apprehensive and concerned as to whether or not
16 they've been HIV infected.

17 The reality is that this is but
18 one incremental step in trying to really level
19 that playing field. As I said earlier, it's a
20 carefully crafted bill. If you look at the
21 application requirements, it certainly makes it
22 clear that there are a host of things that
23 somebody who's endured the agony of rape or a

1 sexual crime has to be made aware of before she
2 and sometimes he or that child can go forward in
3 this process.

4 What this bill would do would be
5 to say that whereas now there is absolutely no
6 body who has the ability to get that
7 information, this bill would say there will be a
8 mechanism that will exist in New York to permit
9 that to happen.

10 Again, this is nothing more than
11 an effort to deal with rights of victims. This
12 is not an effort to stigmatize any segment of
13 the population. This is not an effort to become
14 embroiled in the HIV controversy. This is an
15 effort to give victims a tool which they can use
16 in their moments of agony if they so choose, if
17 they've been counselled, if in fact they've done
18 everything that would reasonably be expected of
19 them. This is a tool.

20 Lastly, this doesn't even go as
21 far as the Governor's Task Force recommended
22 four years ago. The Governor's Task Force would
23 have said even pre-indictment. We don't do that

1 with this bill. Also what we -- what we would
2 be doing is preserving a funding stream that
3 we're going to lose once we leave this place as
4 a regular session concludes and aren't back
5 before September 30th.

6 Thank you, Mr. President.

7 ACTING PRESIDENT FARLEY: Read
8 the last section.

9 THE SECRETARY: Section 8. This
10 act shall take effect on the first day of
11 November next succeeding the date on which it
12 shall have become a law.

13 SENATOR GOLD: Mr. President.

14 ACTING PRESIDENT FARLEY: Call
15 the roll.

16 (The Secretary called the roll.)

17 SENATOR GOLD: Yeah, Mr.
18 President.

19 ACTING PRESIDENT FARLEY: Senator
20 Gold to explain his vote.

21 SENATOR GOLD: Mr. President, I
22 listened very carefully to the debate, and I
23 listened very carefully to my colleague, Senator

1 Mendez, whom I respect greatly, but Mr.
2 President, we -- we -- if we want to help
3 people, and I think Senator Connor pointed it
4 out, we want to help people, we have to stop
5 politicizing everything and, if we hear a bill
6 that mentions the word "rape," it doesn't mean
7 that the bill does anything. All it does is
8 mention the word "rape."

9 Now, Senator Saland said that two
10 or three victims were at a press conference.
11 Well, you say divergence of opinion, Senator
12 Saland. All I know is from what I have. What I
13 have in front of me is a memo. It's -- it
14 exists. New York State Coalition Against Sexual
15 Assault, and they say the bill is wrong.
16 There's also the board of directors of the New
17 York City Victims' Services Agency that voted
18 not to support this kind of legislation.

19 Now, these organizations don't
20 disagree with Senator Mendez when she says that
21 rape is a horrendous crime, and I want to tell
22 you something. I invite anybody here to spend a
23 day, a half a day, an hour with any assistant

1 district attorney who deals with rape every day
2 in the courts and you tell me these aren't
3 sensitive people. They're fabulous people. A
4 lot of them happen to be women, some are men,
5 but they deal every day with the real victim,
6 preparing the cases for trial, dealing with
7 these trials. These people don't take rape as a
8 simple thing.

9 When you hear about plea
10 bargaining of cases, it isn't because the people
11 handling these cases have no internal sense of
12 what is right or wrong. It means that they are
13 in the fields every day doing the damned best
14 they can to make society safe and put rapists
15 behind bars. This bill doesn't put a rapist
16 behind bars.

17 Senator Leichter said it and you
18 can argue for an hour and a half, for 40 days,
19 it's not going to change it. The law today
20 already requires that, if you have a convicted
21 rapist, they will be tested. This talks about
22 something different. It talks about a pre-trial
23 stage. It talks about accusation, and it goes

1 too far.

2 Having said that, if I thought it
3 would help, I could even say it goes too far,
4 but how can you turn your back? But it isn't
5 going to help. Those people convicted of rape
6 will be tested.

7 I vote no.

8 ACTING PRESIDENT FARLEY: Senator
9 Gold in the negative. Continue the roll.

10 Senator Dollinger to explain his
11 vote.

12 SENATOR DOLLINGER: Mr.
13 President, I find that this bill has some good
14 things about it. I guess it's about like many
15 things that we do, never has all the good and
16 sometimes it has some part of the bad. I -- I
17 think, in view of the complaints made by victims
18 with respect to whether or not this will work
19 and my concern about whether or not it's going
20 to be affordable to people who are victims who
21 need this protection, I'm going to vote in the
22 negative.

23 I would hope that, if we look at

1 this issue again, we'd look at a couple of
2 things, one waiving the civil court filing fee;
3 two, allowing the district attorney to represent
4 the victim -- the victim. The district
5 attorneys' see assistance program, which they
6 have an extensive one in Monroe County, could
7 represent the victim so that the victim doesn't
8 have to pay the cost; extending the law so that
9 the public defender can represent the civil
10 defendant, the criminal defendant, and test the
11 constitutionality of these issues, test the
12 reasonable cause and provide the mechanism
13 inside the civil court justice system to make
14 this thing work.

15 As I said, I'm not afraid of the
16 constitutionality. I think if this is
17 unconstitutional, the courts can tell us that,
18 but I see this as a proposal that moves in a
19 specific direction, but doesn't have the real
20 teeth of financing and a way to make this happen
21 so that individual victims will be able to
22 realize the promise that this statute offers.

23 I'll vote in the negative, Mr.

1 President.

2 ACTING PRESIDENT FARLEY: Senator
3 Dollinger in the negative.

4 Results.

5 THE SECRETARY: Those recorded in
6 the negative on Calendar Number 1440 are
7 Senators Babbush, Connor, Dollinger, Galiber,
8 Gold, Leichter, Markowitz, and Ohrenstein. Ayes
9 47, nays 8.

10 ACTING PRESIDENT FARLEY: The
11 bill is passed.

12 Senator Daly.

13 SENATOR DALY: Mr. President, may
14 I be voted in the negative on Calendar Number
15 1323.

16 ACTING PRESIDENT FARLEY: 1323,
17 Senator Daly will be in the negative.

18 SENATOR DALY: 8641. I may add,
19 if I had not been tied up when that bill was
20 called, it would have much more debated.

21 ACTING PRESIDENT FARLEY: Also
22 8641. Is that the same bill? That's the Senate
23 Print, Calendar 1321.

1 SENATOR DALY: No, 1323.

2 ACTING PRESIDENT FARLEY: 1323.

3 Senator Connor.

4 SENATOR CONNOR: Thank you, Mr.
5 President.

6 I also was not here or there
7 would have more debate, and I'd like to have
8 unanimous consent to be recorded in the negative
9 on Calendar Number 1323.

10 ACTING PRESIDENT FARLEY: 1323,
11 Senator Connor -- Senator Connor will be in the
12 negative.

13 Senator Smith.

14 SENATOR SMITH: Mr. President, I
15 too request unanimous consent to be recorded in
16 the negative on Calendar Number 1323.

17 ACTING PRESIDENT FARLEY: Without
18 objection.

19 SENATOR GOLD: Mr. President.

20 ACTING PRESIDENT FARLEY: Senator
21 Gold.

22 SENATOR GOLD: Yeah, Senator
23 Ohrenstein also asks unanimous consent to be

1 recorded in the negative on 1323.

2 ACTING PRESIDENT FARLEY: Without
3 objection.

4 SENATOR JONES: I would ask
5 unanimous consent on 1323.

6 ACTING PRESIDENT FARLEY: Senator
7 Jones, without objection; Senator Onorato,
8 without objection.

9 Senator Dollinger.

10 SENATOR DOLLINGER: Same, Mr.
11 President.

12 ACTING PRESIDENT FARLEY: Senator
13 Dollinger; Senator Oppenheimer.

14 Senator Montgomery.

15 SENATOR MONTGOMERY: Mr.
16 President, I would like to have unanimous
17 consent to be in the negative on Calendar 1323.

18 SENATOR PADAVAN: No objection.

19 ACTING PRESIDENT FARLEY: No
20 objection, Senator Montgomery is in the negative
21 on Calendar Number 1323.

22 Regular order, Senator Padavan?

23 SENATOR PADAVAN: Mr. President,

1 could we go back to Calendar 293, please.

2 THE SECRETARY: Calendar Number
3 293, by Senator Levy, Senate Bill 184A, an act
4 to amend the Vehicle and Traffic Law.

5 SENATOR LEVY: Senator Gold, I
6 understand someone on your side of the aisle
7 thought that this bill dealt with speedy trials
8 and DWI. That provision is amended out of this
9 bill. This is a bill that deals exclusively
10 with drinking and driving for young people under
11 the age of 21.

12 As you will recall, three weeks
13 or so ago, we passed a much tougher bill from
14 the standpoint of criminalization for those who
15 drink and drive and are under 21. This is a
16 less restrictive bill in the sense -- and let me
17 just say that those young people under 21 who
18 are drinking and driving continue to be a major
19 problem in our state when they are intoxicated
20 or impaired.

21 The sad fact and tragic fact is
22 that innocent victims who are using New York
23 State's highways and New York State's roads are

1 being killed by the drunk, the impaired and less
2 than impaired alcohol operation of motor
3 vehicles, so much so that in the last year that
4 we have facts -- 1992 -- 61 people were killed
5 on our state highways by persons under 21 who
6 were drunk or impaired. That's a cornerstone of
7 the problem.

8 So what this bill does is to put
9 New York State, if it were to pass the Assembly
10 and be enacted into law with 27 other states in
11 our nation who have lowered the BAC for those
12 under 21, 27 states plus the District of
13 Columbia.

14 Let me tell you that in New
15 Jersey they have a .01 standard. In
16 Massachusetts, Vermont and Maine, neighboring
17 states obviously with the exception of Maine,
18 they have .02 to help better deal with this
19 problem. California has .01, and statistical
20 analysis of the impact of the change of a lower
21 BAC on the problem tells us that deaths on that
22 state's highways and roads are reduced by at
23 least 1/3 when the state moved to a lower BAC.

1 Now, what this bill does
2 different among many other parts that are
3 different from the bill that we passed, instead
4 of making .02, .03 and .04 DWI as we did under
5 the other bill, we deal with .02, .03, .04
6 slowly and exclusively civilly and from an
7 administrative license suspension standpoint.
8 .05, .06 and .07 continues a power in police
9 officers and district attorneys to use either
10 the DWAI statutes or to use an administrative
11 license suspension remedy for those under 21,
12 and this bill in no way changes situations where
13 we have a BAC of .08 or above.

14 SENATOR PADAVAN: Read the last
15 section.

16 ACTING PRESIDENT KUHL: Chair
17 recognizes Senator Galiber.

18 SENATOR GALIBER: Senator, will
19 you yield for a question?

20 ACTING PRESIDENT KUHL: Senator
21 Levy, do you yield?

22 SENATOR LEVY: Yes.

23 ACTING PRESIDENT KUHL: Senator

1 Levy yields, Senator Galiber.

2 SENATOR GALIBER: As usual, I
3 know the intent -- most of the time, whether
4 it's this side's or the other side, the intent
5 is good, but somewhere along the line we dropped
6 something which is ultimately detrimental to
7 someone. In this instance, is it conceivable
8 that whatever the procedure for stopping this
9 person who is in this age bracket and is tested
10 at .02, is that .02 -- if that were an adult,
11 would that .02 indicate enough reading for that
12 person to be intoxicated or covered with Driving
13 While Intoxicated or even impaired?

14 SENATOR LEVY: Under this bill,
15 no. Under the bill that passed this house with
16 only one negative vote three weeks ago, the
17 answer is yes, it would be DWI.

18 SENATOR GALIBER: DWI. So, is it
19 conceivable, Senator, that a youngster who was
20 given a small quantity of beer at home and gets
21 into a vehicle and under normal circumstances -
22 not normal circumstances but certainly would not
23 be intoxicated, certainly would not be putting

1 anybody in jeopardy, would not be in that
2 category as we changed the readings because of
3 the horrible things that are happening out on
4 the highways?

5 And I agree with you, horrible
6 things are happening. Our young folks -- just
7 to make a short statement or ask the question,
8 it's never been conceivable to me as to how it
9 is that youngsters at a point in their life
10 where their reflexes are so perfect that the
11 number of accidents that occur are in the
12 category that you are concerned with.

13 But like most things that I
14 mentioned before, what your bill does and you
15 have indicated this that it is conceivable that
16 someone can read a .02 and not be in jeopardy,
17 not put anybody else in jeopardy, not be in that
18 category of driving while intoxicated, not be in
19 that category of impaired. Why then -- if I'm
20 right, why are we doing this, Senator? Why are
21 we imposing this on youngsters who are not
22 intoxicated? Those excellent reflexes that I
23 made reference to, they may later on in the

1 evening, unfortunately, read point so-and-so,
2 which will be dangerous, but your piece of
3 legislation father can share a portion of a beer
4 with his daughter, she can leave -

5 SENATOR LEVY: Certainly, in the
6 other 27 states that have gone this route and
7 have had dramatic results in the decreases of
8 deaths caused by the people, they don't share
9 the conclusion that you share that you just
10 articulated, Senator.

11 Now, as you know, people under 21
12 in this state should not -- should not be
13 drinking based upon our laws, and they certainly
14 should not be driving. And depending upon what
15 they had to drink, a lot has to do with their
16 physical makeup, how tall they are, how much
17 they weigh, whether they are tired at the time
18 that they drink, whether they have eaten
19 something as it relates to what their BAC is
20 going to be and whether they are going to be
21 impaired or not.

22 This legislation goes hand in
23 glove with the legislation that we passed to

1 deal with people who shouldn't be drinking and
2 driving based upon the legislation which became
3 law in the state of New York. And we are
4 dealing with .02, .03 and .04, not the way we
5 did three weeks ago, to make it a misdemeanor,
6 but solely putting this over into the
7 administrative portion of our law and to impact
8 the license.

9 And why are we doing it,
10 Senator? Because, particularly for young people
11 under the age of 21, the most important thing to
12 them -- among the most important things to them
13 is that license to drive an automobile and if
14 they believe that they are risking the losing of
15 that license, this is going to be -- based upon
16 what 27 other states and the district of
17 Columbia have shown us, it is going to deter
18 young people from driving and drinking, and
19 we're going to save lives big time in the state
20 of New York the same way that we have saved
21 lives in 27 other states and the District of
22 Columbia. That's why we want to do it this
23 year.

1 SENATOR GALIBER: Senator, if you
2 will yield to another question?

3 ACTING PRESIDENT KUHL: Senator
4 Levy, do you yield.

5 SENATOR LEVY: Yes, certainly.

6 ACTING PRESIDENT FARLEY: Senator
7 Levy yields.

8 SENATOR GALIBER: Very frankly, I
9 should stop this, because I'm going to vote for
10 the piece of legislation. I am. It's just that
11 it troubles me that we're going too far in
12 certain areas. I have the same interest that
13 you have, very frankly, but when we throw
14 statistics out, "Well, we have decreased the
15 number of deaths on highways," do you have
16 anything to give to us that would show a direct
17 causal effect of this piece of legislation in
18 other states that have deterred youngsters from
19 driving and save lives?

20 SENATOR LEVY: Yes, we have
21 statistical analyses a year after the bills have
22 become law in other states, where they say they
23 have cut down one-third on deaths that were

1 caused by people under the age of 21 in
2 alcohol-related crashes. That's what the
3 statistics show.

4 ACTING PRESIDENT KUHL: Senator
5 Waldon.

6 SENATOR WALDON: Will the Senator
7 yield to one little question?

8 SENATOR LEVY: Yes.

9 ACTING PRESIDENT KUHL: Senator
10 Levy yields.

11 SENATOR WALDON: Senator Levy, is
12 there any evidence regarding people less than 21
13 who have been tested with an alcoholic content
14 of .02, I think is the lowest threshold in your
15 bill -- correct? -- as to how much impairment
16 occurs in regard to their physical capabilities,
17 i.e., touch your nose, walk the straight line,
18 can you actually operate the vehicle, is their
19 speech slurred, those kind of things? Is there
20 any database?

21 SENATOR LEVY: Senator, as I
22 indicated just a minute ago in talking with
23 Senator Galiber, as you know as a former law

1 enforcement officer, the impact of any alcohol
2 is really based upon, among other things, the
3 age, the weight, whether somebody is tired,
4 whether they had eaten. We do know that
5 scientific tests that have been accepted say
6 that if you have any alcoholic intake, it has a
7 negative impact upon your reflexes, which in
8 turn has a causal impact on what you do in that
9 vehicle and exponentially increases the
10 possibility or the probability that somebody is
11 going to get killed or maimed. We know that,
12 Senator.

13 SENATOR WALDON: If I may?

14 ACTING PRESIDENT KUHL: Senator
15 Levy, do you continue to yield?

16 SENATOR LEVY: Yes, certainly.

17 ACTING PRESIDENT KUHL: Senator
18 yields.

19 SENATOR WALDON: I'm not being
20 contentious, Senator Levy, but is there any
21 definitive evidence regarding that low number?
22 I understand the biochemistry. You know, take
23 ten people in this room; we will all react

1 differently to one shot of bourbon. Okay. But
2 the threshold numbers, has there been any study
3 in any form or fashion which says that someone
4 less than 21 will be more impaired at .02 than
5 someone in excess of 21?

6 SENATOR LEVY: Oh, no. No. I'm
7 sorry, Senator. I misunderstood your question.
8 The scientists tell us that any alcohol for
9 anyone will impair their reflexes as it relates
10 to operating a motor vehicle safely.

11 SENATOR WALDON: Thank you, sir.

12 ACTING PRESIDENT KUHL: The
13 Secretary will read the last section.

14 THE SECRETARY: Section 15. This
15 act shall take effect on the 1st day of December
16 next succeeding the date on which it shall have
17 become law.

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT FARLEY: Senator
22 DeFrancisco to explain his vote.

23 SENATOR DeFRANCISCO: I just have

1 to put on the record that I have grave concerns
2 about this .02 test, whether it's a person less
3 than 21 or somebody over 80 years of age. I
4 just think that when you are doing a chemical
5 test or a breath test, the margin of error has
6 got to be pretty close to a .02.

7 But what concerns me most is that
8 in order to stop someone in a vehicle, you have
9 to have probable cause, and it was alluded to in
10 some of the debate. What characteristics does
11 one show when they have just .02 alcohol content
12 in their system, and I just have a feeling that
13 a bill that has a standard this low, basically
14 is giving law enforcement officers a carte
15 blanche to stop anybody who happens to be under
16 21 who has a driver's license because of the
17 likelihood -- not the likelihood -- because the
18 test of .02 is so easy to attain and that margin
19 of error is within that range, in my judgment.

20 Everybody wants to stop DWI, and
21 it's very difficult for anybody to vote against
22 this bill, but I just have grave concerns in
23 doing so -- and I will vote yes -- grave

1 concerns in doing so because I really feel that
2 the question of probable cause is a very
3 difficult one to demonstrate with a .02 blood
4 alcohol level.

5 ACTING PRESIDENT KUHL: Senator
6 DeFrancisco will be recorded in the
7 affirmative.

8 Senator Levy to explain his vote.

9 SENATOR LEVY: Yes, Mr.
10 President. The case law is clear in this state
11 that a police officer doesn't have the power to
12 stop someone under 21 or anyone else unless
13 there is a violation of law. That is the
14 trigger for the police officer to stop -- stop
15 the car and then seek to deal with the person
16 operating the car. There has to be a violation
17 of the law.

18 ACTING PRESIDENT KUHL: Senator
19 Levy in the affirmative.

20 The Secretary will announce the
21 results.

22 THE SECRETARY: Those recorded in
23 the negative on Calendar Number 293 are Senators

1 Galiber, Kuhl, Mendez, and Waldon. Ayes 52.

2 Nays 4.

3 ACTING PRESIDENT KUHL: The bill
4 is passed.

5 Senator Santiago, why do you
6 rise?

7 SENATOR SANTIAGO: Mr.
8 President. I would like to be recorded in the
9 negative on Calendars 1440 and 1323, please.

10 ACTING PRESIDENT KUHL: Without
11 objection, Senator Sangiaco will be recorded in
12 the negative on Calendars Number 1440 and 1323.

13 Secretary will call Calendar
14 Number 261.

15 THE SECRETARY: Calendar Number
16 261, by Senator Daly, Senate Bill Number 4583E,
17 an act to amend the Real Property Law.

18 ACTING PRESIDENT KUHL: Senator
19 Padavan.

20 SENATOR PADAVAN: Mr. President.
21 Earlier, Senator Daly indicated that the
22 revisions which are now in E print had involved
23 the counsel to the Secretary of State in terms

1 of recommendations that have been made, and the
2 question that we wanted to resolve, and I'm sure
3 we all agree that we should, was whether or not,
4 in view of that involvement, the Secretary of
5 State was in favor of this legislation.

6 We contacted her counsel, she
7 being unavailable herself, who indicated to her
8 that the Secretary of State is still opposed to
9 this bill, and the primary and perhaps the only
10 major if not the only reason relates to a
11 provision which is on page 3 of the bill, the E
12 print, which allows this newly-created board by
13 a two-thirds majority vote to overrule the
14 Secretary of State's consent requirement on
15 their rulemaking authority. That, therefore,
16 answers the issue or the question that we had
17 earlier.

18 In regard to the entire matter,
19 Mr. President, as I have said on previous
20 occasions when this bill was discussed on the
21 floor here, my problem is not with the industry
22 in any broad sense or in the industry, in any
23 macro sense. My problem is with a portion of

1 this industry which continues to participate in
2 unethical, undesirable community block busting
3 tactics.

4 My area of the City of New York,
5 a portion of it, was covered by a non
6 solicitation ban, one that had been initiated
7 over 20 years ago after proper hearing and
8 proper justification, reaffirmed by four
9 Secretaries of State, including the Governor
10 when he had that position. And recently this
11 industry, these real estate individuals went
12 into Federal Court and were successful, at least
13 at a certain level within that branch of
14 judiciary to have that ban removed.

15 I don't trust them. Their
16 interests are not consistent with the interests
17 of my constituents in this particular area, and
18 that's my primary reason for opposing this
19 legislation.

20 ACTING PRESIDENT KUHL: Chair
21 recognizes Senator Daly.

22 SENATOR DALY: Senator Padavan
23 yield?

1 SENATOR PADAVAN: Yes.

2 ACTING PRESIDENT KUHL: Senator
3 Padavan, will you yield to Senator Daly?

4 SENATOR DALY: Legislation as
5 drafted and amended, as you requested, in any
6 way impact on the Secretary of State's powers to
7 administer Section 442.

8 SENATOR PADAVAN: Senator, to
9 answer your question fully, in line with prior
10 discussions you made sure that there was a
11 section in this statute that would deal with the
12 issue of the Secretary of State's authority to
13 issue nonsolicitation orders for valid reasons.
14 No problem.

15 SENATOR DALY: Okay.

16 SENATOR PADAVAN: But as I just
17 told everybody, this group doesn't care about
18 her orders. They went into Federal Court and
19 got that order overturned, therefore, I don't
20 trust them and I don't trust them with good
21 cause.

22 ACTING PRESIDENT KUHL: Senator
23 Daly.

1 SENATOR DALY: Mr. President.
2 Senator Padavan did say, and I understand his
3 emotion and his concern with the recent decision
4 of the courts, but this bill has nothing to do
5 with it. And the language in this bill protects
6 that very clause in the statute that Senator
7 Padavan is concerned about.

8 So I submit to my colleagues, we
9 did, we went back and amended the bill to make
10 sure that that concern -- I know Senator Maltese
11 had that concern and several of my colleagues on
12 the other side of the aisle had that concern, so
13 we tried to made sure that this bill does not
14 impact on that and it does not, as Senator
15 Padavan said.

16 And, secondly, I must admit that
17 it boggles my mind that the Secretary of State's
18 office objects to an amendment that we put in to
19 give her more power. Remember what Senator
20 Padavan said that the section that they are
21 opposed to says that two-thirds -- we put that
22 in in the amendment -- two-thirds of the board
23 has to vote affirmatively to overrule a decision

1 by the Secretary of State. That wasn't in the
2 previous bill. The majority. We didn't have it
3 in the bill.

4 So I must admit I'm somewhat
5 confused by the words that we have received from
6 the Secretary of State's office that that one
7 section of the bill which we had amended to give
8 her more say over the action of the board is the
9 reason she's opposed to the bill. I guess I
10 will have to talk to someone up there for quite
11 a while before I understand that one.

12 And let me just make one more
13 point. The other concern was that the language
14 that we had in the original amendment might
15 allow a majority of the board to be real estate
16 people. We amended that language also. Very
17 specifically when you read this bill, the
18 majority has to be, including the Secretary of
19 State, public members with the Secretary of
20 State. So we made that amendment, also.

21 I submit to you that -- if you
22 remember when we debated the bill originally, I
23 stated that the Banking Advisory Committee which

1 is a parallel committee has members all of whom
2 are from the banking community. That board has
3 functioned exceptionally well. I know I have
4 received no complaints about it, and I don't
5 think any of my colleague have or I'm sure I
6 would have heard about it on the floor when I
7 mentioned it.

8 So we have before us a bill that
9 is severely amended to meet some of the concerns
10 of the Secretary of State, actually I think all
11 of the concerns. As I said, I can't understand
12 why she's opposed to giving her more power over
13 the decision of the advisory board by requiring
14 two-thirds votes of the advisory board to
15 override a decision.

16 One other point. Oh! The other
17 point I'm trying to make is that the board which
18 is again made up of 15 members -- and I just
19 realized I did cover that point and let me just
20 repeat it. We make sure that a majority of the
21 board including the Secretary of State are non
22 -- non members of the real estate community.

23 SENATOR GOLD: Mr. President.

1 ACTING PRESIDENT KUHL: Chair
2 recognizes Senator Gold.

3 SENATOR GOLD: Thank you.
4 Senator yield to a question?

5 SENATOR DALY: Yes.

6 ACTING PRESIDENT KUHL: Senator
7 Daly do you yield?

8 Senator yields.

9 SENATOR GOLD: Senator, I think
10 Senator Padavan already discussed, to some
11 extent, this two-thirds majority vote over
12 riding.

13 SENATOR DALY: Yes.

14 SENATOR GOLD: This statute would
15 be creating a state real estate board. Now, are
16 there other similar boards in other industries?

17 SENATOR DALY: Yes, I said there
18 is a similar board in the banking -- there is a
19 banking advisory board.

20 SENATOR GOLD: And do they have
21 that power?

22 SENATOR GOLD: All of the members
23 of banking board are from the banking community.

1 SENATOR GOLD: No, no, I'm not
2 asking you that. If I may continue?

3 SENATOR DALY: I'm sorry.

4 ACTING PRESIDENT KUHL: Senator
5 continues to yield.

6 SENATOR GOLD: What I'm saying
7 is, does the banking board have the power by a
8 two-thirds vote to override decisions?

9 SENATOR DALY: Well, not
10 decisions. Really, it's not decisions. If you
11 read, it's recommendations made, "Shall review
12 any rule...".

13 SENATOR GOLD: Senator Daly, I'm
14 not trying to -

15 SENATOR DALY: Yes.

16 SENATOR GOLD: Let's deal with
17 the language. "After considering the
18 Secretary's objection, the board may amend or
19 withdraw the proposed rule or may by a
20 two-thirds majority of the members currently
21 serving on the board adopt, file a rule without
22 the Secretary's consent." Does the banking
23 board have the right to that similar rule?

1 SENATOR DALY: I don't know,
2 Senator. I do not know.

3 SENATOR GOLD: Are there any
4 other boards similar to the banking and the real
5 estate board proposed?

6 SENATOR DALY: I can't think of
7 any offhand. There could well be. I very
8 frankly did not check that out.

9 SENATOR GOLD: The point is
10 this. I certainly don't have a problem with
11 there being a real estate board, as such, to be
12 helpful in government in some way, but if we
13 have never given this kind of power, the power
14 to overrule or to do this rulemaking, how do we
15 do it now? And the other question I would have,
16 Senator Daly, is a constitutional one which, of
17 course, makes everybody yawn. But I thought we
18 were law making bodies, and we could give some
19 kind of rulemaking authority, but now giving
20 what is, in essence, a granting of legislative
21 authority to the board to override the
22 Secretary, isn't that a big constitutional
23 jump?

1 SENATOR DALY: Not really. The
2 way I interpret what you are saying, Senator, is
3 that they can override any decision made by the
4 Secretary of State. That's not true. It says,
5 "The Secretary of State shall review any rule,
6 including any amendment thereof, proposed by the
7 board. They are only dealing with amendments or
8 rules of amendments proposed by the board.

9 SENATOR GOLD: Yes, but, Senator
10 -- if I may, Mr. President. Are you saying that
11 if there is a rule or an amendment proposed by
12 the board and it is overruled by the Secretary,
13 that this board can overrule the Secretary.

14 SENATOR DALY: Can come back with
15 a two-thirds vote -

16 SENATOR GOLD: Yes.

17 SENATOR DALY: -- of the board.
18 Yes, that's exactly what it is.

19 SENATOR GOLD: Which means
20 Senator Daly, any way you look at it -- any way
21 you look at it that this board can create rules
22 and regulations and that is -- as I understand
23 it -- is either a legislative function or a

1 function of some governmental agency properly
2 authorized. I don't know how we create a board
3 to create laws.

4 SENATOR DALY: No, we -- Senator,
5 I think you are exaggerating just a bit there.
6 We're not creating -- let me finish. We're not
7 creating a board to create laws. Every
8 department makes rules. They promulgate rules
9 and regulations based on the request of the
10 Legislature. They have, I'm sure, rules which
11 are promulgated by the Department that are not
12 based on legislation. What we're saying here is
13 that the board, which I remind you, Senator, is
14 made up of the following -- the following, and
15 this is important, eight people appointed by the
16 Governor, two people appointed by the Majority
17 Leader, two people appointed by the Minority
18 Leader -- I'm sorry -- by the Speaker, one
19 person by the Minority Leader in both houses.
20 Think of that. Think of who appointed that
21 board, with the Governor having the power to
22 appoint the largest number, 8 out of the 14
23 appointees are by the Governor.

1 The last I heard the Secretary of
2 State was also appointed by the Governor. Now,
3 I see no problem whatsoever when you have a
4 board made up of people who are appointed by the
5 governor, by the Majority Leader, by the
6 Speaker, and by the Minority Leaders, of having
7 a voice in advising -- in advising the Secretary
8 of State. And I have no problem whatsoever in
9 saying, well, if 10 of those people -- 10, that
10 means 10 out of the 14 appointed -- feel that a
11 certain rule should be implemented that they
12 have the right to demand it.

13 SENATOR GOLD: Will Senator yield
14 to a question?

15 ACTING PRESIDENT KUHL: Senator
16 Daly, do you yield?

17 SENATOR DALY: Yes, Mr.
18 President.

19 ACTING PRESIDENT KUHL: Senator
20 Daly continues to yield.

21 SENATOR GOLD: Senator Daly, a
22 lot of things that we do here, as I need not
23 tell you -- I hope you don't take this as a

1 lecture. I don't mean it in a demeaning way,
2 but a lot of the things we do here deal with
3 legislative ideas which are basically in a
4 vacuum in terms that some people may agree or
5 not agree that this is good or bad, but some
6 things we do really deal with structure of
7 government, and they deal with the integrity of
8 government and a process, and that's what I'm
9 concerned about here.

10 I'm curious as to whether or not
11 we have any other situations where we are
12 creating a board which in essence is an advisory
13 board, to a large extent, but I mean we are
14 creating a board, and we are giving this kind of
15 grant of authority. If there is no precedent
16 for it, Senator Daly, it doesn't mean it's
17 wrong. This doesn't mean it's wrong, but I
18 certainly think that we should acknowledge that
19 we are taking a step that maybe we've never done
20 before, and that's all I'm trying to find out.

21 SENATOR DALY: Mr. President, if
22 I may, I would remind the Senator that in law -
23 and the reason that this bill is before us is

1 that in law the Secretary of State may appoint
2 an advisory board. It's in the law. She just
3 has never seen fit to do it.

4 Now, I submit to you when I'm
5 looking into a bill and I need some legal
6 interpretation, I'm not a lawyer, I find a
7 lawyer or a counsel who can advise me on that
8 legislation. If I'm dealing in hazardous waste
9 and I want to find out some scientific
10 description or some scientific definition, I go
11 to an expert there. We believe that the
12 Secretary of State should have at hand
13 representatives both from the public and -- by
14 public, I mean nonrealtor, nonreal-estate
15 interests -- and from the real estate interests
16 because they know the problems. They are living
17 with them on a day-to-day basis.

18 We feel it would be good for the
19 Secretary of State's office and good for the
20 people of New York State if the Secretary of
21 State had that kind of advisory group around
22 her, and that's the purpose of the bill.

23 ACTING PRESIDENT KUHL: Secretary

1 will read the last section.

2 Senator Dollinger.

3 SENATOR DOLLINGER: Can I just
4 ask one question of Senator Daly?

5 ACTING PRESIDENT KUHL: Senator
6 Daly, do you yield to Senator Dollinger for one
7 question?

8 SENATOR DALY: Yes.

9 ACTING PRESIDENT KUHL: Senator
10 yields.

11 SENATOR DOLLINGER: Senator, as I
12 understand this bill, at no time would there be
13 more than seven members of the real estate
14 industry on this board?

15 SENATOR DALY: And probably,
16 Senator, you will never see seven.

17 SENATOR DOLLINGER: But as it's
18 currently drafted, there would be at most
19 seven?

20 SENATOR DALY: At most. Remember
21 the Governor can appoint up to a maximum of
22 three.

23 SENATOR DOLLINGER: Correct.

1 SENATOR DALY: The Majority
2 Leader can appoint one if he wishes to, only
3 one. The Speaker one, if he wishes to.

4 SENATOR DOLLINGER: Right.

5 SENATOR DALY: And the Minority
6 Leaders can select either a member of the real
7 estate industry or the public. You're right.
8 It's a maximum -- max seven. Probably two or
9 three.

10 SENATOR DOLLINGER: It would take
11 a two-thirds vote, 10 of the 15 members, to
12 actually overturn the Secretary of State?

13 SENATOR DALY: That's exactly
14 right.

15 SENATOR DOLLINGER: So at no time
16 under the way the board is configured would the
17 real estate industry, assuming ill motive which
18 I'm not necessarily going to assume, but at no
19 point would they be in a position where they
20 alone could overturn the Secretary of State
21 under the way the bill is drafted.

22 SENATOR DALY: That's correct,
23 Senator.

1 SENATOR DOLLINGER: No further
2 questions.

3 ACTING PRESIDENT KUHL: Secretary
4 will read -

5 Senator Gold no.

6 ACTING PRESIDENT KUHL: The
7 Secretary will read the last section.

8 THE SECRETARY: Section 4. This
9 act shall take effect on the first day of
10 January next succeeding the date on which it
11 shall have become a law.

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 SENATOR GOLD: Have my name
16 called.

17 ACTING PRESIDENT KUHL: Senator
18 Gold to explain his vote.

19 SENATOR GOLD: Mr. President.
20 I'm going to support the bill, and I want to
21 explain why. I voted against prior prints, but
22 the fact of the matter is that this bill has
23 been the subject of great negotiation; and

1 whereas, there are other times when I come to
2 the floor and I question why weren't there
3 conversations, I think you got to give credit
4 where it's due, even if it's a Senator from
5 Niagara Falls. Senator Daly has in fact
6 negotiated this bill, and I understand the
7 Secretary on a phone call to Senator Padavan may
8 have said she's opposed to it, but I understand
9 with due respect to her, which I do give, that
10 she was involved in this process. And while
11 there is a question on the grant of authority,
12 that's something which if we decide as a
13 legislature we want to give, we have a right to
14 give it even if it's a new type of grant, and
15 let the Governor decide whether he wants that to
16 stand.

17 I vote in the affirmative.

18 ACTING PRESIDENT KUHL: Senator
19 Gold will be recorded in the affirmative.

20 The chair recognizes Senator
21 Padavan to explain his vote.

22 SENATOR PADAVAN: No, I'm just
23 voting in the negative, Mr. President.

1 ACTING PRESIDENT KUHL: Senator
2 Padavan in the negative. Secretary will
3 announce the results when tabulated.

4 THE SECRETARY: Those recorded in
5 the negative on Calendar Number 261 are Senators
6 Leichter, Maltese, Padavan and Santiago, also
7 Senator Babbush. Ayes 51. Nays 5.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 Senator Present, regular order?

11 SENATOR PRESENT: Regular order.

12 ACTING PRESIDENT KUHL: Secretary
13 will call regular order commencing with Calendar
14 Number 1445.

15 THE SECRETARY: Calendar Number
16 1445, by Senator Present, Senate Bill Number
17 4711B, Administrative Procedure Act.

18 ACTING PRESIDENT KUHL: Secretary
19 will read the last section.

20 SENATOR GOLD: Hold on one
21 second.

22 Last section.

23 ACTING PRESIDENT KUHL: The

1 Secretary will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 56.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 1449, by Senator Saland, Senate Bill Number
12 6506B, an act to amend the State Finance Law.

13 SENATOR GOLD: Explanation.

14 ACTING PRESIDENT KUHL: Senator
15 Saland, an explanation of Calendar Number 1449
16 has been asked for by Senator Gold.

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

19 Mr. President. This is one of a
20 series of bills which I have introduced in
21 response to some investigative activities that
22 my office has been involved in in conjunction
23 with the Workers' Compensation controversy, the

1 one involving the stripping of Unisys of a
2 contract that had been awarded them and
3 involving the questions of both the actions in
4 behalf of the Workers' Compensation people in
5 making their determination and the seeming
6 failure to ignore -- failure to respond to a bid
7 by IBM.

8 This bill basically says that the
9 State's competitive bidding processes which
10 certainly provides for competitive bidding when
11 we're dealing with goods and materials provides
12 differently when we deal with services, and the
13 parameters of competitive range have never been
14 well defined in our law, and the net result is a
15 tremendous amount of discretion among those
16 executive agencies and authorities in
17 determining who shall be the appropriate bidder
18 or receive the bid where there is a services
19 RFP.

20 What we have attempted to do here
21 is to create a mechanism that says where there
22 is the greater New York State impact, where
23 there are at least two bids for a services

1 contract and both those bids meet all the
2 technical specifications, both are within the
3 competitive range, and both come from
4 responsible bidders, the authority or the agency
5 will then have to request from DED, the
6 Department of Economic Development, and Taxation
7 and Finance a review by them to determine which
8 would have the greater economic impact on the
9 State of New York.

10 And if you look at page 4 of the
11 bill, that says that the evaluation shall
12 include but not be limited to an analysis of
13 potential corporate tax revenue, jobs created or
14 retained, income tax revenue, sales tax revenue
15 and property tax revenue.

16 Similarly, we attempt to limit
17 that competitive range to a 10 percent factor,
18 the purpose of which is to basically avoid the
19 wide discretion that sometimes appears to occur
20 in these cases.

21 Also understand what we are doing
22 here is not creating a price preference as the
23 contracting agency would not be forced to choose

1 a bid which under the present system it does not
2 already have the ability to choose.

3 This legislation also preserves
4 as is in existing law the ability of the
5 contracting agency to reject all bids
6 irrespective of their economic impact.

7 ACTING PRESIDENT KUHL: The chair
8 recognizes Senator Galiber.

9 SENATOR GALIBER: Will you yield
10 for a question?

11 ACTING PRESIDENT KUHL: Will you
12 yield to Senator Galiber?

13 SENATOR SALAND: Yes.

14 ACTING PRESIDENT KUHL: Senator
15 Saland yields.

16 SENATOR GALIBER: Would you agree
17 that OGS has played a very important role in
18 terms of this piece of legislation?

19 SENATOR SALAND: Sir, would you
20 repeat your question?

21 SENATOR GALIBER: Office of
22 General Services has a big play in terms of a
23 service contract, since it is my understanding

1 that they have the responsibility for doing a
2 lot of these contracts and bids with other state
3 agencies. Is that correct?

4 SENATOR SALAND: Correct.

5 SENATOR GALIBER: Have you heard
6 from -- not put it that way. I have heard from
7 them that they have not been consulted in regard
8 to this bill. Rather than throw a sand bag at
9 you. Have you consulted? They tell me you have
10 not consulted with them.

11 The Comptroller's office because
12 you plug it into a particular section, your
13 piece of legislation -- I'm not sure if it's 170
14 or 112, but it precludes -- by you're saying
15 that this would be final precludes the
16 Comptroller's input. It's part of those
17 three-point questions.

18 SENATOR SALAND: Let me address
19 the first question. Back in March at a
20 negotiation that was occurring with OGS people
21 regarding an Article VII bill, members of my
22 staff advised them of our intention of putting
23 out a bill -- of this bill. I believe by that

1 time we had put out the bill. We invited their
2 comment and asked if they were interested in
3 working with us, and we have not heard from them
4 since that point in time.

5 SENATOR GALIBER: I would imagine
6 that means, yes, that they have not been
7 consulted but given an opportunity to confer
8 with you.

9 SENATOR SALAND: They've
10 certainly been given that opportunity. They
11 were invited. Their comments certainly would
12 have been welcome. This bill as I look at it I
13 see is dated January 20, 1994. I would think
14 that in the three months that have elapsed since
15 we gave them the specific invitation, they have
16 had ample opportunity to talk to us.

17 SENATOR GALIBER: Have you
18 extended the same courtesy or made the same
19 inquiry as to the Comptroller's office?

20 SENATOR SALAND: We have
21 communicated with the Comptroller's office but
22 not specifically with regard to this bill. We
23 have communicated with the Comptroller's office

1 expressing our concerns about what occurred in
2 the Workers' Comp Unisys matter. We have
3 expressed some concerns as to whether or not the
4 bidder who received the bid in that case,
5 Unisys, was a responsible bidder. We've
6 provided them with information that we think is
7 relevant to that particular proceeding.

8 SENATOR GALIBER: Would it be
9 fair, Senator, since it's your piece of
10 legislation and you've read it and maybe have
11 had hearings or certainly a great deal of
12 consultation on it, there are sections in this
13 piece of legislation that if, in fact, this
14 becomes final, as your legislation says,
15 wouldn't that, in effect, indirectly or directly
16 preclude the Comptroller's office, who has
17 interest in either overseeing or making some
18 comments or perhaps having the authority to
19 perhaps not veto but come pretty close to doing
20 so?

21 SENATOR SALAND: I don't view
22 this bill as -- the Comptroller, as I understand
23 it, by the way, has a somewhat similar bill out

1 that the Comptroller has offered. This bill is
2 not intended to circumscribe the Comptroller.
3 The bill, basically, is an effort to try and
4 deal with the issue of service contracts and
5 establish guidelines where you have comparable
6 bids within that so-called comparable range
7 where they meet all those specifications.

8 We feel that it is important to
9 the State of New York to basically weigh. It
10 may well be that a foreign corporation would
11 have a greater impact, greater economic impact,
12 say, for example because it would subcontract
13 with a number of New York state subs than would
14 a domestic corporation that might not
15 necessarily either get all the materials or
16 provide all the services from New York.

17 This is, as I said in my earlier
18 remarks, not a preference bill. It's really a
19 bill that's aimed specifically at economic
20 development in an economic impact in the State
21 of New York.

22 SENATOR GALIBER: Let me take you
23 back.

1 ACTING PRESIDENT KUHL: Senator
2 Saland, do you continue to yield?

3 SENATOR GALIBER: I'm sorry.
4 Will you yield?

5 SENATOR SALAND: Yes, Mr.
6 President.

7 ACTING PRESIDENT KUHL: Senator
8 Saland yields.

9 SENATOR GALIBER: Senator, would
10 this piece of legislation have anything to do
11 with the economic impact on IBM, the fact that
12 they have laid off so many people; and,
13 unfortunately, if I may quickly add, very
14 frankly, there are those of us who have used
15 that example of IBM leaving Mid-Hudson with all
16 this trained staff and the physical plants
17 there, and we can't, unfortunately, get anyone
18 to come in.

19 SENATOR SALAND: No, let me
20 respond to that question by saying -- and I
21 think I acknowledged that up front. I came to
22 this issue perhaps in a somewhat parochial
23 fashion, and it was really the response to what

1 occurred in the Hudson Valley which basically
2 made me cognizant of really some rather woefully
3 inept laws in dealing with bidding, in dealing
4 with contracting for services. Basically, it
5 was sort of like, you know, the door was wide
6 open and there was very little oversight. And
7 particularly when you were talking about service
8 contracts, the existing law just hides a
9 multitude of sins.

10 And believe me when I tell you
11 I'm confident that there are a number of sinners
12 out there, and what we're attempting to do is to
13 sort of define parameters, and there is nothing
14 in here that is intended to do anything but be
15 an economic advantage to New York corporations.

16 Certainly in no way, shape or
17 form, is this intended to be a plum for IBM. It
18 is intended to deal with anybody who is willing
19 to do business in New York, making sure that New
20 York becomes the focal point of their efforts.

21 And, again, let me please
22 repeat -- and I'm sorry. I don't care if you
23 are a bidder from Texas, a bidder from

1 California, a bidder from Illinois. I mean that
2 if -- when this is reviewed by DED and Taxation
3 and Finance, if it's a close call, all other
4 things being equal, if you are within the
5 parameters as defined and you are going to do
6 better by New York, then we are going to give
7 you that ability.

8 SENATOR GALIBER: Senator, you
9 have been very candid, and I say this not
10 massaging you as far as our debates are
11 concerned. There seems to be some allegations
12 that there is some ambiguity in the definition
13 of service contracts. That happens when we
14 tackle from a parochial standpoint issue that -
15 because it concerns us.

16 This ambiguity is suggested by
17 the Office of General Services, who you offered
18 an opportunity to step into the swim on this
19 piece of legislation, that they suggest that the
20 ambiguity in terms of defining what service
21 contracts are would probably foster, like most
22 things that are vague and ambiguous, number of
23 lawsuits.

1 Do you, first off, say yes or no
2 to me as far as the ambiguity. That takes a
3 sense of admission that I'm sure you would do if
4 it's there.

5 SENATOR SALAND: I'm troubled by
6 that because our effort was to codify existing
7 case law, and the definitions come from some of
8 the leading cases dealing with this very subject
9 matter, so -- I mean if they can point
10 particularly to what troubles them or if they
11 can -- if they are willing to tell me that they
12 are not satisfied with the case law, it may well
13 have been appropriate for them to do that some
14 time between March and now. But I think what
15 you are seeing is a codification of prevailing
16 case law.

17 SENATOR GALIBER: Will you
18 continue to yield, Senator?

19 ACTING PRESIDENT KUHL: Senator
20 Saland, do you yield to another question?

21 SENATOR SALAND: Certainly, Mr.
22 President.

23 ACTING PRESIDENT KUHL: Senator

1 yields.

2 SENATOR GALIBER: When you
3 measure things in the legislative process, when
4 you are dealing with the legislative process, a
5 couple months don't make any difference as my
6 grandma used to say, especially something as
7 earthshaking as this, but the Office of General
8 Services indicates that the definition of
9 service contracts -

10 SENATOR SALAND: Excuse me,
11 Senator. I'm truly having a difficult time
12 hearing you.

13 SENATOR GALIBER: Oh, I'm sorry.
14 Okay. The definition -- and this is from the
15 office of Office of General Services. "The
16 definition of service contracts is inadequate
17 and very subjective. The bill's definition of
18 competitive range is vague. The agency does not
19 know what it means. It is not beyond the
20 agency's current capacity to establish such
21 competitive range and evaluate the economic
22 impact of the contracts."

23 SENATOR SALAND: Would you just

1 repeat the last portion of that?

2 SENATOR GALIBER: Yes. "It is
3 not beyond the agency's current capacity to
4 establish such a competitive range and evaluate
5 the economic impact of the contract." That has
6 part of the explanation for the first two.
7 That's their observation as to the first two
8 issues I mentioned.

9 "The definition of service
10 contract is inadequate and," they put, "very
11 subjective." Is that so?

12 SENATOR SALAND: I didn't view it
13 as such when we drafted this legislation. As I
14 said, we attempted to deal with what was the
15 prevailing case law at the time and, for that
16 matter, is currently the prevailing case law.

17 SENATOR GALIBER: Senator, I
18 have -

19 ACTING PRESIDENT KUHL: Senator
20 Saland, do you continue to yield?

21 SENATOR SALAND: Yes, Mr.
22 President.

23 ACTING PRESIDENT KUHL: Senator

1 continues to yield.

2 SENATOR GALIBER: Senator, I have
3 Executive Department, Office of General
4 Services, memorandum. Whether it's three months
5 later or not, but certainly it's important to
6 this piece of legislation, and it's dated June
7 30, 1994.

8 SENATOR SALAND: Rather current I
9 would say, Senator.

10 SENATOR GALIBER: Let me ask you
11 this question. I think I know the answer. Do
12 you have this memo?

13 SENATOR SALAND: No, I don't.

14 SENATOR GALIBER: I didn't think
15 you did. It says -- I'm willing to share this,
16 of course, with you.

17 SENATOR SALAND: Please. Thank
18 you.

19 SENATOR GALIBER: It says,
20 "Notwithstanding the sponsor's memorandum in
21 support of the referenced bill, it is clear that
22 its implementation would have significant fiscal
23 effect on OGS's operation and programs, and

1 although it is not possible at this time to
2 assign a dollar figure to the increased cost
3 which will be occasioned by the bill's
4 enactment, it is clear that the bill's
5 requirements in the following areas will result
6 in increased costs," and it goes on.

7 "Initially, the bill required analysis of
8 distinction between commodity and service
9 contracts, will require utilization of sparse
10 personnel prior to letting of any OGS
11 centralized contract. Additionally, the bill's
12 requirement for the determination of service
13 contract, besides being beyond OGS's present
14 capacity, given the number of assigned
15 categories of purchasing professionals would
16 necessarily require the utilization of
17 additional personnel for administrative
18 purposes."

19 (The memo read was handed to
20 Senator Saland.)

21 So it will add some fairness to
22 it so you will at least have an opportunity to
23 read what they've said as of June 30, 1994,

1 which seems to me to be relatively important to
2 this piece of legislation, if it is to pass both
3 houses. I think that if they have this kind of
4 objection, or even part of these objections, the
5 chance of it passing the other house -- and I
6 understand where you are coming from in terms of
7 that Hudson Valley matter of economics, but I'm
8 concerned also, very frankly.

9 Wouldn't it be -- after careful
10 reading of this memo, would it suggest that
11 putting it aside for a day -- you won't lose
12 very much -- might help its movement. Because
13 you understand, as usual, the intent is good,
14 but I'm saying we're hitting in areas where OGS
15 services the other agencies; and, certainly, if
16 there is any ambiguity, if there's any fault
17 with this, if there's anything that we could
18 possibly clear up here, I'm sure that you would
19 want to do that.

20 I don't say that with tongue in
21 cheek. I mean it sincerely. Sometimes we don't
22 pass pieces of legislation because we have pure
23 numbers, as I would say. Just pass it. It

1 doesn't make any difference whether it's right,
2 wrong, constitutional, unconstitutional, just
3 pass it because we have the numbers.

4 You have not impressed me, most
5 of the time anyway, of wanting to do that. But
6 here's an instance where it bears on the
7 economic factor for the State of New York in
8 terms of its competitiveness for survival so we
9 won't have duplications of Mid Hudson throughout
10 our state. As our economy slowly goes up, we
11 want to improve on it, all of us do.

12 So perhaps it might be wise to
13 take a look at the memo and maybe lay it aside
14 for a day to see whether or not there is
15 anything -

16 SENATOR SALAND: May I just
17 respond, at least in part. I have to assume and
18 I would be absolutely shocked, Senator, that OGS
19 is not making distinctions between commodity and
20 service contracts. I mean that's a
21 responsibility of theirs, and they must do that
22 before they determine whether or not a contract
23 has to be bid.

1 So I'm not quite sure what they
2 are telling us there because they are already
3 supposed to be doing that.

4 And I'm particularly troubled by
5 what I think would be their misreading of the
6 bill when it says, "The bill's requirement for
7 the determination of economic impact on the
8 state prior to the award of service contract
9 besides being beyond OGS's present capacity..."
10 Well, they are not asked to make that
11 determination. That has been specifically
12 delegated to DED and Taxation and Finance.

13 So it makes me wonder if this is
14 a little bit of double speak or perhaps a little
15 bit of fog. I'm a little troubled by it, and I
16 would have been a lot more comfortable if some
17 little bit earlier they might have provided us
18 with this memo; but, nonetheless, I do have
19 reservations about at least those provisions
20 which certainly calls, I think, into issue the
21 credibility of the rest of their points.

22 SENATOR GALIBER: I shared this
23 memo with you.

1 ACTING PRESIDENT KUHL: Senator
2 Saland, do you continue to yield.

3 SENATOR SALAND: Yes, Mr.
4 President.

5 ACTING PRESIDENT KUHL: Senator
6 yields.

7 SENATOR GALIBER: I draw your
8 attention again to something I mentioned in
9 passing before. In the last paragraph, it says,
10 "Further, we believe that the bill's ambiguity
11 with regard to its contractual definition and
12 it's required determination of competitive range
13 and economic impact would almost invariably
14 result in litigation by disaffected affected
15 vendors, would result in significant and
16 detrimental fiscal impact." We're talking about
17 litigation again.

18 SENATOR SALAND: But, Senator,
19 that already happens now. What we're doing is
20 we're defining what competitive range shall be,
21 and what we're saying is instead of leaving the
22 barn door wide open and instead of leaving the
23 unfettered discretion of an agency to determine

1 what constitutes competitive range, we're saying
2 there's going to be a 10 percent factor. We're
3 saying -- again, and it's very important for me
4 to reemphasize this point -- that the competing
5 bidders have to all meet certain specific
6 requirements and there are three of them.
7 They've got to meet the technical
8 specifications. They have to be within that
9 competitive range, within 10 percent of each
10 other, and they've got to be a responsible
11 bidder. Those are pretty fair. Those are, I
12 think, pretty reasonable criterion.

13 And the fact that we are
14 narrowing competitive range I think is an
15 appropriate oversight function for us as a
16 Legislature in providing those kinds of
17 guidelines, because there are no guidelines now
18 and competitive range can be all over the map.

19 SENATOR GALIBER: Yes, thank you,
20 Senator.

21 SENATOR SALAND: Thank you,
22 Senator.

23 SENATOR GALIBER: On the

1 legislation, Mr. President.

2 ACTING PRESIDENT KUHL: Senator
3 Galiber on the bill.

4 SENATOR GALIBER: Now that we've
5 had a bit of debate in regard to this, and
6 whether Office of General Services is three
7 months late or no, whether the Comptroller's
8 office will be shut out as a result of this
9 piece of legislation passing, the point is that
10 the debate between the two of us, Senator,
11 certainly has made it crystal clear in my
12 judgment by your response, very candidly, that
13 there is some ambiguity on the state agency that
14 we, as state legislators, are forcing by
15 legislation on that agency.

16 They have written a memo, late as
17 it may be, dated June the 30th, 1994, suggesting
18 that there is ambiguity. It is not clear as to
19 what service and commodities are all about.
20 They have indicated and seriously questioned
21 what would be the impact as far as revenue is
22 concerned, whether this carefully thought-out
23 formula that you and your staff have put

1 together, and I say that in all sincerity,
2 whether that 10 percent will be looked at as a
3 sword or shield, will we cut people up, hide
4 behind it, be beneficial or no history will
5 record. We have an opportunity not to put this
6 in history, because the agencies that is going
7 to be impacted on who will have the total
8 responsibility of making those very fine
9 distinctions or broad difference is saying that
10 this bill is going to encourage lawsuits, that
11 there is ambiguity, that there is serious
12 questions as to whether this will work.

13 I think that, in and of itself,
14 warrants, since we have waited three months -
15 and I don't want to wait to next week with this,
16 Senator, because you and all of us know we would
17 like to be some place else next week. But it
18 seems, based on this memo, that we lose
19 absolutely nothing by calling and saying to
20 them, "This is a memo. You say you have this
21 ambiguity. I have staff people who have worked
22 on this. They are the experts." And I mean
23 that sincerely also, like my staff are the

1 experts over here.

2 And if there is, we want a good
3 piece of legislation that is going to serve the
4 general public in terms of economics throughout
5 the state. And we know, and you've had the
6 experience on the other side, that if we don't
7 clear this matter up, it's not going to go any
8 further. And the thrust of what this piece of
9 legislation is all about is important enough for
10 some changes to be made so that we won't have a
11 reoccurrence of what the motivating factor was
12 for you to bring this could be excellent piece
13 of legislation to our attention.

14 Calls for a mere phone call after
15 some three months or so to clear up some
16 things. Worth a chance. Worth an opportunity.
17 I'm not sure after the telephone conversation if
18 you may it whether it will be any clearer, but
19 there is always that possibility.

20 That's what I'm asking for, Mr.
21 President, that the sponsor of the bill -- and I
22 thank him for his very candid response to the
23 questions on this issue -- would lay the bill

1 aside for a day, just to call OGS, if nothing
2 more than to find out what took you so long
3 after three months.

4 Thank you, Mr. President.

5 ACTING PRESIDENT KUHL: The chair
6 recognizes Senator Stachowski.

7 SENATOR STACHOWSKI: Will Senator
8 Saland yield for a question?

9 ACTING PRESIDENT KUHL: Senator
10 Saland, do you yield to a question from Senator
11 Stachowski.

12 SENATOR SALAND: Yes.

13 ACTING PRESIDENT KUHL: Senator
14 Saland yields.

15 SENATOR STACHOWSKI: Senator, one
16 of the problems we run into sometimes when we
17 look at bills that give a 10 percent swing in
18 the bidding process is that the people on the
19 second floor, and mostly I believe it's probably
20 their legal department, immediately warns us
21 that there could be a problem with a retaliatory
22 action on behalf of states that represents
23 vendors that maybe lose the contract because of

1 this 10 percent swing to economic advantage to
2 the State of New York. Does this bill address
3 that part?

4 SENATOR SALAND: No. And I think
5 your concern was a concern that I had, Senator,
6 when I started to draft this legislation. I
7 certainly didn't want to do anything that was
8 going to invite any kind of retaliatory action.
9 If you can recall my comments in response to my
10 debate with Senator Galiber, this does not
11 insure that New York corporations are going to
12 be successful bidders in this process. What it
13 says is that if in fact you have -- and I will
14 go back to those same three factors -- if you
15 have met all the technical specifications, you
16 need that to get in the door, and you are within
17 that competitive range which we have defined as
18 10 percent, and you are a responsible bidder
19 that you are not somehow or another somebody
20 who's been engaged in illegal activities and in
21 some way or other subject to either the
22 condemnation of the criminal law or some other
23 misconduct, you are a player and we will

1 consider your bid.

2 If you happen to be a
3 Pennsylvania corporation or a New Jersey
4 corporation and if your proposal -- and, again,
5 I will come back to the language of the bill.
6 When the evaluation is made by DED and Taxation
7 and Finance, that evaluation, and I'm quoting
8 here on page 4, lines 50 through 53, "Such
9 evaluation shall include but be not limited to
10 an analysis of potential corporate tax revenue,
11 jobs created or retained, income tax revenue,
12 sales tax revenue and property tax revenue."

13 That does not mean that the X Y Z
14 Corp in New Jersey will not prevail over the
15 A B C Corp in New York. It may well be that
16 there is much more to be said in terms of New
17 York economic impact because of the
18 subcontractors they may well deal with, the
19 consultants they may well deal with, and this is
20 not an effort to create borders.

21 It is an effort to enhance
22 economic development in New York.

23 SENATOR STACHOWSKI: Mr.

1 President. Would the sponsor yield for another
2 question?

3 ACTING PRESIDENT KUHL: Senator
4 Saland, do you continue to yield?

5 SENATOR SALAND: Yes, Mr.
6 President.

7 ACTING PRESIDENT KUHL: Senator
8 continues to yields.

9 SENATOR STACHOWSKI: In your
10 explanation, you hit on another part that is
11 actually my second question; and that is, you
12 used the term, "if they are a responsible
13 bidder," and for the last few years, we have
14 gone through all kinds of anxieties in the labor
15 committee and in bids on SUNY contracts,
16 Dormitory Authority contracts, highway
17 contracts, on reaching just that definition,
18 "What is a responsible bidder?" And I don't
19 know if your bill has that, but so far, we
20 haven't had a great definition on what a
21 responsible bidder actually is.

22 SENATOR SALAND: And I know,
23 Senator, that you have a keen and longstanding

1 interest in dealing with that bill, and I know
2 you've introduced -- with that concept, and I
3 know you have introduced legislation to deal
4 with that. We do not do anything definitionally
5 here in this bill. Whatever currently
6 determines responsible bidder would be the
7 standards by which these prospective bidders
8 would be considered.

9 The interest in if not redefining
10 then certainly better describing what a
11 responsible bidder is is one which I would share
12 with you, and I would reasonably hope that in
13 the coming session if the two of us are
14 fortunate enough to be back that we will have
15 the opportunity to maybe dwell on that at
16 greater length, but it is an issue, an important
17 one, and one which I, too, would like to
18 address.

19 SENATOR STACHOWSKI: Thank you.
20 Just on the bill.

21 ACTING PRESIDENT KUHL: Senator
22 Stachowski on the bill.

23 SENATOR STACHOWSKI: I don't have

1 a problem with this bill; and if we can find a
2 way to do a swing on the 10 percent on that, I
3 don't have a problem with that. But I would
4 suggest to Senator Saland that maybe he can help
5 me with the Labor Committee to get the
6 responsible bidder definition bill that we have
7 which actually pretty much mirrors what the
8 Governor put out in an executive order and
9 clearly defines what contractors would have to
10 do -- or better yet, what they would not be able
11 to do in order to be a responsible bidder. And
12 if we can get that legislation through, then we
13 would have that definition that I so much worry
14 about, and I would have absolutely no trouble
15 with this bill.

16 Thank you very much.

17 ACTING PRESIDENT KUHL: The
18 Secretary will read the last section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 ACTING PRESIDENT KUHL: Senator
2 Galiber to explain his vote.

3 SENATOR GALIBER: Yes. I want
4 you to know, Senator, that I'm voting against
5 this merely because you didn't make that
6 telephone call. It has nothing to do with the
7 substance of the bill or the intent, so it's a
8 protest no.

9 ACTING PRESIDENT KUHL: Senator
10 Galiber recorded in the negative.

11 THE SECRETARY: Ayes 56. Nays
12 1. Senator Galiber recorded in the negative.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 Senator Saland, why do you rise?

16 SENATOR SALAND: Please note my
17 apologies to the Senator, as a gentleman, and I
18 do apologize if I appeared ungentlemanly.

19 Thank you.

20 ACTING PRESIDENT KUHL: Senator
21 Present, we have a number of housekeeping items
22 at the desk we'd like to take care of, if
23 possible.

1 SENATOR PRESENT: Let's
2 accommodate the desk.

3 ACTING PRESIDENT KUHL: All
4 right. Senator Libous for a motion.

5 SENATOR LIBOUS: Thank you, Mr.
6 President. On behalf of Senator Nozzolio, on
7 page 31, I offer the following amendments to
8 Calendar Number 1379, Senate Print Number 8648,
9 and ask that said bill retain its place on the
10 Third Reading Calendar.

11 ACTING PRESIDENT KUHL:
12 Amendments are received and adopted. The bill
13 will retain its place on Third Reading Calendar.
14 Senator Libous.

15 SENATOR LIBOUS: Thank you, Mr.
16 President. Also on behalf of my colleague,
17 Senator Maltese, on page 24, I offer the
18 following amendments to Calendar Number 1048,
19 Senate Print number 366, and I also ask that
20 said bill retain its place on the Third Reading
21 Calendar.

22 ACTING PRESIDENT KUHL:
23 Amendments are received and adopted. The bill

1 will retain its place on the Third Reading
2 Calendar.

3 Senator DiCarlo.

4 SENATOR DiCARLO: Mr. President.

5 I wish to call up my bill, Senate Print 8405A,
6 recalled from the Assembly, which is now at the
7 desk.

8 ACTING PRESIDENT KUHL: Secretary
9 will read.

10 THE SECRETARY: By Senator
11 DiCarlo, Senate Bill Number 8405A, an act to
12 amend the Social Services Law.

13 SENATOR DiCARLO: Mr. President.

14 I now move to reconsider the vote by which this
15 bill was passed and ask that the bill be
16 restored to the order of third reading.

17 ACTING PRESIDENT KUHL: The
18 question is on vote to reconsider the vote by
19 which the bill passed the Senate.

20 The Secretary will read the roll
21 on reconsideration.

22 (The Secretary called the roll on
23 reconsideration.)

1 THE SECRETARY: Ayes 57.

2 ACTING PRESIDENT KUHL: The bill
3 is before the house.

4 SENATOR DiCARLO: Mr. President.
5 I now move to discharge from the Committee on
6 Rules Assembly Print 8527A and substitute it for
7 my identical bill. The Senate bill on first
8 passage was voted unanimously. I now move the
9 substituted Assembly bill have its third reading
10 at this time.

11 ACTING PRESIDENT KUHL: The
12 Assembly bill will be discharged and substituted
13 for your Senate bill.

14 The Secretary will read the last
15 section.

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Unanimous.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 Senator Rath.

2 SENATOR RATH: Yes, Mr.

3 President. I would like please to have a
4 sponsor star placed on my bill, Calendar 796,
5 Print 6751.

6 ACTING PRESIDENT KUHL: The
7 sponsor star is placed on it. Sorry, I didn't
8 hear you.

9 SENATOR RATH: Thank you.

10 And, Mr. President, on page 32,
11 please place a sponsor star on Calendar 1421,
12 Print 7507A. Thank you.

13 ACTING PRESIDENT KUHL: Sponsor
14 star will be placed on Calendar 1421.

15 Senator Present, we have a number
16 of substitutions to read. Ask the Secretary to
17 read.

18 Senator Galiber before the
19 substitutions.

20 SENATOR GALIBER: Yes. Mr.
21 President. May I have, if it's in order,
22 unanimous consent to be recorded in the negative
23 on a couple of bills?

1 ACTING PRESIDENT KUHL:

2 Certainly.

3 SENATOR GALIBER: Okay. It's
4 Calendar Number 261 and Calendar Number 1323.

5 THE SECRETARY: 261 and 1323.

6 ACTING PRESIDENT KUHL: Without
7 objection, Senator Galiber will be recorded in
8 the negative on Calendar 261 and 1323.

9 Senator Stachowski.

10 SENATOR STACHOWSKI: Mr.
11 President. May I have unanimous consent to be
12 recorded in the negative on Calendar 1323,
13 please.

14 ACTING PRESIDENT KUHL: Without
15 objection, Senator Stachowski will be recorded
16 in the negative on Calendar 1323.

17 Senator Markowitz.

18 SENATOR MARKOWITZ: Same thing
19 for me, Mr. President, to be recorded in the
20 negative on Calendar 1323.

21 ACTING PRESIDENT KUHL: Without
22 objection, Senator Markowitz will be recorded in
23 the negative on Calendar Number 1323.

1 Senator Kruger.

2 SENATOR KRUGER: Yes, Mr.

3 President. I too would like to be recorded in
4 the negative on Calendar 1323.

5 ACTING PRESIDENT KUHL: Without
6 objection, Senator Kruger will be recorded in
7 the negative on Calendar Number 1323.

8 Senator Gold.

9 SENATOR GOLD: I ask unanimous
10 consent to be recorded in the negative on
11 Calendar 1323.

12 ACTING PRESIDENT KUHL: Without
13 objection Senator Gold will be recorded in the
14 negative on Calendar Number 1323.

15 Secretary will read the
16 substitutions.

17 THE SECRETARY: On page 4,
18 Senator Kuhl moves to discharge the Committee on
19 Rules from Assembly Bill Number 4806B and
20 substitute it for the identical Calendar 66.

21 On page 10, Senator Lack moves to
22 discharge the Committee on Rules from Assembly
23 Bill Number 9115A and substitute it for the

1 identical Third Reading 492.

2 On page 12, Senator Daly moves to
3 discharge the Committee on Rules from Assembly
4 Bill Number 10300B and substitute it for the
5 identical Third Reading 593.

6 On page 13, Senator Skelos moves
7 to discharge the Committee on Rules from
8 Assembly Bill Number 12112, and substitute it
9 for the identical Third Reading 600.

10 On page 16, Senator Goodman moves
11 to discharge the Committee on Rules from
12 Assembly Bill Number 6114D and substitute it for
13 the identical Calendar Number 709.

14 On page 18, Senator Maltese moves
15 to discharge the Committee on Rules from
16 Assembly Bill Number 10571A and substitute it
17 for the identical Third Reading 813.

18 On page 19, Senator Velella moves
19 to discharge the Committee on Rules from
20 Assembly Bill Number 11735A and substitute it
21 for the identical Third Reading 882.

22 On page 23, Senator Levy moves to
23 discharge the Committee on Rules from Assembly

1 Bill Number 2235B and substitute it for the
2 identical Third Reading 1028.

3 On page 30, Senator Johnson moves
4 to discharge the Committee on Rules from
5 Assembly Bill Number 11822A and substitute it
6 for the identical Third Reading 1368.

7 On page 36, Senator Skelos moves
8 to discharge the Committee on Rules from
9 Assembly Bill Number 10407B and substitute it
10 for the identical Third Reading 1457.

11 On page 36, Senator Sears moves
12 to discharge the Committee on Rules from
13 Assembly Bill Number 11581B and substitute it
14 for the identical Third Reading 1460.

15 ACTING PRESIDENT KUHL:
16 Substitutions are ordered.

17 Chair recognizes Senator Present.

18 SENATOR PRESENT: Mr. President.
19 Can we take up Calendar 1407.

20 ACTING PRESIDENT KUHL: Secretary
21 will read Calendar Number 1407.

22 ACTING PRESIDENT KUHL: Calendar
23 Number 1407, by Senator Volker, Senate Bill

1 Number 8606, establish a moratorium on requiring
2 any disconnection from the Letchworth State Park
3 waterline.

4 ACTING PRESIDENT KUHL: Senator
5 Maltese, an explanation of Calendar 1407 has
6 been asked for by Senator Gold.

7 SENATOR MALTESE: Mr. President.
8 This is an act to establish a moratorium on
9 requiring any disconnection from the Letchworth
10 State Park waterline. Since in my district
11 especially on behalf of Mr. Volker, Senator
12 Volker, I'm a friend of the dairy farmer. In
13 this specific situation, a dairy farmer in
14 Senator Volker's district and in Assemblyman
15 Reynolds' district has been connected to the
16 waterline that goes from the lake to Letchworth
17 Park. This connection was made on property
18 owned by the farmer and which the park received
19 a easement -- on which the park received an
20 easement.

21 What this amendment seeks to do
22 is protect the farmer from having his main
23 source of water to feed his cattle disconnected

1 while they attempt to work out an equitable
2 arrangement. But the only person affected by
3 this bill would be this specific farmer,
4 approximately -- even if a new water district is
5 established, which is what they are trying to
6 work out, only seven or eight families, all
7 dairy farmers, would be affected. But as far as
8 this specific bill, it does not seek to
9 reconnect or change anyone else's rights. It
10 only seeks to protect this specific farmer from
11 having his source of water for his cattle
12 disconnected.

13 ACTING PRESIDENT KUHL: Chair
14 recognized Senator Gold.

15 SENATOR GOLD: Yes. Does Senator
16 Maltese yield to a question?

17 ACTING PRESIDENT KUHL: Senator
18 Maltese, do you yield?

19 SENATOR MALTESE: Yes.

20 ACTING PRESIDENT KUHL: Senator
21 yields.

22 SENATOR GOLD: Senator, is 80th
23 Street and Metropolitan Avenue in your

1 district?

2 SENATOR MALTESE: Yes, it is.

3 SENATOR GOLD: Senator, if I were
4 to tell you that there is a store located at
5 that vicinity, and somebody came into that store
6 and specifically asked the store owner to give
7 them some property which they were denied and
8 the person took the property anyway, the store
9 owner is suing to get it back, but they asked
10 you to put in a bill to let the thief keep the
11 property while they negotiated something
12 amicable, would you put in that bill, Senator?

13 SENATOR MALTESE: No, I would
14 not. But in this specific situation, we have a
15 farmer who is paying for the water -- not a
16 thief, who is having the water metered by
17 apparently an agreement with the state park and
18 is paying as he utilizes the water.

19 SENATOR GOLD: On the bill, Mr.
20 President.

21 ACTING PRESIDENT KUHL: Yes,
22 Senator Gold. On the bill.

23 SENATOR GOLD: I know, Mr.

1 President, that deep in your heart you have only
2 love for farmers, so I don't know whether you
3 should be even presiding right now. I
4 understand the explanation given by Senator
5 Maltese helping our distinguished colleague,
6 Senator Volker, but I just want the chamber to
7 understand there was a memo in opposition from
8 Parks and Recreation.

9 What they basically say -- and
10 I'll read it to you. It's very short. Four
11 years ago, a private landowner illegally
12 connected into the water supply system after -
13 after the landowner had specifically been denied
14 permission to do it. The legislation
15 prohibiting OPRHP from disconnecting this
16 private connection would, in effect, sanction a
17 deliberate, unauthorized activity through which
18 a private entity has appropriated public
19 property owned by the State of New York.

20 Now, I think it's fascinating. I
21 really think it's fascinating. I don't want to
22 see the farmer hurt, and maybe the farmer ought
23 to be able to get this water. I don't know all

1 of the details. I just think it's fascinating.

2 Here we are coming to the closing
3 hours of this session. We have not as yet seen
4 these major crime packages to clamp down on
5 criminals, and I know when we get it the
6 sponsorship is all going to be Republican
7 names. You never even let our side co-sponsor
8 even though you will take our votes along with
9 it. But here's a piece of legislation that says
10 what the heck. This isn't some minority kid in
11 the ghetto who breaks into a store. This isn't
12 Les Miserable. Him you could run over.

13 But here's a poor farmer who
14 steals the water. He's told you can't do it.
15 He made application. Turned down. You can't do
16 it. He goes onto state land and steals it
17 anyway, and now we want to pass a law that tells
18 the State of New York you can't even disconnect
19 him.

20 Well, I just think -- I just
21 think it's a fascinating argument. I am
22 thrilled that it is coming from Republican
23 conservatives. If this bill was put in by a

1 liberal Democrat, you would knock us off the
2 face of the planet. We don't understand the
3 laws. We don't understand what it is to be law
4 abiding. It is incredible.

5 Not only that, let me tell you
6 this. If this was a store owner from the South
7 Bronx, you would probably want the death
8 penalty.

9 ACTING PRESIDENT KUHL: Any other
10 speaker wishing to speak on this bill?

11 Senator Solomon.

12 SENATOR SOLOMON: It's not 3:00
13 in the morning, so. Will Senator Maltese yield,
14 please?

15 ACTING PRESIDENT KUHL: Senator
16 Maltese, do you yield?

17 SENATOR MALTESE: Yes.

18 ACTING PRESIDENT KUHL: The
19 Senator yields.

20 SENATOR SOLOMON: Senator, I read
21 the memorandum in opposition, and it was pretty
22 strong language, "private landowner illegally
23 connected into Letchworth State Park water

1 supply system." Do you have any proof to the
2 contrary?

3 SENATOR MALTESE: Mr. President.
4 I am advised that contrary to the protestations
5 of Senator Gold that this agreement between the
6 farmer and the park resulted from a stipulation
7 as a result of a lawsuit. It was not a lawsuit
8 in conversion or theft of services but a lawsuit
9 brought in civil court where a stipulation was
10 entered into by both sides which provided that
11 the farmer would pay for the water as metered.
12 So we don't exactly have the situation as laid
13 out by Senator Gold.

14 In addition, I think if any proof
15 was needed as to how humane this side of the
16 aisle is. Here it is the waning hours of the
17 session and we do not let the plight of an
18 upstate farmer who requires water for his cattle
19 go unheeded. So I think that what this
20 indicates is that we on this side of the aisle
21 worry about every constituent no matter how
22 small the problem.

23 SENATOR SOLOMON: Mr. President.

1 SENATOR MALTESE: Senator
2 Solomon, mostly respectfully, I forgot your
3 question.

4 SENATOR SOLOMON: I know you
5 forgot my question. I asked if you had any
6 proof showing me that it was not illegal.

7 SENATOR MALTESE: Mr. President.

8 SENATOR SOLOMON: Don't tell me
9 about the farmer's plight. Just tell me whether
10 there's any proof.

11 SENATOR MALTESE: I am advised
12 that this was a stipulation. I don't have any
13 proof that it wasn't illegal. But I think if it
14 arose out of a court stipulation, both sides
15 entered before a court of law and came to an
16 agreement.

17 SENATOR SOLOMON: Mr. President.
18 Another short question.

19 ACTING PRESIDENT KUHL: Senator
20 Maltese, do you continue to yield?

21 SENATOR MALTESE: Yes.

22 ACTING PRESIDENT KUHL: Senator
23 yield.

1 SENATOR SOLOMON: Can you tell me
2 what the estimated value of the water is on an
3 annual basis? It is not like a water fountain.

4 SENATOR MALTESE: I am advised
5 the farmer has approximately 750 cows, and -
6 but I don't know the value of the water, but he
7 is paying for it, so I think if we could require
8 expert testimony as to how much water a cow
9 drinks over a normal day, we would probably
10 multiply it by 750 and come up with a reasonable
11 estimate.

12 SENATOR SOLOMON: I know. On the
13 bill.

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

16 SENATOR SOLOMON: I was not going
17 to ask Senator Maltese how much water each cow
18 consumes each day, because I have a feeling that
19 it would be kind of difficult for him to come up
20 with that answer, unless there is a farm hidden
21 in his district that I'm not aware of.

22 But I would suspect that 750 cows
23 drink a lot more water -- or use quite a bit of

1 water. And I'm really concerned about the fact
2 that this memorandum in opposition is drafted so
3 strongly by the state agency to specifically
4 state that this landowner illegally connected
5 into the water supply.

6 I'm not unfamiliar with those
7 connections. In fact, in my Senate district, we
8 have people who attempt to illegally connect
9 into the electric supply in many instances.
10 Now, the gas supply when they illegally connect
11 into it, they usually have a little mishap. But
12 they illegally connect into the electric supply
13 on many occasions. And this is basically, when
14 you get down to it, a theft of services from
15 someone, and I think that's a problem with this
16 bill, and I don't think we should sanction a
17 theft of services by passing this bill.

18 And if the farmer is having a
19 dialogue with a state agency to resolve the
20 problem, let him continue to dialogue. I don't
21 think we should sanction the services and, in
22 effect, give the farmer an edge in his
23 dialogue. If he is in the civil court system,

1 then he's in the civil court system. And let
2 him stay in the civil court system. Why should
3 we sanction his activities? So I suggest there
4 be a no vote on this bill.

5 SENATOR DOLLINGER: Mr.
6 President. On the bill.

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

9 SENATOR DOLLINGER: This is the
10 reason why we're not good judges. We're good
11 legislators, but we are not particularly good
12 judges when someone asks us to find facts or
13 draw conclusions about what's happening out
14 there in the rest of the world and we've got to
15 adjudicate who's right and who's wrong.

16 If I could, Mr. President, could
17 I ask the sponsor or substitute for the sponsor,
18 do you have any proof that shows that there is a
19 civil action and that this was undertaken in
20 reliance on some claim of right or some
21 settlement of a lawsuit? And if so, could you
22 put the bill aside, lay it aside, or put it on
23 the table for a day to give us some proof of

1 that.

2 SENATOR MALTESE: Mr. President.
3 I'm advised that counsel has been in touch with
4 the law firm Puresutti and Coniglio, who
5 represents the farmer, and the farmer's name is
6 David Smithgall. I do not have proof in my hand
7 at this point in time that a stipulation has
8 been entered into, but I accept as an officer of
9 the court the representation of the attorney to
10 Senate counsel.

11 I think the point that we and
12 Senator Volker and Assemblyman Reynolds, whose
13 district this is also in, who supports this
14 legislation -- the point they are trying to
15 make, they are not trying to give free water to
16 this particular farmer. We are not trying to
17 adjudicate the matter here in the Senate
18 chamber. What we're attempting to do is take a
19 situation that has already been done, that has
20 already been litigated to some degree and stop a
21 disconnection which would preemptorily end the
22 farmer's access to the waters and probably doom
23 his business.

1 What we're allowing for here is
2 not a permanent deed, but a temporary hiatus so
3 that the parties would have an opportunity to
4 get together, perhaps the farmer seek
5 alternative sources of waters. And, by the way,
6 just for the purposes of how much water is
7 consumed, I'm advised that the farmer's only
8 source of water is not just this pipeline, but
9 that there are minimal water supply wells on the
10 property but not in sufficient quantity to
11 provide sufficient water for the cows.

12 So I think what we're trying to
13 do is give them some breathing time where both
14 parties could possibly amicably settle the
15 dispute.

16 SENATOR DOLLINGER: Again, I
17 appreciate the observations of the sponsor.
18 What I think might be happening, and I will just
19 offer a guess -- I will offer a guess that the
20 State of New York found out that the water was
21 being taken illegally, and the State of New York
22 has moved for a temporary order to shut off and
23 to disconnect it, to tear it up and to back

1 charge the cost to the farmer who's taking
2 something illegally, and the court has either
3 issued an order requiring that he discontinue
4 taking that water and ordering or permitting the
5 state to remove the connection, and we're going
6 to intervene in that legal dispute and tell the
7 Court that it can't order that, even though this
8 individual is apparently taking the water
9 without the approval of people of this state.

10 While I may have sympathy for the
11 farmer's ability to find other sources of water,
12 he asked, apparently was told no, and then went
13 ahead and did it anyway. And it seems to me we
14 can't countenance that kind of disregard for the
15 power of the people of this state, for the
16 ability of this Legislature to protect the
17 assets of this state including the water that
18 flows through Letchworth Park.

19 I've been in the park a number of
20 times, a beautiful place. This doesn't seem to
21 me to make any sense. I appreciate the
22 sponsor's intent, but we're intervening in a
23 legal proceeding. I don't think there is any

1 basis for it. If somebody is taking something
2 illegally, we should tell him no, you can't do
3 it.

4 ACTING PRESIDENT KUHL: The
5 Secretary will read the last section.

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT KUHL: Announce
12 the results when tabulated.

13 THE SECRETARY: Those recorded in
14 the negative on Calendar Number 1407 are
15 Senators Connor, DeFrancisco, DiCarlo,
16 Dollinger, Galiber, Gold, Jones, Leichter,
17 Oppenheimer, and Solomon. Ayes 48. Nays 10.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 1451, by Senator LaValle, Senate Bill Number
22 6759, an act to amend the State Finance Law.

23 ACTING PRESIDENT KUHL: Senator

1 LaValle, an explanation has been asked for by
2 Senator Gold on Calendar Number 1451.

3 SENATOR LAVALLE: Mr. President.

4 This legislation establishes incentives to
5 stabilize the school district property tax. We
6 heard earlier this week -- I believe yesterday
7 -- Senator Cook offer a piece of legislation to
8 deal with a problem of grave concern to many of
9 us representing the rural and suburban school
10 districts in this state, whereby property taxes
11 have been escalating despite the fact that we
12 have given to our school districts increasing
13 amounts of state aid.

14 This proposal very specifically
15 amends the Finance Law because it addresses not
16 the educational portion of the budget in the way
17 we address providing services to our youngsters
18 but rather the concern of the taxpayer and the
19 tax rate problem; and so, whereby a school
20 district freezes their tax levy, the state
21 provides under a formula by this legislation
22 incentives for the school district to maintain a
23 stabilized tax rate.

1 I believe that it's in the best
2 interest of all parties by maintaining a stable
3 real property tax rate, because the people in
4 the communities will feel less pressure, will
5 feel more -- much better about supporting a
6 school budget and school programs and I believe
7 reduce some of the tensions that we see mounting
8 in our school districts between taxpayers and
9 people who want to provide good programs for our
10 youngsters.

11 This program would begin with the
12 1995 tax levy and would begin in terms of
13 financing this in our next -- in succeeding
14 budgets.

15 ACTING PRESIDENT KUHL: Chair
16 recognizes Senator Gold.

17 SENATOR GOLD: Thank you.

18 Mr. President. Would the Senator
19 yield to a question?

20 SENATOR LAVALLE: Yes.

21 ACTING PRESIDENT KUHL: Senator
22 yields.

23 SENATOR GOLD: Senator, you say

1 that this would give some comfort to people in
2 the communities. And what I would like to know
3 is what communities are we talking about? Are
4 we talking about every community in this state?

5 SENATOR LAVALLE: Yes.

6 SENATOR GOLD: Does this include
7 the big five?

8 SENATOR LAVALLE: Yes, it does,
9 Senator. It's a statewide -- as I understand,
10 it's a statewide bill, but the major beneficiary
11 of this proposal would be those school districts
12 that have high tax rates and actually establish
13 a tax rate.

14 Now, the City of New York, for
15 instance, does not have a separate tax rate for
16 school purposes, and so this legislation, by
17 definition in a sense, would exclude those
18 districts, as the City, that do not have a
19 separate tax rate for school purposes.

20 SENATOR GOLD: Yes. All right.
21 Senator, that's what I wanted to clarify. When
22 you say it gives comfort to people in the
23 communities, there is a -- oh, a few million

1 people in the City of New York who don't get any
2 comfort out of this particular bill. Am I
3 correct?

4 SENATOR LAVALLE: That is
5 correct.

6 SENATOR GOLD: Yes. I also
7 understand that there are some people in Buffalo
8 and a few other little places, Rochester, yeah,
9 that also -- and I'm not saying, Senator, that a
10 bill has to apply statewide, but I want to
11 clarify that this does not, as I understand it,
12 apply to every school district.

13 SENATOR LAVALLE: By the
14 definition in the formula -

15 SENATOR GOLD: Okay.

16 SENATOR LAVALLE: -- it would
17 exclude those areas that do not have a real
18 property tax rate for school purposes. That is
19 correct.

20 SENATOR GOLD: Is that Syracuse,
21 too, Jim? Yes.

22 Will the Senator yield to another
23 question?

1 ACTING PRESIDENT KUHL: Senator,
2 would you yield to another question from Senator
3 Gold?

4 SENATOR LAVALLE: Yes.

5 SENATOR GOLD: Senator, there has
6 been a term floating around here this year with
7 regard to certain pieces of legislation,
8 "maintenance of effort." Now, as I understand
9 it, that term means that there are certain areas
10 in the state where we are mandating that they
11 spend money, not that they save money and cut
12 taxes but that they actually spend money in the
13 schools; and as a result of the maintenance of
14 effort mandate, they might have to increase
15 their taxes. Is that correct?

16 SENATOR LAVALLE: Senator, as you
17 know, this legislation does not address that
18 issue. I think you are aware that that issue is
19 being discussed at a -- in a separate forum,
20 that more properly looks at revenues that go
21 into cities, and you are talking about more
22 specifically New York City. And that problem
23 you are oversimplifying by attaching that

1 discussion to this issue because it's apples and
2 oranges. It is really an entirely different
3 issue.

4 SENATOR GOLD: Will the Senator
5 yield to a question?

6 SENATOR LAVALLE: Yes, I will.

7 ACTING PRESIDENT KUHL: Would you
8 yield for another question, Senator?

9 SENATOR LAVALLE: Yes.

10 ACTING PRESIDENT KUHL: He will.

11 SENATOR GOLD: Senator, I want to
12 tell you something. There is so much to know
13 around here, I really don't claim to be the
14 expert I should be on everything, but I know
15 school aid formula is very, very complicated,
16 and the way we fund education is complicated.
17 But isn't it fair to say, in the most lay-way
18 words I can think of, that when we talk about
19 "maintenance of effort" for some of the
20 districts, we are basically saying we want to
21 make sure that they put in a certain amount of
22 funding; and when we talk about your bill, we
23 are talking about encouraging them to make

1 certain kinds of cuts and we're going to give
2 them bonuses based upon that?

3 SENATOR LAVALLE: Senator, we
4 have -- you know, this discussion, we have
5 during the state aid formula. Senator Leichter
6 usually raises certain aspects. And, again, you
7 are looking at a New York City or a city
8 situation, whereby, there is a general budget
9 and, out of the general budget, the city spends
10 monies for school purposes.

11 Here, we are talking about
12 independent school districts, that their sole
13 purpose, the state aid that we send to them goes
14 specifically for the schools along with the
15 property taxes that they raise to receive the
16 revenue from state aid and their property taxes
17 to meet their budgetary needs. It is an
18 entirely different situation than that that
19 people who live within cities face.

20 So you are mixing and matching
21 issues. I am not diminishing the issue that you
22 raise as being an important issue. I know very
23 precisely what you are talking about, but this

1 bill is entirely different. It's an entirely
2 different issue than the one that you raise.

3 SENATOR GOLD: Mr. President. If
4 the Senator will yield to a question?

5 ACTING PRESIDENT KUHL: Senator,
6 would you yield again?

7 SENATOR LAVALLE: Yes, I will.

8 SENATOR GOLD: Senator, those of
9 us who represent areas such as the City of New
10 York understand some of the budget process; and
11 when we use phrases like Stavisky-Goodman, for
12 example, we all remember that there was a time
13 when the Legislature felt very pressed to make
14 sure that the money that we voted for education
15 aid went to education. All right?

16 Now, it may be that under the
17 current system, mayors such as the mayor of the
18 City of New York have to come to this
19 Legislature and have to grab money every place
20 they can get it to put their budgets together,
21 and then we always have this fight as to whether
22 education dollars go to education.

23 But after all of this is talked

1 out, the bottom line of it is that we are
2 talking as a Legislature in terms of mandating
3 that the City of New York and other places have
4 some kind of maintenance of effort because we
5 want to make sure these dollars flow. And if by
6 saying maintenance of effort they have to raise
7 their taxes, real estate or otherwise, then
8 sobeit.

9 But when you get to the rest of
10 the state, we say no, no, no, no. The rest of
11 the state, you know, we got to give them help.
12 We got to give them bonuses.

13 And isn't this really funding
14 them in the educational field, adding in, no
15 matter what you want to label it, additional
16 education monies while other places such as the
17 big five may have to raise taxes?

18 SENATOR LAVALLE: Senator, I
19 believe not because real property taxes in
20 several parts of this state have reached
21 confiscatory levels. As a matter of public
22 policy, it is driving people out of their
23 residences. It is driving people out of their

1 businesses. And so I believe that in terms of
2 outside of some of our cities, I think
3 communities are at a point of rebellion.

4 Now, the cities -- once again, I
5 go back to the fact that there is a general
6 budget, and that budget funds many, many things,
7 whereby the City Council and the mayor make
8 decisions on how that money is to be spent.
9 That does not, again, I want to repeat, diminish
10 the obligation that they have. And people stood
11 up in this house and in the Assembly to override
12 a governor on Goodman-Stavisky to insure that
13 the dollars that we send for school purposes go
14 for those purposes and that there's not a mixing
15 and matching.

16 And I would say, Senator, this
17 problem happens to the community colleges, where
18 we send aid to our community colleges in the
19 City University and, many times, they do not get
20 the full benefit of those dollars because within
21 the city budget they may move away the dollars.
22 If we send a million dollars in state aid, a
23 million dollars may be withdrawn of city

1 contribution. But I think this is not the forum
2 to discuss the maintenance of effort issue,
3 Senator, as it relates to the purpose of this
4 bill.

5 SENATOR GOLD: Thank you.

6 On the bill, Mr. President.

7 ACTING PRESIDENT KUHL: On the
8 bill, Senator Gold.

9 SENATOR GOLD: Mr. President.
10 Senator LaValle states some truths and then
11 gives us a bill which may not, in effect, be
12 very fair at all. I don't think anybody in the
13 state underestimates how significant real estate
14 taxes are in many parts of the state and how
15 they affect quality of life, how they affect
16 sale of property, how they affect senior
17 citizens in their ability to maintain their
18 property in their retirement, et cetera, et
19 cetera, et cetera. And I know that I was not
20 the only one who heard the Governor talk about
21 the concept of reexamining how we fund school
22 aid. It may be that we have now come to the
23 point where property tax is not the way to fund

1 school aid. It may be that as people get older
2 and people get into retirement they don't want
3 to sell their homes because the taxes on real
4 estate will eat up their pensions and they don't
5 have children in the school.

6 But, Senator LaValle,
7 understanding all of that it's divisive to come
8 here with this bill which tells people in the
9 City of New York and other places that we are
10 not going to help you. Now, we have done a
11 budget, and that budget was negotiated, and we
12 all know how those negotiations are handled when
13 it comes to school aid. They are never fair.

14 The school aid formula has never
15 been fair as long as I've been up here; and if
16 you want to get more money in the City of New
17 York, then we hear about, "This will do some
18 save harmless here," and "This will be a bunch
19 of money there," and the bottom line is the kids
20 are the last ones anybody ever really thinks
21 about. It's all politics.

22 But we finished it for this
23 year. We've got our budget. And now we're

1 talking about planning for the future? Well, if
2 we're planning for the future, Senator LaValle,
3 why don't we plan for the future of kids that
4 are in the City of New York and in Buffalo and
5 Rochester and in Syracuse and in other places
6 also? But we don't do that.

7 I mean this bill flies in the
8 face of the kind of messages that we send down
9 to Senator Maltese's district and Senator
10 Padavan's and Senator DiCarlo's and Senator
11 DeFrancisco and Senator Volker. I mean we tell
12 those Senators that their districts have to do
13 something else.

14 And I don't know. To tell you
15 the truth, I know there's a lot of discipline in
16 the Republican Party, particularly in this
17 house, but I'm going to be fascinated to see the
18 way some of my colleagues on the other side vote
19 on this bill and whether or not you can really
20 go back into your districts and suggest that you
21 did your districts a great favor by voting for a
22 piece of legislation that gives bonuses to every
23 place else in this state except your area while

1 your area is right under the gun and being told
2 that, whether you'd like it or not, you better
3 come up with taxes and you better come up with
4 revenues because you better maintain your
5 effort, and there's no two ways about it.

6 But there are two ways about it,
7 and that's what's wrong with this bill. The
8 bill is divisive, and it shouldn't be. If you
9 want to look to the future, Senator LaValle,
10 that's great. And when you say Senator Leichter
11 usually says this and that, and Senator Galiber,
12 whatever, speaks out, that's great. But we
13 can't go on with legislation which takes a piece
14 of this, piece of that and makes no sense when
15 viewed at alone.

16 We had a couple of bills reported
17 out of rules in the crime area the other day,
18 and one of them I think was starred, but I mean
19 we as Democrats looked at the Majority as if
20 they had blown their minds. You wanted to make
21 a felony out of something which was a theft of
22 some service and make a violation out of
23 somebody putting in faulty fire alarm equipment

1 which could kill hundreds of people.

2 I mean now, if that was part of
3 one crime bill, you'd never do it. Because it's
4 one part of one crime bill, we would see how
5 everything meshes with each other. The same
6 thing here. If you're telling us that this
7 program makes sense for some of the people in
8 the state and it was part of a program which
9 made sense for the Big Five and took into
10 account what everybody's problems are, that's
11 one thing; but put alone the way it is, Senator
12 LaValle, I know I as a city legislator could not
13 possibly support this. And it would seem to me
14 that there are people on your side of the aisle
15 who I believe would look foolish going back home
16 and saying that for future budgets, or whatever,
17 we voted to set up this process for people, but
18 it isn't our people.

19 I think the bill should be
20 opposed.

21 ACTING PRESIDENT KUHL: Senator
22 Dollinger.

23 SENATOR DOLLINGER: Mr.

1 President. Will the sponsor yield for a
2 question.

3 ACTING PRESIDENT KUHL: Senator
4 LaValle, would you yield to a question from
5 Senator Dollinger?

6 SENATOR LAVALLE: Yes.

7 SENATOR DOLLINGER: Yes.

8 Senator, what's the impact of this bill in a
9 school district which has -

10 ACTING PRESIDENT KUHL: You were
11 ahead of him?

12 SENATOR DOLLINGER: Do I have the
13 floor, Mr. President? Excuse me.

14 ACTING PRESIDENT KUHL: You have
15 the floor. I'm sorry.

16 SENATOR DOLLINGER: What's the
17 impact of this bill on a school district that
18 has a growing student population?

19 SENATOR LAVALLE: This bill does
20 not deal with state aid.

21 SENATOR DOLLINGER: No, but my
22 question is as the school district -

23 SENATOR LAVALLE: It doesn't -

1 the bill and the formula relates to tax rates
2 and not to student population.

3 SENATOR DOLLINGER: Right, but as
4 the number of pupils increase in a school
5 district, there's a need -

6 SENATOR LAVALLE: This bill does
7 not relate -- if you look at the bill and read
8 the bill, it talks about tax rates and compares
9 tax rates. It does not address the problem of a
10 school district with a growing population.

11 SENATOR DOLLINGER: Okay, but -
12 Again, through you, Mr. President, if Senator
13 LaValle will continue to yield. If the school
14 population is growing, there is a concomitant
15 increase in the need for teachers, for
16 buildings, for lights, for transportation, all
17 of those things. Those are additional costs
18 that would show up on the property -

19 SENATOR LAVALLE: Yes.

20 SENATOR DOLLINGER: -- tax levy,
21 would they not?

22 SENATOR LAVALLE: Yes. You see,
23 Senator, in the formula that we just addressed,

1 we very specifically this year dealt with growth
2 aid outside of the regular formula, so that the
3 needs of the student would be addressed through
4 the state aid formula.

5 This proposal very specifically
6 amends the Finance Law because its purpose and
7 focus is on growing property taxes and how we
8 stabilize that.

9 It is our hope that in each and
10 every session -- and I think we made a
11 significant step in this last session to deal
12 with the growth aid problem and the needs of a
13 school district that have greater problems from
14 one year to the next, and so we hope that we
15 address the student problems. I was very
16 specific in that in my remarks.

17 But what we have failed to
18 address is in too many situations the property
19 tax has continued to escalate, and so we need to
20 look at various methodologies. Senator Cook the
21 other day proposed a methodology to deal with
22 the property tax. I have put forward, as many
23 of my other colleagues, various approaches in

1 trying to be creative to deal with the problem
2 of financing the education of our 3 million
3 students that we presently spend about \$22.6
4 billion a year, and that continues to grow.

5 SENATOR DOLLINGER: Right.

6 SENATOR LAVALLE: So this
7 addresses specifically the tax rate problem.

8 SENATOR DOLLINGER: Right. But
9 again, through you, Mr. President. But under
10 the current formula, we don't cover dollar for
11 dollar for local school districts the additional
12 expenditures necessary in a growing student
13 population.

14 SENATOR LAVALLE: Senator, this
15 year, we did. We took the growth aid, the
16 growth problem, and we took it outside of the
17 cap within the formula. So that this year in
18 this budget that we have passed, we did
19 recognize the very problem that you have
20 identified.

21 SENATOR DOLLINGER: Again,
22 through you, Mr. President. So I make sure I
23 understand this. In the Town of Greece, for

1 example, the Greece Central School District,
2 which I believe is the eighth largest school
3 district in this state, I represent all of it.
4 Their student population is going to increase by
5 about 800 students.

6 My understanding is that the
7 additional aid, the additional growth aid, from
8 the State of New York which comes to them
9 alleviates a portion of that additional cost but
10 not the total cost of the two new schools
11 that -- the equivalent of two new schools that
12 they are going to have to add.

13 The reason why I make that point
14 is because those additional 800 students even
15 after they get the state aid are going to drive
16 the tax levy up because there are additional
17 people with additional needs that are going to
18 create additional and incremental costs.

19 If that's the case, that growing
20 student population in a suburban school
21 district, they face additional costs, they
22 wouldn't qualify for the treatment under this
23 formula unless they meet the formula

1 guidelines. Correct?

2 SENATOR LAVALLE: Senator, I
3 gather you now acknowledge that a district like
4 Greece will at least receive growth aid. The
5 last comment is you qualified your remark by
6 saying all of the expenditures related to
7 growth.

8 The state aid formula is broken
9 up in several parts. The part that I talked
10 about, the growth aid, relates to operating
11 expenditures.

12 SENATOR DOLLINGER: Right.

13 SENATOR LAVALLE: If they need to
14 provide a building for those 800 students, we
15 then go to the building aid formula that will
16 provide the aid for those students. And then we
17 have a transportation aid formula to provide the
18 aid for them to get to and from school.

19 So it is a rather complex series
20 of formulas that come together to provide the
21 educational needs. But, again, Senator, this
22 bill is outside of addressing the educational
23 need problem. This bill addresses the taxpayer

1 problem that we have.

2 SENATOR DOLLINGER: Correct. I
3 understand that, and I appreciate that.

4 Just one other question, Mr.
5 President. If there is an increase in the
6 teacher salaries that are associated with the
7 school district -- and that would otherwise
8 increase the tax levy, would it not, say there
9 is a 4 percent or a 3 percent raise?

10 Because, as we know, salaries are
11 the largest portion of the school district
12 budget, we could anticipate something like a
13 concomitant 2 to 3 percent raise or some
14 fraction thereof, 85 percent or 80 percent of
15 that. We would anticipate an increase in the
16 tax levy to that amount.

17 How is that process affected by
18 this bill?

19 SENATOR LAVALLE: Senator, once
20 again, the increases whether they be through
21 teacher salaries or otherwise are addressed by
22 our contribution, by increasing our
23 contribution, state aid to education to the

1 schools. This formula that we passed this year
2 increased the per pupil operating expense
3 ceiling in the formula to address additional
4 needs, whether they be because books went up or
5 because teachers' salaries went up or other
6 employees' salaries went up. That's what state
7 aid to education has primarily funded. When we
8 take apart the per pupil cost, you rightfully
9 have indicated that the majority of that per
10 pupil cost comes from employees' salaries.

11 And so, hopefully, when we
12 increase aid to school districts, we are paying
13 in part for the increase in salaries.

14 SENATOR DOLLINGER: On the bill,
15 Mr. President.

16 ACTING PRESIDENT KUHL: On the
17 bill, Senator Dollinger.

18 SENATOR DOLLINGER: I appreciate
19 Senator LaValle's attempt to provide a further
20 spur to local school districts to reduce or
21 freeze property taxes.

22 It seems to me that local school
23 districts already have the greatest incentive

1 possible, the same incentive that probably
2 drives this measure and frankly drives a lot of
3 what we do in this chamber is that at least in
4 my experience local school board members are all
5 elected. They are all accountable to their
6 constituents. They're all accountable to their
7 communities, and they would have every incentive
8 currently. Because of their desire to get
9 re-elected and make sure they're doing the
10 public good, they have every incentive to keep
11 the tax rates down as low as they can.

12 My community, the 54th Senate
13 District, has had a wonderful experience with
14 exactly that kind of dynamic in the last three
15 or four years as taxpayer groups have become
16 members of school boards, as we've tried to keep
17 down the property taxes, all of that wonderful
18 democratic interplay that works so well at the
19 school board at the local community level is the
20 greatest incentive we have to keep property
21 taxes down.

22 It seems to me that this bill,
23 one, because it excludes the cities; two,

1 although I understand Senator LaValle's comment
2 about excess aid covering additional expenses, I
3 also think this will have the perhaps unintended
4 consequences of disqualifying districts that are
5 growing rapidly, such as all three of my school
6 districts are; and, lastly, because I like the
7 concept of local control by school boards -
8 this may be a very powerful argument. It should
9 be made to school boards. School boards can
10 control their own budget. They can vote zero
11 tax increases every single year if that's what
12 they think they need to get re-elected, if
13 that's what they think serving the public
14 interest is.

15 My guess is, much as the
16 experience in one of my communities suggests, is
17 that often times even a taxpayer group that gets
18 in and says, "We're going to freeze property
19 taxes," nonetheless -- nonetheless -- faces the
20 prospect that their goal as members of the
21 school board is to provide quality education.
22 And what they do is, they take a fine look at
23 that budget, they take a fine look at their

1 contracts with their teachers or anyone else,
2 and they work hard to minimize expenditures.
3 But in a growing district, it's often difficult
4 for them to qualify under this kind of rigid cap
5 that says you have to freeze or only minimally
6 raise your property taxes.

7 Because it excludes cities, a
8 major portion of which I represent, and I think
9 may have the consequence of influencing
10 disqualifying growing districts, I would vote in
11 the negative.

12 SENATOR LAVALLE: Senator
13 Dollinger, before you -

14 ACTING PRESIDENT KUHL: Senator
15 LaValle.

16 SENATOR LAVALLE: I just want to
17 indicate that before you vote in the negative on
18 this, what you should know that is that for the
19 Greece School District, you will be denying them
20 \$1.6 million in additional aid to address the
21 problem of those taxpayers. So I just hope you
22 realize that when you are voting no on this bill
23 you are denying the people in the Greece School

1 District real property tax relief.

2 SENATOR DOLLINGER: Now, Mr.
3 President, since that's the claim that's been
4 made, could you demonstrate to me how that's the
5 case, Senator?

6 SENATOR LAVALLE: By this
7 formula, Senator. It comes to, I believe, \$121
8 per pupil under the formula and the way -

9 SENATOR DOLLINGER: That's, I
10 assume, if they keep their tax rate absolutely
11 flat; correct?

12 SENATOR LAVALLE: If they would
13 qualify under this -

14 SENATOR DOLLINGER: Have they
15 ever kept their tax rate absolutely flat in the
16 last ten years in the Town of Greece, which
17 continues to grow and continues to have
18 additional -

19 SENATOR LAVALLE: Well, they
20 have -- they would have an opportunity to make a
21 choice in whether the incentives under this
22 legislation would be sufficient to allow them
23 when they set the tax levy in this year to

1 qualify for that aid.

2 So I just tell you that under
3 this formula, your school district -- and I just
4 picked that one; I just happened to look under
5 information I have -- that you will be denying
6 those taxpayers real property tax relief by at
7 least \$1-1/2 million.

8 SENATOR DOLLINGER: Again,
9 Senator, that assumes that they are going to
10 keep the tax rate absolutely flat which they
11 have never been able to do because they faced
12 rising student enrollment.

13 SENATOR LAVALLE: Well, all I can
14 tell you is what you, in my judgment, will be
15 denying your taxpayers of the Greece School
16 District.

17 SENATOR DOLLINGER: Well, I don't
18 think I'm denying them that, Mr. President. I
19 appreciate the colloquy from Senator LaValle. I
20 don't think I am. I think what I'm doing is I'm
21 looking at the reality of what they've got to
22 face, and I don't think the reality shows that
23 it will come true as Senator LaValle, who is

1 looking into a crystal ball that I don't see,
2 suggests that it will.

3 In addition, I'd point out that
4 the city of Rochester, which comprises about 60
5 percent of my Senate district, would not get the
6 opportunity to qualify for a nickel under this.

7 ACTING PRESIDENT KUHL: Senator
8 Galiber.

9 SENATOR GALIBER: Yes. Senator,
10 I don't have the advantage of facing you since
11 I've got this other seat, but, Senator -

12 On the bill, rather than ask any
13 questions.

14 Because any time, in my judgment,
15 that there is some tax relief, there has to be
16 somewhere pushing it's going to cost somebody
17 some money, and I know of your fine work through
18 the years, Senator, with Hostos College and
19 Medgar Evers College, and you are concerned
20 about quality education through this state.
21 But, unfortunately, whatever the formula may be
22 in your jurisdiction, it has to have an overall
23 state educational impact.

1 I can't imagine changing formulas
2 on education unless we deal with the City of New
3 York and the Big Five. We're talking about
4 population growth where historically we have
5 some 37 percent of the students throughout the
6 state. We get something like 35 percent -- 34
7 percent. I think it went up a point this year,
8 but certainly not where there is an equity
9 involved.

10 We talked the other day and I
11 wasn't here, but we were talking about the -- we
12 were beating up on the welfare folks and a lot
13 of subsidies that we talked about, I
14 understand. And school is one of the areas
15 where we have been subsidizing through the years
16 to a large amount of money which is never
17 calculated either in the formulas or when we
18 reach the Big Five.

19 We need the kind of help in our
20 district that you talk about for Nassau and
21 Suffolk. We have another piece of legislation
22 that one of your colleagues from Nassau or
23 Suffolk has suggested that the seniors over the

1 age of 70 be relieved of their responsibility to
2 pay taxes on real property. It has to have some
3 ultimate effect on the formula that you make
4 reference to.

5 Some years ago, we have watched
6 -- at least I have watched through the years
7 that education is one of the big items that we
8 deal with. And when we push more money into
9 education, we find that more and more of that
10 money goes out to Nassau and Suffolk, and I
11 appreciate your political power collectively to
12 accomplish this; however, when we write reports
13 -- and they have been substantiated -- that the
14 superintendents' costs out there, the shrinking
15 classrooms and the cost of high-paid
16 superintendents out there, runs the price of
17 education up, no one pays much attention to that
18 except to say I'm going to take this back home
19 and run on this issue.

20 Senator, even where CUNY and -
21 SUNY and CUNY are concerned. You know this
22 better than anyone. You have been chairman of
23 Higher Education now for a long while.

1 Budgetary time comes around, we increase SUNY,
2 we cut CUNY, which is a symbolic way of doing
3 things for the innercity.

4 You want to freeze income tax in
5 your jurisdiction. We're hurting in New York.
6 There is a connection between maintenance of
7 effort and this, if it's no more than your
8 paying attention as someone who is keenly
9 concerned about education on a higher level,
10 because I'm sure you realize that if we don't
11 get those youngsters up the ladder they will
12 never get into our community colleges. They'll
13 never get into SUNY or CUNY.

14 So to bring this to us and say
15 that this only applies if we level off -- and
16 there are certainly building monies that are in
17 State Education. We have buildings in the City
18 of New York that are overcrowded, asbestos
19 infested, lead paint, all these things, yet we
20 don't take the opportunity when we have it.
21 Certainly we have it this year, as Senator Gold
22 indicated, that the Governor talked seriously
23 about changing formulas this year because his

1 sensitivity and our collective sensitivity is
2 that somebody is not getting their proper share,
3 especially in the big Big Five as we make
4 reference to it.

5 You know in your heart's heart
6 that that's right. We're not getting an
7 equitable share. So as long as you can take it
8 home -- you have been here long enough to be
9 elected over and over again, whether you take
10 this piece of legislation or not. You've done
11 an excellent job, and your constituency knows
12 that, so you should be zooming in, if you will,
13 along with the rest of us here, at least those
14 of us from the City of New York and the others
15 in the five to say, Let's try. Since the
16 Governor's given us this direction this year,
17 let's try to balance out some of the inequities
18 as far as the education formulas are concerned.

19 So, Senator, I'm going to vote
20 against this bill because I think there are
21 options, that there's ways of negotiating out a
22 fair formula, whether we have pockets of money
23 in state education for building purposes,

1 transportation or what.

2 We learned one concept in law
3 school years ago. They still do it. There is
4 no special money. We used to symbolically tie a
5 red ribbon around to separate the money. Money
6 is money. Education money is there; and however
7 you want to use it, we can shift it around and
8 apply it and put it in some of the areas where
9 we are concerned in the Big Five because we're
10 all talking about kids. We're all talking about
11 youngsters. We're talking about crowded
12 classrooms in the City of New York. We're
13 talking about the inability to cut out
14 classrooms, as I mentioned before.

15 So, Senator, I think there is an
16 opportunity, but we always miss them. That if
17 we pass this piece of legislation -- and I think
18 Senator Norman Levy has a bill where he is going
19 to exclude 50-year-olds and somebody else
20 excluded. You're going to wind up -- your tax
21 base is going to have to change because if
22 Senator Levy gets his bill passed and you get
23 your bill passed, somebody is going to pay for

1 this education because you are going to start
2 exempting people.

3 The Governor had the best
4 suggestion. Have a local option, income tax or
5 real property tax. You have a choice. At least
6 if you had that choice, exercised that choice,
7 let the people decide. But it certainly would
8 be much more equitable in terms of the education
9 formulas for the Big Five. I know you are
10 concerned about some of the higher education
11 schools.

12 SENATOR LAVALLE: Senator, would
13 you yield for one question?

14 SENATOR GALIBER: Sure.

15 SENATOR LAVALLE: Would you
16 indicate the differences the way we finance our
17 schools between New York City and Port Jefferson
18 school district where I live? In other words,
19 what I'm simply saying, do you recognize that
20 there is a difference in the way the revenue is
21 collected and disbursed to meet educational
22 purposes between a city and a district like Port
23 Jefferson?

1 SENATOR GALIBER: Yes, I do. I
2 understand that. I understand also that out in
3 your district the superintendents that I made
4 reference to, the classes are shrinking. The
5 salaries of the superintendents out there are
6 the highest in the State of New York of all
7 education money. Okay? And some folks -
8 taxpayers -- taxpayers from your district have
9 read the report and commented on it and said,
10 Senator, you and Senator Halperin and Senator
11 Mary Ellen Jones, the report that we put out
12 indicated that we got this money floating
13 around, all this humongous out in your education
14 formulas. Yes, there is a big difference, big
15 difference in it, but you have monies that are
16 coming there now that are being misused, and the
17 taxpayers that you are seeking some relief for
18 are the ones who are complaining about the high
19 paid superintendents, the shrinkage of classes,
20 and the misuse of education monies in terms of
21 salaries, and that money is not getting down to
22 the pupils.

23 You come with a piece of

1 legislation and say, "That's not enough. We
2 want some more." We're going to give them some
3 more relief. Looks great in a newsletter. The
4 fact of the matter is that we are suffering from
5 an educational standpoint, the Big Five and the
6 City of New York and to suggest that there's no
7 connection between maintenance of effort and
8 this piece of legislation -- maybe the pigeon
9 holes to pocket the money is different, but the
10 concept is still there. The philosophy is still
11 there.

12 You at the expense of our Big
13 Five, the innercities, are jeopardizing the
14 education of those youngsters who help give some
15 relief in an area where there is money now being
16 spent in education that should not be spent.

17 SENATOR LAVALLE: Senator, would
18 you yield for one other question?

19 SENATOR GALIBER: Sure.

20 ACTING PRESIDENT KUHL: Senator
21 Galiber, would you yield for one more question
22 from Senator LaValle?

23 SENATOR LAVALLE: Can I ask why

1 when it comes to revenue sharing the enormous
2 amounts of money and the increases, particularly
3 in this budget for New York City, were you not
4 equally as critical of what superintendents in
5 the City of New York in the community school
6 districts make, or whether they are doing the
7 job for the children that are under their care?

8 SENATOR GALIBER: As far as the
9 formulas are concerned, some have suggested the
10 superintendents are being paid higher salaries.
11 That's not so. What they are doing for the
12 youngsters in the City of New York needs a great
13 deal of change.

14 We had a Marchi Commission. The
15 report came out, said, "They are not doing it.
16 Let's change it." We can't get a piece of
17 legislation between both houses, which is not
18 your fault or mine. The best I've seen here out
19 of that entire Marchi Commission, which I served
20 on, one piece of legislation, and I think they
21 suggested increasing the number of school
22 boards. Out of an entire commission, that's all
23 they came up with. Let's increase it from 30,

1 whatever it is. Give them three more. Which is
2 horrible.

3 Senator, we're doing a horrible,
4 horrible job in the City of New York. I made
5 some suggestions on changes, not that it's going
6 to make any difference. I'm not even quite sure
7 whether that will change it. I know what will
8 change, if you sincerely, as someone as involved
9 in education as you are, advocate that we change
10 the formula on a state level so that it will
11 impact on the total population of youngsters of
12 our state. Your voice goes a longer way than
13 mine. If this kind of committment we can get
14 from our total body here, we can assure the
15 future of the youngsters in our state. We can
16 assure that there's going to be some changes
17 that take place.

18 I'm not even concerned about
19 highly paid superintendents. I use that only as
20 a comparison, where we have superintendents who
21 are elected on a political basis through all the
22 horrible things that are happening in our school
23 districts, and how teachers become teachers and

1 how principals become principals. You don't
2 have much to do with that out in your school
3 district. It's a reality. It's horrible in the
4 City of New York. I can't speak for the other
5 Big Four, but the fact of the matter is that we
6 can certainly bring some more money into it.

7 And if we're talking about
8 changing and giving relief in one area, you
9 certainly should be talking about the other part
10 of the state. Greatest opportunity in the
11 world. Let's change the formula, whether it be
12 CUNY and SUNY -- and you know this. Like I said
13 before, it's worth saying one more time before I
14 sit down.

15 Education is probably one of the
16 greatest subsidies that we have for middle class
17 folks. Subsidies, same thing we talked about.
18 We called it welfare the other day. It's
19 another form of subsidy. It applies in the
20 simple category of your concern. We increase
21 SUNY and we cut CUNY, and CUNY represents the
22 City of New York and that's the concept.

23 ACTING PRESIDENT KUHL: Senator

1 Stavisky.

2 SENATOR STAVISKY: Will the
3 sponsor of the bill yield for a question?

4 ACTING PRESIDENT KUHL: I'm sure
5 he will.

6 SENATOR LAVALLE: Yes.

7 SENATOR STAVISKY: Senator
8 LaValle, what is your understanding of the term
9 municipal overburden? Are you familiar with the
10 term?

11 SENATOR LAVALLE: Yes.

12 SENATOR STAVISKY: What is your
13 understanding of the term?

14 SENATOR LAVALLE: Why don't you
15 tell us, Senator.

16 SENATOR STAVISKY: No, I'm asking
17 you. You're the sponsor of this bill. If it
18 were a Stavisky bill, I would gladly yield. But
19 it's a LaValle bill, so I am asking you. What
20 is your understanding of the concept, municipal
21 overburden?

22 SENATOR LAVALLE: We establish a
23 baseline and we say anything beyond that there

1 is an overburden. The municipality is over
2 burdened.

3 SENATOR STAVISKY: Not quite.
4 But thank you very much, Senator.

5 SENATOR LAVALLE: Why did you ask
6 me the question?

7 SENATOR STAVISKY: I thought you
8 would have a more diversified explanation.

9 Municipal overburden, Senator
10 LaValle and my colleagues, refers to the
11 assumption of costs that large cities and
12 sometimes small cities are required to assume in
13 order to provide essential services for their
14 constituents. The net effect is that not only
15 are real property taxes used in the City of New
16 York, in Buffalo, in Rochester, in Syracuse and
17 Yonkers, as well as in small cities, but
18 sometimes they are also required -- in order to
19 meet those needs, those burgeoning needs, they
20 are required to impose an income tax and a local
21 sales tax and a business tax and fees and all
22 kinds of revenue sources that are imposed on the
23 constituents living in those cities, and the

1 cumulative effect can be just as great as the
2 highest real estate tax that is imposed on any
3 school district covered by your legislation.

4 What I'm saying, in effect,
5 Senator LaValle, I wish that you had developed a
6 true statewide bill instead of a narrowly
7 defined, provincial bill that benefits only
8 certain school districts and doesn't take into
9 account that municipal overburden affects city
10 school districts that often are strapped for
11 money and whose constituents and taxpayers make
12 contributions above and beyond the real estate
13 tax which, when these contributions are paid for
14 the support of essential services, are as
15 onerous, Senator LaValle, as onerous as anything
16 that you tried to remedy in your piece of
17 legislation.

18 Senator and my colleagues, let us
19 stop this business of looking out only for our
20 own school districts and begin to look out for
21 the school systems throughout the State of New
22 York in a fair and equitable manner. Let ideas
23 like this, together with ideas for addressing

1 municipal overburden, be dealt with on a
2 bipartisan manner by legislators in the Majority
3 and Minority in both houses of the Legislature,
4 because I tell you that dividing line doesn't
5 mean that all wisdom starts and stops at the
6 aisle and there are things that could be
7 proposed that would make -

8 ACTING PRESIDENT KUHL: Senator
9 Stavisky, I'm going to beg your indulgence while
10 the stenographer changes her tape.

11 SENATOR STAVISKY: What I am
12 suggesting is an end to the business of looking
13 out for only our own school districts and for
14 getting others that also have pain and are
15 overburdened, and that's what I propose we begin
16 to do here and stop this business of one house
17 bills that do not fairly and equitably deal with
18 multiple educational needs.

19 Senator Marchi has a right to
20 recognize the overburden that is imposed on his
21 constituents, and other legislators in the City
22 of New York and in Rochester and Buffalo and
23 Yonkers and Syracuse have a right to be

1 concerned over the municipal overburden that is
2 imposed on their constituents, and I know
3 Senator Marchi is a fair legislator, and I wish
4 that everyone would follow his example in trying
5 to deal with the total needs and not being
6 provincial and shortsighted and petty in the way
7 that legislation is proposed.

8 If there was a desire to do
9 something like this, do it during the budget
10 negotiations, invite other legislators to join
11 with you. We would never fail to respond to a
12 request for a meeting on school finance because
13 it effects every legislator here in this chamber
14 and in the other house. And that's what I would
15 like to see, a spirit of cooperation, a spirit
16 of mutual assistance, a fair approach, not this
17 kind of help me and forget about others who may
18 have even greater overburden for their
19 taxpayers.

20 And for these reasons, I would
21 suggest that this is not a well-founded bill.
22 This is a special interest bill to benefit some
23 parts of the state and not the rest of the

1 state.

2 In many cases, the rest of the
3 state may have equal problems. There are
4 problems of poor people. There are problems of
5 broken homes. There are problems of limited
6 English proficiency. There are problems of
7 reading skill deficiency. There are problems of
8 children with disabilities. And the largest
9 percentage of these special needs are invariably
10 found in the cities which are excluded from this
11 LaValle bill, and that I'm sure was not your
12 intention. I hope it was simply an oversight.

13 Let us together show that a
14 better bill to help school districts throughout
15 the State of New York could be fashioned on a
16 bipartisan basis.

17 For that reason, I will urge my
18 colleagues to vote in the negative on this bill.

19 ACTING PRESIDENT KUHL: Senator
20 Jones.

21 SENATOR JONES: Yes, on the
22 bill. I had two things, I guess, maybe
23 uppermost in my mind and heart when I came here

1 two years ago; and as all of you know, I came
2 from a lifetime of children and education, and I
3 think I saw two things that had to happen. We
4 had to provide an equal and an adequate
5 education for all the children in our state, but
6 I also knew we had to do something for the
7 property owners because we are overburdening
8 them, and we all know that, in taxes to pay for
9 this education.

10 I helped to spend over \$400
11 million yesterday that everyone of us sitting
12 here knows in our heart we don't have, because I
13 thought it was at least worth looking at and
14 discussing, and maybe it would relieve the
15 taxpayers. And I'm willing to support Senator
16 LaValle today even though I agree with my
17 colleagues who are saying that it's not equal
18 and adequate for all the children.

19 I'm probably in a unique position
20 since I represent almost eleven suburban school
21 districts and I represent a portion of the city,
22 so I'm definitely between, as somebody described
23 it yesterday, a rock and a hard place.

1 But I think what that says is
2 we're not doing what we need to do. We've got
3 some pieces out here, but somehow we've got to
4 put these pieces together. I was sitting here
5 today thinking it's almost like I'm operating in
6 a field of dreams. I think we all want
7 something to happen, but we're not getting
8 there. Reality seems to be missing from all the
9 equations.

10 I know Senator LaValle cares
11 about education. I've sat next to him on the
12 Education Committee this year, and I know how he
13 feels about it, and I know Senator Cook does
14 too. But, somehow, we still haven't met the
15 goal of this equal and adequate education for
16 everybody and a real genuine relief for
17 taxpayers.

18 So I'm going to hope that all of
19 these are out here now and I'm going to support
20 them, and I hope somewhere the things will
21 happen that Senator Stavisky just said, that we
22 get together and maybe we do address all these,
23 and hopefully next year we can do the right

1 thing by all the children and at the same time
2 maybe even the right thing for our taxpayers.

3 ACTING PRESIDENT FARLEY: Read
4 the last section.

5 THE SECRETARY: Section 3. This
6 act shall take effect July 1.

7 ACTING PRESIDENT FARLEY: Call
8 the roll.

9 (The Secretary called the roll.)

10 SENATOR LEICHTER: Mr. President.

11 ACTING PRESIDENT KUHL: Senator
12 Leichter, why do you rise?

13 SENATOR LEICHTER: Yes. I would
14 like to explain my vote, Mr. President.

15 ACTING PRESIDENT KUHL: All
16 right. Senator Leichter to explain his vote.

17 SENATOR LEICHTER: I'm sorry that
18 I can't agree with this act of faith on the part
19 of Senator Jones that if we pass enough
20 unrealistic bills that that will lead us to some
21 solution. Not only is this bill unrealistic,
22 it's highly unfair to over 50 percent of the
23 children of the State of New York.

1 And I just marvel at the
2 discipline of the Republican Party to see
3 legislators from my city which is so badly
4 injured by this bill but they will vote for it.
5 I can't believe that. And legislators from
6 other parts of the state, Syracuse and other
7 cities, that are disadvantaged by this bill.

8 But, my friends, there is
9 something else about this bill which I think
10 makes it not only unrealistic but I think
11 deceptive. Nobody mentioned but this bill has a
12 fiscal note to it of \$250 million. How is that
13 money going to be raised? I want to relieve
14 taxpayers, and I want to relieve particularly
15 taxpayers of the real estate tax because it's a
16 regressive, burdensome tax. But then you've got
17 to say how you are going to replace that money,
18 and I don't see Senator LaValle doing it.

19 He has picked up the Cook magic
20 wand which is that we can say we'll spend money,
21 we will provide for government services, but we
22 never have to pay for it because we're not
23 engaged in serious legislation. We're engaged

1 in press release legislation.

2 So, Senator Jones, I'm sorry, I
3 don't think that's going to lead us to the
4 solution.

5 Mr. President. I vote in the
6 negative.

7 ACTING PRESIDENT KUHL: Senator
8 Leichter in the negative.

9 Results.

10 THE SECRETARY: Those recorded in
11 the negative on Calendar Number 1451 are
12 Senators Babbush, Connor, DeFrancisco,
13 Dollinger, Galiber, Gold, Kruger, Leichter,
14 Markowitz, Mendez, Montgomery, Ohrenstein,
15 Onorato, Smith, Solomon and Stavisky. Ayes 42.
16 Nays 16.

17 ACTING PRESIDENT FARLEY: That
18 bill is passed.

19 SENATOR PRESENT: Mr. President.
20 Can we take up 1105.

21 ACTING PRESIDENT FARLEY: 1105.
22 The Secretary will read it.

23 THE SECRETARY: Calendar Number

1 1105, by Senator Stafford, Senate Bill Number
2 7970A, proposing an amendment to the
3 constitution in relation to the use of certain
4 forest preserve land.

5 ACTING PRESIDENT FARLEY:

6 Explanation has been asked for. Senator
7 Stafford.

8 SENATOR STAFFORD: Thank you, Mr.
9 President. As you all remember, with the
10 support of this body, the Assembly and the
11 Governor's office, as a matter of fact when the
12 whole program started for the Olympics our
13 present Governor was Secretary of State, was
14 very involved and helpful. We constructed a
15 biathlon course and that involves skiing and
16 shooting, and there are about 76 miles of trails
17 -- 75 acres, I'm sorry -- 75 acres that the
18 course is presently on.

19 Many of us realize that
20 technically the course really isn't in
21 accordance with the forever wild provision, and
22 we have worked with a number of organizations
23 including the Adirondack Mountain Club, which is

1 supporting this resolution, the Governor's
2 office, the Governor and others, and we will be
3 again putting 75 acres back into the forest
4 preserve, and we will have this course so that
5 we will be able to maintain it as it should be
6 maintained for a world class course.

7 I would say this, and of course
8 this is my area, but I'm very aware that it
9 affects all of our areas of the state. It is
10 really important that we keep up these various
11 venues because people do come in from all areas
12 of the globe, and it's for the good of the areas
13 and it's for the good of the state.

14 So, again, I would ask that this
15 resolution be passed so we can do what the
16 resolution calls for.

17 ACTING PRESIDENT FARLEY: Senator
18 Oppenheimer.

19 SENATOR OPPENHEIMER: Senator
20 yield for a question?

21 SENATOR STAFFORD: Sure.

22 SENATOR OPPENHEIMER: I think you
23 just said something that I wasn't aware of. Did

1 you say there would be 75 acres of replacement
2 land?

3 SENATOR STAFFORD: At least.

4 SENATOR OPPENHEIMER: At least.
5 That is nowhere noted, unless it's been amended
6 subsequently. I see no mention of where that
7 land is and the size of the land.

8 SENATOR STAFFORD: Line 18,
9 Senator. "Lands of equal to or greater than the
10 value of the lands removed from the forest
11 preserve."

12 SENATOR OPPENHEIMER: If you
13 would yield for another question?

14 SENATOR STAFFORD: Sure.

15 ACTING PRESIDENT FARLEY: Would
16 you yield for another question, Senator
17 Stafford?

18 SENATOR OPPENHEIMER: Is it
19 specified what the land is and where it is and
20 the size of it, other than just some general
21 reference?

22 SENATOR STAFFORD: I have a great
23 deal of confidence in this Legislature. And as

1 you notice, it says it will be subject to
2 legislative action, and you certainly have my
3 word that it will be done. I'm sure I can rely
4 upon you supporting that.

5 SENATOR OPPENHEIMER: If this is
6 in, and I have no reason to disbelieve the
7 Senator. On the bill.

8 ACTING PRESIDENT FARLEY: On the
9 bill.

10 SENATOR OPPENHEIMER: I only know
11 that this -- from the memorandums that I have
12 that this is considered to be a disastrous
13 precedent, because we are taking land that is
14 supposed to be forever wild as mentioned by
15 Senator Stafford previously, and that's an
16 illegal use and hardly worthy of a state
17 constitutional amendment. However, I was
18 unaware that there is an exchange of land. I
19 would merely say at this juncture until I find
20 out more specific information that this is one
21 of our few if the only three smoke stakes from
22 the Environmental Planning Lobby, which means
23 that they consider this about as bad as you can

1 get. So unless I have some information
2 otherwise, I would suggest that those of you who
3 care about maintaining the forever wild nature
4 of our Adirondack Park area, those specific
5 areas that are forever wild, that you vote
6 against this and then we will see what develops
7 as far as a swap of land.

8 ACTING PRESIDENT FARLEY: Call
9 the roll on the resolution.

10 (The Secretary called the roll on
11 reconsideration.)

12 THE SECRETARY: Those recorded in
13 the negative on Calendar Number 1105 are
14 Senators Babbush, Connor, Dollinger, Gold,
15 Jones, Kruger, Leichter, Markowitz, Ohrenstein,
16 Onorato, Oppenheimer, Stachowski and Stavisky.
17 Ayes 45. Nays 13.

18 ACTING PRESIDENT FARLEY: The
19 resolution is adopted.

20 Senator Kruger, why do you rise?

21 SENATOR KRUGER: Mr. President.
22 I ask to be recorded in the negative on Calendar
23 Number 261.

1 ACTING PRESIDENT FARLEY: 261?

2 SENATOR KRUGER: Yes.

3 ACTING PRESIDENT FARLEY: Without
4 objection.

5 SENATOR CONNOR: Mr. President.

6 ACTING PRESIDENT FARLEY: Senator
7 Connor.

8 SENATOR CONNOR: Thank you, Mr.
9 President. I would like unanimous consent to be
10 recorded in the negative on Calendar Number 261.

11 ACTING PRESIDENT FARLEY: 261,
12 without objection.

13 Regular order. Secretary will
14 read it.

15 THE SECRETARY: Calendar Number
16 1454, substituted earlier today, by Member of
17 the Assembly Pordum, Assembly Bill Number 10681,
18 an act to amend the General Municipal Law.

19 ACTING PRESIDENT FARLEY: Read
20 the last section.

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

23 ACTING PRESIDENT FARLEY: Call

1 the roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 57. Nays

4 1. Senator Galiber recorded in the negative.

5 ACTING PRESIDENT FARLEY: The
6 bill is passed.

7 SENATOR STAVISKY: Mr. President.

8 ACTING PRESIDENT FARLEY: Senator
9 Stavisky.

10 SENATOR STAVISKY: Without
11 objection, may I be recorded in the negative on
12 Calendar 1407.

13 ACTING PRESIDENT FARLEY: 1407,
14 Senator Stavisky will be in the negative,
15 without objection.

16 Senator Waldon.

17 SENATOR WALDON: Thank you very
18 much, Mr. President. Due to other legislative
19 business, I was out of the chamber. On bill
20 Number 1451, I request unanimous consent to be
21 in the negative.

22 ACTING PRESIDENT FARLEY: Without
23 objection, Senator Waldon is in the negative on

1 Calendar 1451.

2 SENATOR WALDON: Thank you, Mr.
3 President.

4 THE SECRETARY: Calendar Number
5 1457, substituted earlier today, by Member of
6 the Assembly Balboni, Assembly Bill Number
7 10407B, Estates, Powers and Trusts Law.

8 ACTING PRESIDENT FARLEY: Read
9 the last section.

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

12 ACTING PRESIDENT FARLEY: Call
13 the roll.

14 (The Secretary called the roll.)

15 ACTING PRESIDENT FARLEY: Senator
16 Gold.

17 SENATOR GOLD: Mr. President. If
18 I can explain my vote on this. I found the bill
19 very, very confusing, and I want to thank
20 Assemblyman Balboni, who was able to come over
21 here and give me a really fine explanation, and
22 I vote in the affirmative.

23 ACTING PRESIDENT FARLEY:

1 Continue the roll call.

2 THE SECRETARY: Ayes 58.

3 ACTING PRESIDENT FARLEY: The
4 bill is passed.

5 THE SECRETARY: Calendar Number
6 1458, by Senator Levy, Senate Bill Number 8229A,
7 an act to amend the Real Property Tax Law.

8 ACTING PRESIDENT FARLEY: Read
9 the last section.

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

12 ACTING PRESIDENT FARLEY: Call
13 the roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 58.

16 ACTING PRESIDENT FARLEY: The
17 bill is passed.

18 THE SECRETARY: Calendar Number
19 1459, by Senator Trunzo, Senate Bill Number
20 8255A, an act to amend the Retirement and Social
21 Security Law.

22 ACTING PRESIDENT FARLEY: Read
23 the last section.

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

3 ACTING PRESIDENT FARLEY: Call
4 the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 58.

7 ACTING PRESIDENT FARLEY: The
8 bill is passed.

9 THE SECRETARY: Calendar Number
10 1460, substituted earlier today.

11 SENATOR GOLD: Excuse me, Mr.
12 President.

13 ACTING PRESIDENT FARLEY: Senator
14 Gold.

15 SENATOR GOLD: Yes. Can we
16 reconsider 1459 the one we just did, please?

17 ACTING PRESIDENT FARLEY: Hold
18 on. It just went out the door.

19 We got it. The Secretary will
20 call the roll on reconsideration.

21 (The Secretary called the roll on
22 reconsideration.)

23 THE SECRETARY: Ayes 58.

1 ACTING PRESIDENT FARLEY: The
2 bill is before the house.

3 SENATOR GOLD: Mr. President.
4 Could we please lay that aside temporarily.

5 ACTING PRESIDENT FARLEY: All
6 right with you, Senator Present?

7 SENATOR PRESENT: Yes.

8 ACTING PRESIDENT FARLEY: Lay it
9 aside temporarily.

10 SENATOR GOLD: Thank you.

11 ACTING PRESIDENT FARLEY: Senator
12 Waldon.

13 SENATOR WALDON: Mr. President.
14 Please suffer an interruption again.

15 ACTING PRESIDENT FARLEY: Would
16 you take the conversations outside the chamber,
17 please.

18 Senator Waldon, you have the
19 floor.

20 SENATOR WALDON: Yes. I request
21 unanimous consent to be recorded in the
22 negative. I think Calendar Number is 698. Is
23 that the correct one?

1 ACTING PRESIDENT FARLEY: I don't
2 know.

3 SENATOR WALDON: It is 698.

4 ACTING PRESIDENT FARLEY: Is that
5 what you want? 698, without objection.

6 SENATOR WALDON: Thank you, Mr.
7 President.

8 ACTING PRESIDENT FARLEY: You're
9 welcome.

10 THE SECRETARY: Calendar Number
11 1460, substituted earlier today, by the Assembly
12 Committee on Rules, Assembly Bill Number 11581B,
13 an act to amend Chapter 147 of the Laws of 1994,
14 amending the General Business Law.

15 ACTING PRESIDENT FARLEY: Read
16 the last section.

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

19 ACTING PRESIDENT FARLEY: Call
20 the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 58.

23 ACTING PRESIDENT FARLEY: That

1 bill is passed.

2 THE SECRETARY: Calendar Number
3 1462, by Senator Lack, Senate Bill Number 8527,
4 in relation to appointment of certain
5 non-judicial officers and employees of the
6 unified court system.

7 ACTING PRESIDENT FARLEY: Read
8 the last system.

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

11 ACTING PRESIDENT FARLEY: Call
12 the roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 58.

15 ACTING PRESIDENT FARLEY: The
16 bill is passed.

17 THE SECRETARY: Calendar number
18 1464, by Senator Cook, Senate Bill Number 8653,
19 in relation to making an additional apportion
20 ment of building aid to the Ellenville Central
21 School District.

22 ACTING PRESIDENT FARLEY: Read
23 the last section. There's a home rule message

1 or not? Read the last section.

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

4 ACTING PRESIDENT FARLEY: Call
5 the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 58.

8 ACTING PRESIDENT FARLEY: The
9 bill is passed.

10 Senator Gold.

11 SENATOR GOLD: Mr. President.

12 ACTING PRESIDENT FARLEY: Senator
13 Gold.

14 SENATOR GOLD: I asked that 1459
15 be reconsidered. We don't have an objection to
16 it, though.

17 ACTING PRESIDENT FARLEY: May we
18 call up 1459.

19 THE SECRETARY: 1459, by Senator
20 Trunzo, Senate Bill Number 8255-A, an act to
21 amend the Retirement and Social Security Law.

22 ACTING PRESIDENT FARLEY: Read
23 the last section.

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

3 ACTING PRESIDENT FARLEY: Call
4 the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 58.

7 ACTING PRESIDENT FARLEY: The
8 bill is passed.

9 THE SECRETARY: Calendar number
10 1465, by Senator Maltese, Senate Bill Number
11 8677, an act to amend the Vehicle and Traffic
12 Law.

13 ACTING PRESIDENT FARLEY: Read
14 the last section.

15 SENATOR PRESENT: Lay it aside
16 for the day.

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

19 SENATOR PRESENT: Mr. President.

20 ACTING PRESIDENT FARLEY: Senator
21 Present.

22 SENATOR PRESENT: Would you
23 recognize Senator Marchi.

1 ACTING PRESIDENT FARLEY: Senator
2 Marchi.

3 SENATOR MARCHI: There is at the
4 desk a privileged resolution, and I request that
5 it be read in its entirety.

6 ACTING PRESIDENT FARLEY: The
7 Secretary will read Senator Marchi's privileged
8 resolution in its entirety.

9 THE SECRETARY: Legislative
10 Resolution, by Senators Marchi, DiCarlo and
11 Maltese, honoring the late Michael J. Petrides of
12 Staten Island.

13 WHEREAS, this legislative body
14 learned with sadness of the death on June 30th
15 of Michael J. Petrides of Staten Island,
16 educator, engineer, political leader, member of
17 the New York City Board of Education, and key
18 adviser to governmental figures and
19 institutions;

20 Because it is the custom of this
21 legislative body to declare its appreciation for
22 the work of those like Michael J. Petrides who
23 perform outstanding service in the interests of

1 the public -- the interests of the public in New
2 York State;

3 Michael J. Petrides earned the
4 respect and admiration of all who knew him
5 during the course of an illustrious professional
6 and public service career;

7 Mr. Petrides prepared for his
8 professional career by attending and graduating
9 from the City College of New York with a
10 Bachelor's Degree in electrical engineering and
11 from New York University where he earned a
12 Master's Degree in electrical engineering;

13 Mr. Petrides served as a faculty
14 member of the College of Staten Island beginning
15 in 1965 and attained the status of Professor of
16 Engineering Technology and was advanced to the
17 chairmanship of the Department of Electrical
18 Technology at the College of Staten Island in
19 the 1970s;

20 Mr. Petrides' professional tenure
21 also included service as Associate Dean of the
22 faculty of CSI from 1977 to 1984. During that
23 time, he developed many educational and training

1 programs with public agencies and unions
2 including the New York City schools and the
3 United Federation of Teachers;

4 Mr. Petrides won community- and
5 Citywide esteem when, as Dean of Administration
6 for the College of Staten Island from 1985 to
7 1990, he produced plans for a new consolidated
8 campus for the College of Staten Island, a
9 capital project of more than 400 million;

10 Mr. Petrides also served as a
11 senior executive officer overseeing ten of the
12 college's support departments including the
13 offices of financial aid facilities,
14 institutional research, the registrar and the
15 computer center;

16 Mr. Petrides made signal
17 contributions to the public schools of New York
18 City in his service as a member of the City
19 Board of Education, to which he was appointed by
20 Borough President Guy Molinari for a four-year
21 term beginning July 1, 1990 and also as a member
22 of the Staten Island Community School Board, to
23 which he was elected in 1973 and re-elected in

1 1975. During that tenure he served as Community
2 School Board chairman in 1974;

3 Mr. Petrides took an additional
4 public service duties -- took on additional
5 public service duties in January of 1994 when
6 Mayor Rudolph Giuliani appointed him as special
7 adviser to the mayor, an unsalaried position;

8 Michael Petrides added expertise
9 and sage counsel to the work of the New York
10 State Legislature's Temporary Commission on New
11 York City Schools Governance, to which he was
12 appointed in September 1989;

13 Mr. Petrides performed valuable
14 service as a member of the Education
15 Subcommittee of the Staten Island Charter
16 Commission, the state panel assigned to explore
17 possible secession of Staten Island from New
18 York City;

19 Mr. Petrides' wide ranging
20 service also included the vice-chairmanship of
21 the New York City Districting Commission from
22 1990 to 1991 and as an expert consultant to the
23 state Supreme Court-appointed Congressional

1 Reapportionment Panel;

2 Michael Petrides also won respect
3 and praise for his involvement in the political
4 life of his community and city as witness his
5 effective service as campaign manager for the
6 elections and reelections of Staten Island
7 Borough President Guy V. Molinari and for
8 Congresswoman Susan Molinari, and for the
9 campaigns of Rudolph Giuliani for Mayor of New
10 York in 1989 and 1993;

11 Mr. Petrides earned acclaim and
12 respect for his many contributions to the public
13 advancement, but none more notable than his
14 efforts to restore cohesion and moral authority
15 to the City's educational system;

16 Mr. Petrides was also known for
17 his many services to charitable and civic
18 endeavors;

19 Mr. Petrides' passing removes
20 from the public scene an individual and leader
21 of extraordinary ability and character who
22 earned the respect and esteem of all who knew
23 him;

1 Because it is the custom of this
2 legislative body to pay homage to such
3 individuals;

4 NOW, THEREFORE, BE IT RESOLVED
5 that this legislative body pause in its
6 deliberations and voice its admiration and
7 respect for Michael Petrides and his enviable
8 record of accomplishments; and

9 BE IT FURTHER RESOLVED that a
10 copy of this resolution, suitably engrossed, be
11 conveyed to Mrs. Petrides and the other members
12 of the Petrides family.

13 ACTING PRESIDENT FARLEY: On the
14 resolution, Senator Marchi.

15 SENATOR MARCHI: Mr. President,
16 it certainly was not in the fullness of time.
17 Michael Petrides was 53 years of age and, for a
18 person as vital as he was and uniquely gifted in
19 so many different areas and for the distinctive
20 contributions that he consistently made to the
21 people of my community and the people of this
22 City and state, we certainly extend our sympathy
23 and condolences to his family.

1 Senator Galiber and I both worked
2 with Mike Petrides in our school study
3 proceedings, and he indicated to me that he
4 would like to be included on as a sponsor. So
5 we miss his passing and -- and extend to his
6 family respect and affection which he certainly
7 earned in great measure in his brief but
8 brilliant period of service and living in the
9 community of Staten Island and the city of New
10 York.

11 ACTING PRESIDENT FARLEY: Senator
12 DiCarlo.

13 SENATOR DiCARLO: Mr. President,
14 I also rise to mourn the death of Mike
15 Petrides. I've known Mike -- I knew Mike for a
16 number of years, and besides the fact that he
17 was a valued member of the Board of Education in
18 the city of New York, I remember Mike as
19 probably one of the finest political minds that
20 I have ever encountered. Sometimes we were on
21 opposite ends, but most of the time we were
22 together. He was a fine man and he will be
23 missed.

1 ACTING PRESIDENT FARLEY: Senator
2 Maltese on the resolution.

3 SENATOR MALTESE: Mike Petrides,
4 I think, showed especially in the last few
5 months the type of human being he is by -- or he
6 was by suffering through in this last terrible
7 period and, at the same time, constantly
8 reassuring his friends, his wife, his children,
9 his family.

10 I think what he has done for not
11 only Staten Island but the City and the state
12 will remain with us far, far into the future.
13 In Staten Island he was a friend to many of the
14 people not only in public office, being so close
15 to the Borough President and the Congresswoman
16 and so many -- so many other close friends, but
17 also at the same time friendly with so many of
18 the students during his tenure at the College of
19 Staten Island, and always available at any hour
20 of the day or night for a telephone call, a
21 communication, a consultation on politics. He
22 truly loved politics and, as Senator DiCarlo has
23 indicated, as Senator John Marchi has indicated,

1 he was a master of it.

2 He was a family man. He loved
3 his family and made certain that he spent a
4 great deal of time with them. He faced his -
5 his end, his untimely end, very, very bravely.
6 He was a good friend to all of us, and I and
7 many others will miss him a great deal.

8 ACTING PRESIDENT FARLEY: On the
9 resolution, all in favor say aye.

10 (Response of "Aye.")

11 Those opposed nay.

12 (There was no response.)

13 The resolution is adopted.

14 Senator Present, what's your
15 pleasure?

16 SENATOR PRESENT: Mr. President,
17 I move that we adopt the Resolution Calendar.

18 ACTING PRESIDENT FARLEY: All in
19 favor of adopting the Resolution Calendar say
20 aye.

21 SENATOR GOLD: One second, sir.

22 ACTING PRESIDENT FARLEY: Senator
23 Gold.

1 SENATOR GOLD: Hold on. You want
2 to open one of them up, Senator?

3 SENATOR DiCARLO: Yes, Mr.
4 President. I have two resolutions at the desk.
5 I ask the titles be read and they be opened up
6 to the membership, 4191 and 4192.

7 ACTING PRESIDENT FARLEY: Can we
8 adopt the Resolution Calendar first? We're on
9 that adoption. Just a moment. We'll read the
10 titles to Senator DiCarlo's resolutions.

11 THE SECRETARY: Legislative
12 Resolution 4191, by Senators DiCarlo and Larkin,
13 commemorating the 50th Anniversary of the
14 retaking of the Philippine Islands by Allied
15 forces and the landing at Leyte Province by
16 General Douglas MacArthur October 20th, 1994.

17 Also Legislative Resolution
18 Number 4193, by Senator DiCarlo, honoring New
19 York State's veterans on November 11, 1994,
20 Veterans Day.

21 ACTING PRESIDENT FARLEY: All in
22 favor of adopting the resolutions.

23 SENATOR GOLD: Mr. President, I

1 assume those are the two that we'll have
2 everybody on unless they indicate otherwise.

3 ACTING PRESIDENT FARLEY: That's
4 up to the Acting Majority Leader.

5 SENATOR PRESENT: Mr. President,
6 following past practices, everyone will be on
7 except those who decline.

8 ACTING PRESIDENT FARLEY: Without
9 objection. If you have an objection to the
10 resolution, please notify the desk. Otherwise
11 your name will be on it.

12 All in favor of the resolution
13 say aye.

14 (Response of "Aye.")

15 Opposed nay.

16 (There was no response.)

17 The resolutions are adopted.

18 Now, on the Resolution Calendar,
19 all in favor of adopting the Resolution Calendar
20 please say aye.

21 (Response of "Aye.")

22 Those opposed no.

23 SENATOR GOLD: No.

1 The Resolution Calendar is
2 adopted.

3 SENATOR SEWARD: Mr. President.

4 ACTING PRESIDENT FARLEY: Senator
5 Present.

6 SENATOR PRESENT: Mr. President,
7 do we have any housekeeping? Let's take care of
8 it. Following that, we'll stand at ease.

9 ACTING PRESIDENT FARLEY: Senator
10 Seward. I think we have a housekeeper.

11 SENATOR SEWARD: Yes, Mr.
12 President. I would inquire of the clerk how I
13 was reported as voting on Calendar Number 1435.

14 ACTING PRESIDENT FARLEY: You
15 were recorded in the affirmative -- in the
16 negative. In the negative, I'm sorry.

17 SENATOR SEWARD: I would ask to
18 be recorded in the affirmative on that bill.

19 ACTING PRESIDENT FARLEY: Without
20 objection, you will be recorded in the
21 affirmative. Are there any other motions or
22 housekeeping on the floor?

23 If you could wait just a moment,

1 Senator Present, we have a motion that is coming
2 down, from where I don't know.

3 SENATOR PRESENT: Then we'll be
4 at ease.

5 ACTING PRESIDENT FARLEY: From
6 Senate desk operations.

7 Senator Daly for a motion that
8 has arrived.

9 SENATOR DALY: Mr. President, I
10 wish to call up my bill, Print Number 7884,
11 recalled from the Assembly which is now at the
12 desk.

13 ACTING PRESIDENT FARLEY:
14 Secretary will read it.

15 THE SECRETARY: By Senator Daly,
16 Senate Bill Number 7884-A, an act to authorize
17 the legislative body of the county of Niagara to
18 permit payment of county and municipal taxes.

19 ACTING PRESIDENT FARLEY: Senator
20 Daly.

21 SENATOR DALY: I now move to
22 reconsider the vote by which the bill passed
23 this house.

1 ACTING PRESIDENT FARLEY: Call
2 the roll on reconsideration.

3 (The Secretary called the roll on
4 reconsideration.)

5 ACTING PRESIDENT FARLEY: Bill is
6 before the house. Senator Daly.

7 SENATOR DALY: Mr. President, I
8 now move to discharge from the Committee on
9 Rules, Assembly Print 9588-A, and substitute it
10 for my identical bill.

11 ACTING PRESIDENT FARLEY:
12 Substitution is ordered. Do you have any
13 amendments to that?

14 SENATOR DALY: Mr. President, I
15 now offer the following amendments.

16 ACTING PRESIDENT FARLEY:
17 Amendments are received, bill will retain its
18 place.

19 SENATOR PRESENT: Is that the
20 amendment we were waiting for?

21 ACTING PRESIDENT FARLEY: That's
22 the amendment we were waiting for.

23 SENATOR PRESENT: Mr. Cornell, do

1 you have another motion?

2 ACTING PRESIDENT FARLEY: We have
3 a procedural snag here.

4 SENATOR PRESENT: Let's unsnag
5 it.

6 ACTING PRESIDENT FARLEY: That
7 bill is restored to third reading, without
8 objection.

9 Senator Present.

10 SENATOR PRESENT: Mr. Cornell, do
11 you have something you need?

12 ACTING PRESIDENT FARLEY: The
13 Senate will stand easy for just a few seconds.

14 The Senate is going to stand at
15 ease for just a few minutes.

16 (The Senate stood at ease from
17 5:16 to 5:19 p.m.)

18 ACTING PRESIDENT FARLEY: Senator
19 Present.

20 SENATOR PRESENT: I believe
21 Senator Montgomery has something she would like
22 to take care of.

23 ACTING PRESIDENT FARLEY: Senator

1 Montgomery.

2 SENATOR MONTGOMERY: Thank you,
3 Mr. President.

4 I'd like unanimous consent to be
5 in the negative on 1105.

6 ACTING PRESIDENT FARLEY: 1105,
7 Senator Montgomery will be in the negative
8 without objection.

9 Senator Goodman.

10 SENATOR GOODMAN: Mr. President,
11 may I please be in the negative on Calendar
12 Number 1105?

13 ACTING PRESIDENT FARLEY: 1105,
14 Senator Goodman will be in the negative without
15 objection.

16 SENATOR LEVY: Mr. President.

17 ACTING PRESIDENT FARLEY: Yes.

18 SENATOR LEVY: Mr. President.

19 ACTING PRESIDENT FARLEY: Hold
20 on. Senator Levy.

21 SENATOR LEVY: Yes. There will
22 be a meeting of the Transportation Committee in
23 Room 124 at 5:45 to consider the nomination of

1 Peter Kalikow to be a member of the Metropolitan
2 Transportation Authority.

3 ACTING PRESIDENT FARLEY: The
4 Transportation Committee will be meeting in Room
5 124 of the Capitol at 5:45 for the purpose of a
6 confirmation hearing.

7 SENATOR GOLD: Is he appearing?

8 SENATOR LEVY: Yes.

9 ACTING PRESIDENT KUHL: Senate
10 will come to order. The Chair recognizes
11 Senator Present.

12 SENATOR PRESENT: Can we call up
13 Calendar 890.

14 ACTING PRESIDENT KUHL: Call up
15 Calendar Number 890, which is not on the active
16 list. Ask the Secretary to read.

17 THE SECRETARY: Calendar Number
18 -- on page 20, Calendar Number 890, by Senator
19 Daly, Senate Bill Number 7511-A, an act relating
20 to constituting Chapter 34 of the Consolidated
21 Laws and to amend the Partnership Law, the
22 Business Corporation Law, the Arts and Cultural
23 Affairs Law and the Tax Law and the General City

1 Law and the Administrative Code of the city of
2 New York.

3 SENATOR PRESENT: Mr. President.

4 ACTING PRESIDENT KUHL: Senator
5 Present.

6 SENATOR PRESENT: Is there a
7 message of necessity at the desk on this bill?

8 ACTING PRESIDENT KUHL: I'm
9 informed by the Secretary that there is a
10 message of necessity at the desk.

11 SENATOR PRESENT: Mr. President,
12 I move we accept the message.

13 ACTING PRESIDENT KUHL: The
14 motion is to accept the message of necessity.
15 All those in favor, signify by saying aye.

16 (Response of "Aye.")

17 Opposed nay.

18 (There was no response.)

19 The ayes have it. The message of
20 necessity is accepted. Secretary will read the
21 last section.

22 THE SECRETARY: Section 76. This
23 act shall take effect immediately.

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 SENATOR LEICHTER: Explanation,
4 please.

5 SENATOR DALY: May I explain my
6 vote, or explanation?

7 ACTING PRESIDENT KUHL: Senator
8 Daly to explain the bill.

9 SENATOR DALY: This bill is
10 probably the most important bill to come out of
11 the Corporations Committee this year or in
12 several years.

13 It allows the formation of -

14 ACTING PRESIDENT KUHL: Senator
15 Daly, excuse me for just one moment. There's a
16 little noise in the chamber. We're having a
17 difficult time here transcribing what's to be
18 said, so we ask the members to take their
19 places, staffs to take their places and for any
20 conversations that are being held in the back of
21 the chambers, would ask the members to either
22 take those conversations outside or the staff to
23 take them outside.

1 Senator Daly.

2 SENATOR DALY: Mr. President,
3 this bill has as its primary purpose the es
4 tablishment of two new business entities in New
5 York State which, when formed and functioning,
6 will make New York State much more attractive to
7 business, for a business, in which to organize.

8 The two entities are called, one,
9 the limited liability company and the second is
10 a limited liability partnership. These
11 companies have the tax attributes of a
12 partnership, the single taxation, while they
13 contain also the liability benefits of a
14 corporation.

15 This has become a very popular
16 structure for the organization of new business
17 in this country. They began back in 1978 in
18 Wyoming and truly came into their own in the
19 late '80s with the tax reform measures that
20 occurred in Washington at that time, and with
21 the IRS interpreting those laws to allow a
22 company to form which, as I said, as a limited
23 liability company can add the tax benefits of a

1 single taxation and the tax -- I should say the
2 liability benefits of a corporation.

3 Because of this, LLCs have been
4 formed in over 44 states already, and it's very
5 important that New York State join with that
6 growing list. I would point out that the
7 primary benefit from this -- from this type of
8 business entity is the attraction into New York
9 and particularly New York City, and I want to
10 point this out to my New York City colleagues
11 because I think it's important, that they
12 realize that this new kind of business entity is
13 going to be very, very advantageous to the
14 City.

15 I know that New York City is on a
16 -- is attempting to add to its reputation as
17 the international capital of the world, and
18 foreign corporations like this type of business
19 entity. They're used to this type of business
20 entity in the nations in which -- the other
21 nations in which they do business, and I think
22 you'll find that, as foreign corporations come
23 over into New York City, the fact that we have

1 -- we allow them in New York State to form as
2 limited liability companies will be an advantage
3 to the City in attracting foreign companies.

4 As far as the fiscal impact, we
5 do have a -- a fee which has been agreed upon
6 with the Assembly and the Governor and the
7 Senate of \$50 for a partner, per member in a
8 limited liability company, and for partner in a
9 limited liability partnership with a \$10,000 cap
10 which would be -- which would mean that a
11 partnership or a company would have more than -
12 if they had more than 200 partners or members,
13 that they would be capped at \$10,000.

14 Thank you, Mr. President.

15 ACTING PRESIDENT KUHL: Is there
16 any other member wishing to speak on the bill?
17 Secretary will read the last section.

18 THE SECRETARY: Section 76. This
19 act shall take effect immediately.

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 SENATOR DALY: Mr. President, may

1 I explain my vote.

2 ACTING PRESIDENT KUHL: Senator
3 Daly to explain his vote.

4 SENATOR DALY: I would like to
5 point out that we've been working on this for
6 three years and certainly my counsel, Richard
7 Runes, has spent a great deal of time in putting
8 this together and, in his particular case, I
9 would like to recognize his efforts.

10 I vote yes.

11 ACTING PRESIDENT KUHL: Senator
12 Daly in the affirmative. Announce the results.

13 THE SECRETARY: Ayes 58.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 The Chair recognizes Senator
17 Present.

18 SENATOR PRESENT: Mr. President,
19 can we continue to stand at ease.

20 ACTING PRESIDENT KUHL: The
21 Senate will continue to stand at ease.

22 (The Senate stood at ease from
23 5:58 to 6:30 p.m.)

1 ACTING PRESIDENT KUHL: The
2 Senate will come to order.

3 The Chair recognizes Senator
4 Present.

5 SENATOR PRESENT: Mr. President,
6 there will be an immediate meeting of the Rules
7 Committee in Room 332, an immediate meeting of
8 the Rules Committee in Room 332. The Senate
9 will continue to stand at ease.

10 ACTING PRESIDENT KUHL: For those
11 who didn't hear, there will be an immediate
12 meeting of the Rules Committee in the Majority
13 Conference Room, Room 332.

14 The Chair recognizes Senator
15 LaValle.

16 SENATOR LAVALLE: Yes, Mr.
17 President. If I can have unanimous consent to
18 be recorded in the negative on Calendar Number
19 1337, Senate Print Number 6851-A.

20 ACTING PRESIDENT KUHL: Without
21 objection, Senator LaValle will be recorded in
22 the negative on Calendar Number 1337.

23 The Senate will stand at ease.

1 (The Senate stood at ease from
2 6:31 to 7:27 p.m.)

3 ACTING PRESIDENT KUHL: The
4 Senate will come to order.

5 The Chair recognizes Senator
6 Present.

7 SENATOR PRESENT: Mr. President,
8 I'm going to call an immediate conference of the
9 Majority in Room 332 and we will now receive the
10 report of the Rules Committee.

11 ACTING PRESIDENT KUHL: There
12 will be an immediate meeting of the Majority in
13 the Majority Conference Room, Room 332.

14 The Chair recognizes Senator
15 Mendez.

16 SENATOR MENDEZ: Thank you, Mr.
17 President.

18 There will be an immediate
19 conference of the Minority.

20 ACTING PRESIDENT KUHL: Immediate
21 conference of the Minority in the Minority
22 Conference Room.

23 We'll return to reports of

1 standing committees, ask the Secretary to read.

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

5 Senate Bill Number 113-A, by
6 Senator Montgomery, city of New York to reconvey
7 its interests in certain real property;

8 1196-A, by Senator Levy,
9 establish a Temporary State Commission on Real
10 Property Taxation;

11 1226-B, by Senator Goodman,
12 Administrative Code of the city of New York;

13 1304, by Senator Levy, restore
14 funds to school districts;

15 2763-A, by Senator Larkin,
16 Administrative Code of the city of New York;

17 3330, by Senator Waldon, an act
18 to amend the Social Services Law;

19 5145-A, by Senator Maltese,
20 Executive Law;

21 6616-B, by Senator Seward, city
22 of Oneonta to discontinue the use and sell
23 certain park lands;

1 6704-A, by Senator Libous, the
2 city of New York to reconvey its interests in
3 certain lands;
4 6878, by Senator Johnson, Local
5 Finance Law;
6 7117, by Senator Present, County
7 Law;
8 7159-A, by Senator Skelos,
9 providing for retirement credits for Lawrence
10 Bergman;
11 7162, by Senator Bruno, Public
12 Authorities Law;
13 7197-A, by Senator Velella,
14 Education Law;
15 7212-A, by Senator Bruno,
16 Economic Development Law;
17 7245, by Senator Marino,
18 proposing an amendment to the Constitution;
19 7413, by Senator Smith, city of
20 New York to reconvey its interest in certain
21 real property;
22 7650-A, by Senator DeFrancisco,
23 Department of Social Services to contract for

1 chronic care management;
2 7700-A, by Senator Present,
3 General Municipal Law;
4 7733-A, by Senator Stafford,
5 State Finance Law;
6 7802-A, by Senator -- by Senator
7 Tully, an act to amend the Public Health Law;
8 7863, by Senator Spano, an act to
9 amend the Labor Law;
10 7904-A, by Senator Bruno, Labor
11 Law;
12 8014-A, by Senator Spano, Civil
13 Service Law;
14 8071-B, by Senator Skelos, an act
15 to amend the Insurance Law;
16 8074-A by Senator Larkin, Real
17 Property Tax Law;
18 8151-A, by Senator Skelos, Public
19 Authorities Law;
20 8161-A, by Senator Larkin, Local
21 Finance Law;
22 8187-D, by Senator Lack, an act
23 to amend the Penal Law;

1 8218-B, by Senator Nolan, an act
2 to amend the Tax Law;
3 8233-A, by Senator Skelos, town
4 of Hempstead to lease certain lands;
5 8237, by Senator Tully, Executive
6 Law;
7 8314-A, by Senator LaValle,
8 Social Services Law;
9 8329-A, by Senator Volker,
10 Criminal Procedure Law;
11 8374-A, by Senator Wright,
12 computation of the indirect component of the
13 basic reimbursement rate received by Mercy
14 Hospital;
15 8395, by Senator Tully, Public
16 Health Law;
17 8401, by Senator Daly, Executive
18 Law;
19 8420-A, by Senator Velella,
20 Retirement and Social Security Law;
21 8560-A, by Senator Larkin, Real
22 Property Tax Law;
23 8569-A, by Senator Velella,

1 Insurance Law;
2 8618, by Senator DiCarlo,
3 Education Law;
4 8631, by Senator Wright, Labor
5 Law;
6 8632-A, by Senator Seward, Public
7 Service Law;
8 8650, by Senator Spano, Criminal
9 Procedure Law;
10 8671, by Senator Stafford, State
11 Finance Law;
12 8683, by Senator Cook, Judiciary
13 Law;
14 8686, by Senator Bruno, Civil
15 Service Law;
16 8696, by Senator Stafford, amends
17 Chapter 656 -- 656 of the Laws of 1993;
18 8705, by Senator Lack, an act to
19 amend Chapter 502 of the Laws of 1992;
20 8710, by the Committee on Rules,
21 grant Patricia Schuster retroactive membership
22 in the Teachers Retirement System;
23 8712, by Senator Present, an act

1 to amend the Town Law;
2 8715, by Senator Maltese, an act
3 to amend the Tax Law;
4 8725, by Senator Levy, Public
5 Buildings Law;
6 8727, by the Committee on Rules,
7 authorizing the town of Greece to discontinue
8 the use of a portion of a road;
9 8735, by the Committee on Rules,
10 Administrative Code of the city of New York;
11 8737, by the Committee on Rules,
12 Real Property Tax Law;
13 8741, by Senator Babbush,
14 Commissioner of General Services to sell certain
15 lands;
16 8743, by Senator Nozzolio, amends
17 Chapter 615 of the Laws of 1992;
18 8764, by Senator Seward, State
19 Finance Law;
20 8769-A, by Senator Bruno, General
21 Municipal Law;
22 8773, by Senator Cook,
23 Commissioner of Health to identify certain

1 unresolved early intervention programs;
2 8777, by Senator Volker,
3 providing a retirement incentive for the city of
4 Buffalo;

5 8839, by the Committee on Rules,
6 State Finance Law;

7 7729, by Senator Markowitz,
8 authorizing the city of New York to reconvey its
9 interest in certain real property;

10 All bills reported directly for
11 third reading.

12 ACTING PRESIDENT KUHL: All bills
13 are reported directly to third reading.

14 A reminder that all members of
15 the Majority should report immediately to the
16 Majority Conference Room for a Majority
17 conference. All members of the Minority should
18 report immediately to the Minority Conference
19 Room for a Minority conference.

20 The Senate will stand at ease.

21 (The Senate stood at ease from
22 7:50 to 8:21 p.m.)

23 ACTING PRESIDENT KUHL: Senate

1 will come to order.

2 The chair recognizes Senator
3 Present.

4 SENATOR PRESENT: Mr. President,
5 I think we got a little housekeeping on the
6 calendar.

7 ACTING PRESIDENT KUHL: We've got
8 a few motions. Recognize Senator DiCarlo.

9 SENATOR DiCARLO: Mr. President,
10 on behalf of Senator Libous, on page 18, I offer
11 the following amendments to Calendar 856, Senate
12 Print 7586-A, and ask that said bill retain its
13 place on Third Reading Calendar.

14 ACTING PRESIDENT KUHL:
15 Amendments received and adopted; the bill will
16 retain its place on the Third Reading Calendar.

17 Senator DiCarlo.

18 SENATOR DiCARLO: Mr. President,
19 I offer the following amendments to Calendar
20 Number 646, Senate Print 6579-C, and ask that
21 said bill retain its place, for Senator
22 DeFrancisco.

23 ACTING PRESIDENT KUHL:

1 Amendments received and adopted; bill will
2 retain its place on the Third Reading Calendar.

3 Senator DiCarlo.

4 SENATOR DiCARLO: Mr. President,
5 on behalf of Senator Levy, please place a
6 sponsor's star on Calendar 1028.

7 ACTING PRESIDENT KUHL: A
8 sponsor's star is placed on Calendar Number
9 1028.

10 The Chair recognizes Senator
11 Present.

12 SENATOR PRESENT: Mr. President,
13 the Senate will stand in recess until 11:00 p.m.

14 ACTING PRESIDENT KUHL: The
15 Senate stands in recess until 11:00 p.m. this
16 evening.

17 (The Senate stood in recess from
18 8:23 p.m. until 5:17 a.m., July 1, 1994.)

19 SENATOR NANULA: Mr. President.

20 ACTING PRESIDENT VELELLA: Senator
21 Nanula.

22 SENATOR NANULA: I'd like
23 unanimous consent to be recorded in the negative

1 on Calendar Numbers 1105, 1443, 261 and 1451.

2 ACTING PRESIDENT VALELLA:

3 Without objection, so ordered.

4 Senator Paterson.

5 SENATOR PATERSON: Mr. President,

6 with unanimous consent of whoever is still here,

7 I'd like to be recorded in the negative on

8 Calendars 1105, 261, 1440, 1451 and 1407.

9 ACTING PRESIDENT VELELLA:

10 Without objection.

11 Senator Stafford.

12 SENATOR STAFFORD: Thank you.

13 Could I, on behalf of Senator Levy, please

14 remove the sponsor's star on Calendar Number

15 1028.

16 ACTING PRESIDENT VELELLA: Star

17 is removed.

18 SENATOR STAFFORD: On behalf of

19 Senator Saland, please remove a sponsor's star

20 on Calendar 1414.

21 ACTING PRESIDENT VELELLA: Star

22 is removed.

23 Senator Tully.

1 SENATOR TULLY: Thank you, Mr.
2 President.

3 I wish to call up my bill, Print
4 Number 1520-A, recalled from the Assembly which
5 is now at the desk.

6 ACTING PRESIDENT VELELLA:
7 Secretary will read.

8 THE SECRETARY: By Senator
9 Goodman, Senate Bill 1520-A, an act to amend the
10 Tax Law.

11 SENATOR TULLY: Mr. President, I
12 now move to reconsider the vote by which this
13 bill was passed.

14 ACTING PRESIDENT VELELLA: Call
15 the roll on reconsideration.

16 (The Secretary called the roll on
17 reconsideration.)

18 SENATOR TULLY: Mr. President, on
19 behalf of Senator Goodman, I now offer the
20 following amendments.

21 ACTING PRESIDENT VELELLA:
22 Amendments received.

23 Senator Tully.

1 SENATOR TULLY: Mr. President, on
2 page number 9, I offer the following amendments
3 to Calendar Number 478, Senate Print 5881-C, and
4 ask that said bill retain its place on the Third
5 Reading Calendar.

6 ACTING PRESIDENT VELELLA:
7 Amendments received.

8 SENATOR TULLY: And that was done
9 on behalf of a wonderful Senator named Saland.

10 On behalf of Senator LaValle, Mr.
11 President, on a page number to be determined, I
12 offer the following amendments to Calendar
13 Number 1502, Senate Print Number 8314-A, and ask
14 that said bill retain its place on the Third
15 Reading Calendar.

16 ACTING PRESIDENT VELELLA:
17 Amendments received.

18 Senator Tully.

19 SENATOR TULLY: Mr. President, on
20 a page to be determined, I offer the following
21 amendments to Calendar Number 1472, Senate Print
22 Number 1226-B, and ask that said bill retain its
23 place on the Third Reading Calendar on behalf of

1 Senator Goodman.

2 ACTING PRESIDENT VELELLA:

3 Amendments received.

4 SENATOR PRESENT: Mr. President,
5 can we come to messages from the Assembly.

6 ACTING PRESIDENT VELELLA: The
7 Chair hands down a message from the Assembly.
8 Secretary will read.

9 THE SECRETARY: The Assembly has
10 sent to the Senate Assembly Bill Number 11973,
11 by the Assembly Committee on Rules, an act to
12 amend the Insurance Law, in relation to
13 continuing the purpose and extending the
14 existence of the Medical Malpractice Insurance
15 Association.

16 SENATOR PRESENT: Mr. President.

17 ACTING PRESIDENT VELELLA: Senator
18 Present.

19 SENATOR PRESENT: Senator Gold?

20 ACTING PRESIDENT VELELLA: The
21 bill is advanced to third reading.

22 SENATOR PRESENT: Mr. President,
23 is there a message of necessity at the desk?

1 ACTING PRESIDENT VELELLA: There
2 is a message of necessity.

3 SENATOR PRESENT: I move we
4 accept the message.

5 ACTING PRESIDENT VELELLA: All
6 those in favor of receiving the message, say
7 aye.

8 (Response of "Aye.")

9 Opposed nay.

10 (There was no response.)

11 The message is accepted.

12 SENATOR GOLD: Mr. President.

13 ACTING PRESIDENT VELELLA: Senator
14 Gold.

15 SENATOR GOLD: I know it's late
16 and it may have been my ears, but I want to make
17 sure this is 11703-A, is that correct?

18 ACTING PRESIDENT VELELLA: That's
19 correct, Senator.

20 SENATOR GOLD: Thank you.

21 ACTING PRESIDENT VELELLA: Read
22 the last section.

23 THE SECRETARY: Section 6. This

1 act shall take effect July 1.

2 ACTING PRESIDENT VELELLA: Call
3 the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 60.

6 ACTING PRESIDENT VELELLA: The
7 bill is passed.

8 Senator Present.

9 SENATOR PRESENT: Mr. President,
10 there being no further business, I move that we
11 adjourn until noon today.

12 ACTING PRESIDENT VELELLA: The
13 Senate stands in recess until noon today,
14 adjourned.

15 (Whereupon at 5:31 a.m., July 1,
16 1994, the Senate adjourned.)

17

18

19

20

21

22

23