ALBANY, NEW YORK

June 30, 1994

11:44 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

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

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

P R O C E E D I N G S

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

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

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

(A moment of silence was observed.)

Reading of the Journal.

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

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Cook.

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

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

SENATOR COOK: Read the whole

thing, if you would.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

SENATOR FARLEY: Thank you, Mr. President.

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

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

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is unanimously adopted.

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

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

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

(Applause.)

SENATOR DiCARLO: Mr. President.

ACTING PRESIDENT KUHL: Senator DiCarlo.

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

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

SENATOR DiCARLO: I have some other work to do.

ACTING PRESIDENT KUHL: Senator DiCarlo for a motion.

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

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

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

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

SENATOR PRESENT: Please.

ACTING PRESIDENT KUHL: Secretary will read the substitutions.

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

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

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

the identical Third Reading 1447.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: All substitutions or ordered.

Senator Present, that brings us to the calendar.

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

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

SENATOR LIBOUS: Mr. President.

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

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

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

The Senate will continue to stand at ease.

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

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

The Chair recognizes Senator Present.

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

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

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR GOLD: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 896.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The resolution is adopted.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR PRESENT: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1318, by Senator Holland.

SENATOR HOLLAND: Lay aside for

the day, please.

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

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

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1334, by Senator -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR TULLY: Lay aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1407, by Senator Volker.

SENATOR PRESENT: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1410, by Senator Stafford.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1427, by Senator Pataki.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill

is passed.

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Read the

last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Read the last section.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR LEICHTER: Lay it aside,

please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

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

SENATOR PRESENT: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Hold on.

ACTING PRESIDENT KUHL: Senator Gold?

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

ACTING PRESIDENT KUHL: 1462.

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

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

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

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

(The Secretary called the roll on reconsideration.)

ACTING PRESIDENT KUHL: Yes, Senator Gold.

SENATOR GOLD: Would you just lay it aside?

ACTING PRESIDENT KUHL: Lay that bill aside.

The Chair recognizes Senator Wright.

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

1460.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 49.

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

SENATOR WRIGHT: Lay it aside.

ACTING PRESIDENT KUHL: Bill is laid aside.

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

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

ACTING PRESIDENT KUHL: Secretary

-- Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay - lay the bill aside.

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

ACTING PRESIDENT KUHL: Read the last section.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1468, by Senator Spano.

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

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

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar.

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

SENATOR PADAVAN: Yeah. Will the

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

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

SENATOR DALY: I certainly will.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PADAVAN: Senator, just a technical question.

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR DALY: Yes.

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Daly continues to yield.

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

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

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

SENATOR PADAVAN: Please.

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

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

I don't think there's going to be

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

SENATOR DALY: Mr. President.

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

SENATOR DALY: I fully understand that.

ACTING PRESIDENT KUHL: Senator Daly?

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

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

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

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay

Calendar Number 293 aside temporarily.

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Would Senator Tully yield to a question?

ACTING PRESIDENT KUHL: Senator Tully, do you yield?

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Tully yields.

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

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

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

Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

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

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

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

SENATOR TULLY: Well, I'll read

them for you.

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

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

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

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

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

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

SENATOR GOLD: Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Explanation.

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

SENATOR HANNON: This would put

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

ACTING PRESIDENT KUHL: Senator Gold.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

Senator -

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

SENATOR GOLD: That is true.

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

SENATOR GOLD: Yeah. Mr.

President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Senator Hannon is absolutely accurate.

Will you yield to one question?

SENATOR HANNON: Yes, sir.

ACTING PRESIDENT KUHL: Senator Hannon yields.

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

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

an act to amend the State Administrative Procedure Act.

SENATOR GOLD: Will the Senator yield to one question?

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

SENATOR RATH: Yes.

ACTING PRESIDENT KUHL: Senator yields.

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

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

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

SENATOR GOLD: Thank you, Senator.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

Procedure Act.

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Explanation.

SENATOR OPPENHEIMER: Explanation.

SENATOR PRESENT: Lay the bill aside temporarily.

ACTING PRESIDENT KUHL: Lay the

bill aside temporarily.

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

SENATOR GOLD: Hold on a second.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1287, by Senator Rath.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR LEICHTER: Explanation.

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

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

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

There is an exemption provided

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

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

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

SENATOR SALAND: Certainly, Senator.

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

yield to a question from Senator Leichter?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields, Senator Leichter.

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

SENATOR SALAND: Yes, Senator Leichter.

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

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

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

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator does.

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

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

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

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

SENATOR SALAND: Certainly.

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

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

SENATOR LEICHTER: Right.

ACTING PRESIDENT KUHL: Senator Leichter to explain his amendment.

SENATOR LEICHTER: Fine. Thank you very much.

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

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

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

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

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

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

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

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

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

SENATOR LEICHTER: Yes. Let's,

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

Mr. President, I move the amendment.

SENATOR SALAND: Mr. President, on the amendment.

ACTING PRESIDENT KUHL: Senator Saland, on the amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Question

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

(Response of "Aye.")

Opposed nay.

(Response of "Nay.")

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator Present.

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

ACTING PRESIDENT KUHL: Secretary

will read Calendar Number 1323.

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

SENATOR SOLOMON: Explanation. Explanation.

SENATOR VELELLA: Oh.

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

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

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Solomon.

SENATOR SOLOMON: Thank you, Mr. President.

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

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

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

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator Velella, do you yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator yields.

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

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

SENATOR VELELLA: Why we have to eliminate it?

SENATOR SOLOMON: Yes.

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

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

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

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

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

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

Mr. President, if Senator Velella

will yield for one more question.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator Velella yields.

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

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

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

SENATOR SOLOMON: All right. On the bill.

ACTING PRESIDENT KUHL: Senator Solomon, on the bill.

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

MMIA with those that are in the riskier practice.

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

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

again next year.

So I suggest a no vote. Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

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

ACTING PRESIDENT KUHL: Senator Velella yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator Velella yields.

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

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

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

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

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

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

SENATOR VELELLA: No, it was dry.

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator

Velella, you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

SENATOR DOLLINGER: O.K.

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

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

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

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

SENATOR DOLLINGER: Right.

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

SENATOR DOLLINGER: Right.

SENATOR VELELLA: But it's there.

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

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator yields.

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

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

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

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

would think we're in pretty sound shape.

SENATOR DOLLINGER: O.K. O.K. That was my question. I thank Senator Velella.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Skelos to explain his vote.

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

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

Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Present.

The bill is passed.

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

ACTING PRESIDENT KUHL: The last bill was passed.

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

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

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

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

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

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

SENATOR GOLD: Explanation.

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

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1410, by Senator Stafford.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1420, by Senator Bruno.

SENATOR PRESENT: Lay it aside for the day.

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

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1427, by Senator Pataki.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR GOLD: Explanation.

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

SENATOR SALAND: Thank you, Mr. President.

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

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

assailant tested to determine if that person was HIV positive.

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

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

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

Some thirty...

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Mr. President.

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

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

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

SENATOR LEICHTER: You want to finish?

SENATOR SALAND: May I just

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

SENATOR LEICHTER: Sure.

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

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

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

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

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator Leichter, Senator Saland yields.

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

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

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

SENATOR SALAND: Permit me, if I

might. Let me refer you to the Governor's Task Force on Rape and Sexual Assault, the report of April 1990, Rape, Sexual Assault and Child Sexual Abuse, and let me share with you what the Governor's Task Force said. Now, this is the Governor's Task Force, a number of people of renown, scholars, law professors, AIDS advocates I assume, although I can't say that with any certainty, but certainly a number of victims' advocates, and let me read to you because they address this question in their report. Let me read in part.

Their recommendation 16: "An efficient process should be developed by which a victim of rape and sexual assault can easily access" -- and they go on to say, "the civil court system -- to seek a court order to require HIV test financing of an alleged sexual offender to obtain the defendant's HIV antibody status. The question of how and when" -- and I'm quoting -- "to test the alleged sex offender remains. The Task Force considered and rejected waiting until an accused is convicted. While a

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

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

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

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

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

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

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

this counseling assured for both victim and assailant.

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

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

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

But I would hope that our strong

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

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

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

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

ACTING PRESIDENT FARLEY: Senator Saland.

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

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

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

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

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

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

SENATOR LEICHTER: Senator, let me just say that -

ACTING PRESIDENT FARLEY: Senator Leichter.

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

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

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

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

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

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

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

ACTING PRESIDENT FARLEY: Senator Leichter, would you yield?

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

SENATOR LEICHTER: I've read the bill.

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

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

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

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

SENATOR LEICHTER: Yes, yes. Senator, let me just -

ACTING PRESIDENT FARLEY: Senator Leichter.

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

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

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

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

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

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

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

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

ACTING PRESIDENT FARLEY: Senator Saland, would you yield?

SENATOR SALAND: Surely, Senator Gold.

ACTING PRESIDENT FARLEY: Yes, he will.

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

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

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

SENATOR GOLD: Mr. President, on the bill.

ACTING PRESIDENT FARLEY: On the bill, Senator Gold.

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

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

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

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

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

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

want to help the victim.

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT FARLEY: Senator

Dollinger, then Senator Connor.

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

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

SENATOR SALAND: Yes, Mr. President.

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

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

SENATOR DOLLINGER: Yeah.

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

SENATOR DOLLINGER: O.K. Please do.

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

SENATOR DOLLINGER: I was there. I was present.

SENATOR SALAND: You were?

SENATOR DOLLINGER: Yes.

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

SENATOR DOLLINGER: Right.

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

Now, the 20 or 30 people who were

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

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

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

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

SENATOR SALAND: Let me -

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

SENATOR SALAND: And I appreciate that.

ACTING PRESIDENT FARLEY: Senator Saland.

SENATOR SALAND: I very much

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

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

SENATOR DOLLINGER: Right.

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

Now, with regard to the

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

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

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

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

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: On the bill.

ACTING PRESIDENT FARLEY: On the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT FARLEY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

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

represents defendants usually, not victims.

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

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

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

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

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

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

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

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

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR CONNOR: One second, Mr. President.

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

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

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

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

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

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

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

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

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

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

But this bill, I must say no.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Close debate, Senator Saland.

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

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

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

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

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

SENATOR MENDEZ: To ask if

Senator -

ACTING PRESIDENT FARLEY: He's closing debate.

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

SENATOR SALAND: Certainly, Senator.

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

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

SENATOR MENDEZ: Thank you. Thank you.

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

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

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

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Read the last section.

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Yeah, Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold to explain his vote.

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

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

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

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

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

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

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

too far.

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

I vote no.

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

Senator Dollinger to explain his vote.

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

I would hope that, if we look at

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

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

I'll vote in the negative, Mr.

President.

ACTING PRESIDENT FARLEY: Senator Dollinger in the negative.

Results.

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

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Daly.

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

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

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

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

SENATOR DALY: No, 1323.

ACTING PRESIDENT FARLEY: 1323. Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

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

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

Senator Smith.

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

ACTING PRESIDENT FARLEY: Without objection.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

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

recorded in the negative on 1323.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR JONES: I would ask unanimous consent on 1323.

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

Senator Dollinger.

SENATOR DOLLINGER: Same, Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger; Senator Oppenheimer.

Senator Montgomery.

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

SENATOR PADAVAN: No objection.

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

Regular order, Senator Padavan?

SENATOR PADAVAN: Mr. President,

could we go back to Calendar 293, please.

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

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

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

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

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

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

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

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

SENATOR PADAVAN: Read the last section.

ACTING PRESIDENT KUHL: Chair recognizes Senator Galiber.

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

ACTING PRESIDENT KUHL: Senator Levy, do you yield?

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: Senator

Levy yields, Senator Galiber.

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Levy, do you yield.

SENATOR LEVY: Yes, certainly.

ACTING PRESIDENT FARLEY: Senator Levy yields.

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

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

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

ACTING PRESIDENT KUHL: Senator Waldon.

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

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: Senator Levy yields.

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

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

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

SENATOR WALDON: If I may?

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

SENATOR LEVY: Yes, certainly.

ACTING PRESIDENT KUHL: Senator yields.

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

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

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

SENATOR WALDON: Thank you, sir.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I just have

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

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

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

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

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

Senator Levy to explain his vote.

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

ACTING PRESIDENT KUHL: Senator Levy in the affirmative.

The Secretary will announce the results.

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

Galiber, Kuhl, Mendez, and Waldon. Ayes 52. Nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Santiago, why do you rise?

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

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

Secretary will call Calendar Number 261.

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

ACTING PRESIDENT KUHL: Senator Padavan.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Chair recognizes Senator Daly.

SENATOR DALY: Senator Padavan yield?

SENATOR PADAVAN: Yes.

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

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

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

SENATOR DALY: Okay.

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

ACTING PRESIDENT KUHL: Senator Daly.

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

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

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

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

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

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

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

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

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

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Gold.

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

SENATOR DALY: Yes.

ACTING PRESIDENT KUHL: Senator Daly do you yield?

Senator yields.

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

SENATOR DALY: Yes.

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

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

SENATOR GOLD: And do they have that power?

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

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

SENATOR DALY: I'm sorry.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

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

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

SENATOR DALY: Yes.

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

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

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

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

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

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

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

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

SENATOR GOLD: Yes.

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

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

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

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

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

SENATOR GOLD: Will Senator yield to a question?

ACTING PRESIDENT KUHL: Senator Daly, do you yield?

SENATOR DALY: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Daly continues to yield.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Secretary

will read the last section.

Senator Dollinger.

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

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

SENATOR DALY: Yes.

ACTING PRESIDENT KUHL: Senator yields.

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

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

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

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

SENATOR DOLLINGER: Correct.

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

SENATOR DOLLINGER: Right.

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

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

SENATOR DALY: That's exactly right.

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

SENATOR DALY: That's correct, Senator.

SENATOR DOLLINGER: No further questions.

ACTING PRESIDENT KUHL: Secretary will read -

Senator Gold no.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Have my name called.

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

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

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

I vote in the affirmative.

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

The chair recognizes Senator Padavan to explain his vote.

SENATOR PADAVAN: No, I'm just voting in the negative, Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan in the negative. Secretary will announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 261 are Senators Leichter, Maltese, Padavan and Santiago, also Senator Babbush. Ayes 51. Nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present, regular order?

SENATOR PRESENT: Regular order.

ACTING PRESIDENT KUHL: Secretary will call regular order commencing with Calendar Number 1445.

THE SECRETARY: Calendar Number 1445, by Senator Present, Senate Bill Number 4711B, Administrative Procedure Act.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Hold on one second.

Last section.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1449, by Senator Saland, Senate Bill Number 6506B, an act to amend the State Finance Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation of Calendar Number 1449 has been asked for by Senator Gold.

SENATOR SALAND: Thank you, Mr. President.

Mr. President. This is one of a series of bills which I have introduced in response to some investigative activities that my office has been involved in in conjunction with the Workers' Compensation controversy, the

one involving the stripping of Unisys of a contract that had been awarded them and involving the questions of both the actions in behalf of the Workers' Compensation people in making their determination and the seeming failure to ignore -- failure to respond to a bid by IBM.

This bill basically says that the State's competitive bidding processes which certainly provides for competitive bidding when we're dealing with goods and materials provides differently when we deal with services, and the parameters of competitive range have never been well defined in our law, and the net result is a tremendous amount of discretion among those executive agencies and authorities in determining who shall be the appropriate bidder or receive the bid where there is a services RFP.

What we have attempted to do here is to create a mechanism that says where there is the greater New York State impact, where there are at least two bids for a services

contract and both those bids meet all the technical specifications, both are within the competitive range, and both come from responsible bidders, the authority or the agency will then have to request from DED, the Department of Economic Development, and Taxation and Finance a review by them to determine which would have the greater economic impact on the State of New York.

And if you look at page 4 of the bill, that says that the evaluation shall include but not be limited to an analysis of potential corporate tax revenue, jobs created or retained, income tax revenue, sales tax revenue and property tax revenue.

Similarly, we attempt to limit that competitive range to a 10 percent factor, the purpose of which is to basically avoid the wide discretion that sometimes appears to occur in these cases.

Also understand what we are doing here is not creating a price preference as the contracting agency would not be forced to choose

a bid which under the present system it does not already have the ability to choose.

This legislation also preserves as is in existing law the ability of the contracting agency to reject all bids irrespective of their economic impact.

ACTING PRESIDENT KUHL: The chair recognizes Senator Galiber.

SENATOR GALIBER: Will you yield for a question?

ACTING PRESIDENT KUHL: Will you yield to Senator Galiber?

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator Saland yields.

SENATOR GALIBER: Would you agree that OGS has played a very important role in terms of this piece of legislation?

SENATOR SALAND: Sir, would you repeat your question?

SENATOR GALIBER: Office of General Services has a big play in terms of a service contract, since it is my understanding

that they have the responsibility for doing a lot of these contracts and bids with other state agencies. Is that correct?

SENATOR SALAND: Correct.

SENATOR GALIBER: Have you heard from -- not put it that way. I have heard from them that they have not been consulted in regard to this bill. Rather than throw a sand bag at you. Have you consulted? They tell me you have not consulted with them.

The Comptroller's office because you plug it into a particular section, your piece of legislation -- I'm not sure if it's 170 or 112, but it precludes -- by you're saying that this would be final precludes the Comptroller's input. It's part of those three-point questions.

SENATOR SALAND: Let me address the first question. Back in March at a negotiation that was occurring with OGS people regarding an Article VII bill, members of my staff advised them of our intention of putting out a bill -- of this bill. I believe by that

time we had put out the bill. We invited their comment and asked if they were interested in working with us, and we have not heard from them since that point in time.

SENATOR GALIBER: I would imagine that means, yes, that they have not been consulted but given an opportunity to confer with you.

SENATOR SALAND: They've certainly been given that opportunity. They were invited. Their comments certainly would have been welcome. This bill as I look at it I see is dated January 20, 1994. I would think that in the three months that have elapsed since we gave them the specific invitation, they have had ample opportunity to talk to us.

SENATOR GALIBER: Have you extended the same courtesy or made the same inquiry as to the Comptroller's office?

SENATOR SALAND: We have communicated with the Comptroller's office but not specifically with regard to this bill. We have communicated with the Comptroller's office

expressing our concerns about what occurred in the Workers' Comp Unisys matter. We have expressed some concerns as to whether or not the bidder who received the bid in that case, Unisys, was a responsible bidder. We've provided them with information that we think is relevant to that particular proceeding.

SENATOR GALIBER: Would it be fair, Senator, since it's your piece of legislation and you've read it and maybe have had hearings or certainly a great deal of consultation on it, there are sections in this piece of legislation that if, in fact, this becomes final, as your legislation says, wouldn't that, in effect, indirectly or directly preclude the Comptroller's office, who has interest in either overseeing or making some comments or perhaps having the authority to perhaps not veto but come pretty close to doing so?

SENATOR SALAND: I don't view this bill as -- the Comptroller, as I understand it, by the way, has a somewhat similar bill out

that the Comptroller has offered. This bill is not intended to circumscribe the Comptroller. The bill, basically, is an effort to try and deal with the issue of service contracts and establish guidelines where you have comparable bids within that so-called comparable range where they meet all those specifications.

We feel that it is important to the State of New York to basically weigh. It may well be that a foreign corporation would have a greater impact, greater economic impact, say, for example because it would subcontract with a number of New York state subs than would a domestic corporation that might not necessarily either get all the materials or provide all the services from New York.

This is, as I said in my earlier remarks, not a preference bill. It's really a bill that's aimed specifically at economic development in an economic impact in the State of New York.

SENATOR GALIBER: Let me take you back.

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

SENATOR GALIBER: I'm sorry. Will you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Saland yields.

SENATOR GALIBER: Senator, would this piece of legislation have anything to do with the economic impact on IBM, the fact that they have laid off so many people; and, unfortunately, if I may quickly add, very frankly, there are those of us who have used that example of IBM leaving Mid-Hudson with all this trained staff and the physical plants there, and we can't, unfortunately, get anyone to come in.

SENATOR SALAND: No, let me respond to that question by saying -- and I think I acknowledged that up front. I came to this issue perhaps in a somewhat parochial fashion, and it was really the response to what

occurred in the Hudson Valley which basically made me cognizant of really some rather woefully inept laws in dealing with bidding, in dealing with contracting for services. Basically, it was sort of like, you know, the door was wide open and there was very little oversight. And particularly when you were talking about service contracts, the existing law just hides a multitude of sins.

And believe me when I tell you I'm confident that there are a number of sinners out there, and what we're attempting to do is to sort of define parameters, and there is nothing in here that is intended to do anything but be an economic advantage to New York corporations.

Certainly in no way, shape or form, is this intended to be a plum for IBM. It is intended to deal with anybody who is willing to do business in New York, making sure that New York becomes the focal point of their efforts.

And, again, let me please repeat -- and I'm sorry. I don't care if you are a bidder from Texas, a bidder from

California, a bidder from Illinois. I mean that if -- when this is reviewed by DED and Taxation and Finance, if it's a close call, all other things being equal, if you are within the parameters as defined and you are going to do better by New York, then we are going to give you that ability.

SENATOR GALIBER: Senator, you have been very candid, and I say this not massaging you as far as our debates are concerned. There seems to be some allegations that there is some ambiguity in the definition of service contracts. That happens when we tackle from a parochial standpoint issue that - because it concerns us.

This ambiguity is suggested by the Office of General Services, who you offered an opportunity to step into the swim on this piece of legislation, that they suggest that the ambiguity in terms of defining what service contracts are would probably foster, like most things that are vague and ambiguous, number of lawsuits.

Do you, first off, say yes or no to me as far as the ambiguity. That takes a sense of admission that I'm sure you would do if it's there.

SENATOR SALAND: I'm troubled by that because our effort was to codify existing case law, and the definitions come from some of the leading cases dealing with this very subject matter, so -- I mean if they can point particularly to what troubles them or if they can -- if they are willing to tell me that they are not satisfied with the case law, it may well have been appropriate for them to do that some time between March and now. But I think what you are seeing is a codification of prevailing case law.

SENATOR GALIBER: Will you continue to yield, Senator?

ACTING PRESIDENT KUHL: Senator Saland, do you yield to another question?

SENATOR SALAND: Certainly, Mr. President.

ACTING PRESIDENT KUHL: Senator

yields.

SENATOR GALIBER: When you measure things in the legislative process, when you are dealing with the legislative process, a couple months don't make any difference as my grandma used to say, especially something as earthshaking as this, but the Office of General Services indicates that the definition of service contracts -

SENATOR SALAND: Excuse me, Senator. I'm truly having a difficult time hearing you.

SENATOR GALIBER: Oh, I'm sorry. Okay. The definition -- and this is from the office of Office of General Services. "The definition of service contracts is inadequate and very subjective. The bill's definition of competitive range is vague. The agency does not know what it means. It is not beyond the agency's current capacity to establish such competitive range and evaluate the economic impact of the contracts."

SENATOR SALAND: Would you just

repeat the last portion of that?

SENATOR GALIBER: Yes. "It is not beyond the agency's current capacity to establish such a competitive range and evaluate the economic impact of the contract." That has part of the explanation for the first two. That's their observation as to the first two issues I mentioned.

"The definition of service contract is inadequate and," they put, "very subjective." Is that so?

SENATOR SALAND: I didn't view it as such when we drafted this legislation. As I said, we attempted to deal with what was the prevailing case law at the time and, for that matter, is currently the prevailing case law.

SENATOR GALIBER: Senator, I have -

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator

continues to yield.

SENATOR GALIBER: Senator, I have Executive Department, Office of General Services, memorandum. Whether it's three months later or not, but certainly it's important to this piece of legislation, and it's dated June 30, 1994.

SENATOR SALAND: Rather current I would say, Senator.

SENATOR GALIBER: Let me ask you this question. I think I know the answer. Do you have this memo?

SENATOR SALAND: No, I don't.

SENATOR GALIBER: I didn't think you did. It says -- I'm willing to share this, of course, with you.

SENATOR SALAND: Please. Thank you.

SENATOR GALIBER: It says, "Notwithstanding the sponsor's memorandum in support of the referenced bill, it is clear that its implementation would have significant fiscal effect on OGS's operation and programs, and

although it is not possible at this time to assign a dollar figure to the increased cost which will be occasioned by the bill's enactment, it is clear that the bill's requirements in the following areas will result in increased costs," and it goes on.

"Initially, the bill required analysis of distinction between commodity and service contracts, will require utilization of sparse personnel prior to letting of any OGS centralized contract. Additionally, the bill's requirement for the determination of service contract, besides being beyond OGS's present capacity, given the number of assigned categories of purchasing professionals would necessarily require the utilization of additional personnel for administrative purposes."

(The memo read was handed to Senator Saland.)

So it will add some fairness to it so you will at least have an opportunity to read what they've said as of June 30, 1994,

which seems to me to be relatively important to this piece of legislation, if it is to pass both houses. I think that if they have this kind of objection, or even part of these objections, the chance of it passing the other house -- and I understand where you are coming from in terms of that Hudson Valley matter of economics, but I'm concerned also, very frankly.

Wouldn't it be -- after careful reading of this memo, would it suggest that putting it aside for a day -- you won't lose very much -- might help its movement. Because you understand, as usual, the intent is good, but I'm saying we're hitting in areas where OGS services the other agencies; and, certainly, if there is any ambiguity, if there's any fault with this, if there's anything that we could possibly clear up here, I'm sure that you would want to do that.

I don't say that with tongue in cheek. I mean it sincerely. Sometimes we don't pass pieces of legislation because we have pure numbers, as I would say. Just pass it. It

doesn't make any difference whether it's right, wrong, constitutional, unconstitutional, just pass it because we have the numbers.

You have not impressed me, most of the time anyway, of wanting to do that. But here's an instance where it bears on the economic factor for the State of New York in terms of its competitiveness for survival so we won't have duplications of Mid Hudson throughout our state. As our economy slowly goes up, we want to improve on it, all of us do.

So perhaps it might be wise to take a look at the memo and maybe lay it aside for a day to see whether or not there is anything -

SENATOR SALAND: May I just respond, at least in part. I have to assume and I would be absolutely shocked, Senator, that OGS is not making distinctions between commodity and service contracts. I mean that's a responsibility of theirs, and they must do that before they determine whether or not a contract has to be bid.

So I'm not quite sure what they are telling us there because they are already supposed to be doing that.

And I'm particularly troubled by what I think would be their misreading of the bill when it says, "The bill's requirement for the determination of economic impact on the state prior to the award of service contract besides being beyond OGS's present capacity..." Well, they are not asked to make that determination. That has been specifically delegated to DED and Taxation and Finance.

So it makes me wonder if this is a little bit of double speak or perhaps a little bit of fog. I'm a little troubled by it, and I would have been a lot more comfortable if some little bit earlier they might have provided us with this memo; but, nonetheless, I do have reservations about at least those provisions which certainly calls, I think, into issue the credibility of the rest of their points.

SENATOR GALIBER: I shared this memo with you.

ACTING PRESIDENT KUHL: Senator Saland, do you continue to yield.

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GALIBER: I draw your attention again to something I mentioned in passing before. In the last paragraph, it says, "Further, we believe that the bill's ambiguity with regard to its contractual definition and it's required determination of competitive range and economic impact would almost invaribly result in litigation by disaffected affected vendors, would result in significant and detrimental fiscal impact." We're talking about litigation again.

SENATOR SALAND: But, Senator, that already happens now. What we're doing is we're defining what competitive range shall be, and what we're saying is instead of leaving the barn door wide open and instead of leaving the unfettered discretion of an agency to determine

what constitutes competitive range, we're saying there's going to be a 10 percent factor. We're saying -- again, and it's very important for me to reemphasize this point -- that the competing bidders have to all meet certain specific requirements and there are three of them. They've got to meet the technical specifications. They have to be within that competitive range, within 10 percent of each other, and they've got to be a responsible bidder. Those are pretty fair. Those are, I think, pretty reasonable criterion.

And the fact that we are narrowing competitive range I think is an appropriate oversight function for us as a Legislature in providing those kinds of guidelines, because there are no guidelines now and competitive range can be all over the map.

SENATOR GALIBER: Yes, thank you, Senator.

SENATOR SALAND: Thank you, Senator.

SENATOR GALIBER: On the

legislation, Mr. President.

ACTING PRESIDENT KUHL: Senator Galiber on the bill.

SENATOR GALIBER: Now that we've had a bit of debate in regard to this, and whether Office of General Services is three months late or no, whether the Comptroller's office will be shut out as a result of this piece of legislation passing, the point is that the debate between the two of us, Senator, certainly has made it crystal clear in my judgment by your response, very candidly, that there is some ambiguity on the state agency that we, as state legislators, are forcing by legislation on that agency.

They have written a memo, late as it may be, dated June the 30th, 1994, suggesting that there is ambiguity. It is not clear as to what service and commodities are all about. They have indicated and seriously questioned what would be the impact as far as revenue is concerned, whether this carefully thought-out formula that you and your staff have put

together, and I say that in all sincerity, whether that 10 percent will be looked at as a sword or shield, will we cut people up, hide behind it, be beneficial or no history will record. We have an opportunity not to put this in history, because the agencies that is going to be impacted on who will have the total responsibility of making those very fine distinctions or broad difference is saying that this bill is going to encourage lawsuits, that there is ambiguity, that there is serious questions as to whether this will work.

I think that, in and of itself, warrants, since we have waited three months - and I don't want to wait to next week with this, Senator, because you and all of us know we would like to be some place else next week. But it seems, based on this memo, that we lose absolutely nothing by calling and saying to them, "This is a memo. You say you have this ambiguity. I have staff people who have worked on this. They are the experts." And I mean that sincerely also, like my staff are the

experts over here.

And if there is, we want a good piece of legislation that is going to serve the general public in terms of economics throughout the state. And we know, and you've had the experience on the other side, that if we don't clear this matter up, it's not going to go any further. And the thrust of what this piece of legislation is all about is important enough for some changes to be made so that we won't have a reoccurrence of what the motivating factor was for you to bring this could be excellent piece of legislation to our attention.

Calls for a mere phone call after some three months or so to clear up some things. Worth a chance. Worth an opportunity. I'm not sure after the telephone conversation if you may it whether it will be any clearer, but there is always that possibility.

That's what I'm asking for, Mr. President, that the sponsor of the bill -- and I thank him for his very candid response to the questions on this issue -- would lay the bill

aside for a day, just to call OGS, if nothing more than to find out what took you so long after three months.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The chair recognizes Senator Stachowski.

SENATOR STACHOWSKI: Will Senator Saland yield for a question?

ACTING PRESIDENT KUHL: Senator Saland, do you yield to a question from Senator Stachowski.

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator Saland yields.

SENATOR STACHOWSKI: Senator, one of the problems we run into sometimes when we look at bills that give a 10 percent swing in the bidding process is that the people on the second floor, and mostly I believe it's probably their legal department, immediately warns us that there could be a problem with a retaliatory action on behalf of states that represents vendors that maybe lose the contract because of

this 10 percent swing to economic advantage to the State of New York. Does this bill address that part?

SENATOR SALAND: No. And I think your concern was a concern that I had, Senator, when I started to draft this legislation. I certainly didn't want to do anything that was going to invite any kind of retaliatory action. If you can recall my comments in response to my debate with Senator Galiber, this does not insure that New York corporations are going to be successful bidders in this process. What it says is that if in fact you have -- and I will go back to those same three factors -- if you have met all the technical specifications, you need that to get in the door, and you are within that competitive range which we have defined as 10 percent, and you are a responsible bidder that you are not somehow or another somebody who's been engaged in illegal activities and in some way or other subject to either the condemnation of the criminal law or some other misconduct, you are a player and we will

consider your bid.

If you happen to be a Pennsylvania corporation or a New Jersey corporation and if your proposal -- and, again, I will come back to the language of the bill. When the evaluation is made by DED and Taxation and Finance, that evaluation, and I'm quoting here on page 4, lines 50 through 53, "Such evaluation shall include but be not limited to an analysis of potential corporate tax revenue, jobs created or retained, income tax revenue, sales tax revenue and property tax revenue."

That does not mean that the X Y Z Corp in New Jersey will not prevail over the A B C Corp in New York. It may well be that there is much more to be said in terms of New York economic impact because of the subcontractors they may well deal with, the consultants they may well deal with, and this is not an effort to create borders.

It is an effort to enhance economic development in New York.

SENATOR STACHOWSKI: Mr.

President. Would the sponsor yield for another question?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yields.

SENATOR STACHOWSKI: In your explanation, you hit on another part that is actually my second question; and that is, you used the term, "if they are a responsible bidder," and for the last few years, we have gone through all kinds of anxieties in the labor committee and in bids on SUNY contracts, Dormitory Authority contracts, highway contracts, on reaching just that definition, "What is a responsible bidder?" And I don't know if your bill has that, but so far, we haven't had a great definition on what a responsible bidder actually is.

SENATOR SALAND: And I know, Senator, that you have a keen and longstanding

interest in dealing with that bill, and I know you've introduced -- with that concept, and I know you have introduced legislation to deal with that. We do not do anything definitionally here in this bill. Whatever currently determines responsible bidder would be the standards by which these prospective bidders would be considered.

The interest in if not redefining then certainly better describing what a responsible bidder is is one which I would share with you, and I would reasonably hope that in the coming session if the two of us are fortunate enough to be back that we will have the opportunity to maybe dwell on that at greater length, but it is an issue, an important one, and one which I, too, would like to address.

SENATOR STACHOWSKI: Thank you. Just on the bill.

ACTING PRESIDENT KUHL: Senator Stachowski on the bill.

SENATOR STACHOWSKI: I don't have

a problem with this bill; and if we can find a way to do a swing on the 10 percent on that, I don't have a problem with that. But I would suggest to Senator Saland that maybe he can help me with the Labor Committee to get the responsible bidder definition bill that we have which actually pretty much mirrors what the Governor put out in an executive order and clearly defines what contractors would have to do -- or better yet, what they would not be able to do in order to be a responsible bidder. And if we can get that legislation through, then we would have that definition that I so much worry about, and I would have absolutely no trouble with this bill.

Thank you very much.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Galiber to explain his vote.

SENATOR GALIBER: Yes. I want you to know, Senator, that I'm voting against this merely because you didn't make that telephone call. It has nothing to do with the substance of the bill or the intent, so it's a protest no.

ACTING PRESIDENT KUHL: Senator Galiber recorded in the negative.

THE SECRETARY: Ayes 56. Nays 1. Senator Galiber recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Saland, why do you rise?

SENATOR SALAND: Please note my apologies to the Senator, as a gentleman, and I do apologize if I appeared ungentlemanly.

Thank you.

ACTING PRESIDENT KUHL: Senator Present, we have a number of housekeeping items at the desk we'd like to take care of, if possible.

SENATOR PRESENT: Let's accommodate the desk.

ACTING PRESIDENT KUHL: All right. Senator Libous for a motion.

SENATOR LIBOUS: Thank you, Mr. President. On behalf of Senator Nozzolio, on page 31, I offer the following amendments to Calendar Number 1379, Senate Print Number 8648, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted. The bill will retain its place on Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. Also on behalf of my colleague, Senator Maltese, on page 24, I offer the following amendments to Calendar Number 1048, Senate Print number 366, and I also ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted. The bill

will retain its place on the Third Reading Calendar.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President. I wish to call up my bill, Senate Print 8405A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator DiCarlo, Senate Bill Number 8405A, an act to amend the Social Services Law.

SENATOR DiCARLO: Mr. President. I now move to reconsider the vote by which this bill was passed and ask that the bill be restored to the order of third reading.

ACTING PRESIDENT KUHL: The question is on vote to reconsider the vote by which the bill passed the Senate.

The Secretary will read the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is before the house.

SENATOR DiCARLO: Mr. President. I now move to discharge from the Committee on Rules Assembly Print 8527A and substitute it for my identical bill. The Senate bill on first passage was voted unanimously. I now move the substituted Assembly bill have its third reading at this time.

ACTING PRESIDENT KUHL: The Assembly bill will be discharged and substituted for your Senate bill.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Unanimous.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Rath.

SENATOR RATH: Yes, Mr. President. I would like please to have a sponsor star placed on my bill, Calendar 796, Print 6751.

ACTING PRESIDENT KUHL: The sponsor star is placed on it. Sorry, I didn't hear you.

SENATOR RATH: Thank you.

And, Mr. President, on page 32, please place a sponsor star on Calendar 1421, Print 7507A. Thank you.

ACTING PRESIDENT KUHL: Sponsor star will be placed on Calendar 1421.

Senator Present, we have a number of substitutions to read. Ask the Secretary to read.

Senator Galiber before the substitutions.

SENATOR GALIBER: Yes. Mr. President. May I have, if it's in order, unanimous consent to be recorded in the negative on a couple of bills?

ACTING PRESIDENT KUHL:

Certainly.

SENATOR GALIBER: Okay. It's Calendar Number 261 and Calendar Number 1323.

THE SECRETARY: 261 and 1323.

ACTING PRESIDENT KUHL: Without objection, Senator Galiber will be recorded in the negative on Calendar 261 and 1323.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President. May I have unanimous consent to be recorded in the negative on Calendar 1323, please.

ACTING PRESIDENT KUHL: Without objection, Senator Stachowski will be recorded in the negative on Calendar 1323.

Senator Markowitz.

SENATOR MARKOWITZ: Same thing for me, Mr. President, to be recorded in the negative on Calendar 1323.

ACTING PRESIDENT KUHL: Without objection, Senator Markowitz will be recorded in the negative on Calendar Number 1323.

Senator Kruger.

SENATOR KRUGER: Yes, Mr. President. I too would like to be recorded in the negative on Calendar 1323.

ACTING PRESIDENT KUHL: Without objection, Senator Kruger will be recorded in the negative on Calendar Number 1323.

Senator Gold.

SENATOR GOLD: I ask unanimous consent to be recorded in the negative on Calendar 1323.

ACTING PRESIDENT KUHL: Without objection Senator Gold will be recorded in the negative on Calendar Number 1323.

Secretary will read the substitutions.

THE SECRETARY: On page 4, Senator Kuhl moves to discharge the Committee on Rules from Assembly Bill Number 4806B and substitute it for the identical Calendar 66.

On page 10, Senator Lack moves to discharge the Committee on Rules from Assembly Bill Number 9115A and substitute it for the

identical Third Reading 492.

On page 12, Senator Daly moves to discharge the Committee on Rules from Assembly Bill Number 10300B and substitute it for the identical Third Reading 593.

On page 13, Senator Skelos moves to discharge the Committee on Rules from Assembly Bill Number 12112, and substitute it for the identical Third Reading 600.

On page 16, Senator Goodman moves to discharge the Committee on Rules from Assembly Bill Number 6114D and substitute it for the identical Calendar Number 709.

On page 18, Senator Maltese moves to discharge the Committee on Rules from Assembly Bill Number 10571A and substitute it for the identical Third Reading 813.

On page 19, Senator Velella moves to discharge the Committee on Rules from Assembly Bill Number 11735A and substitute it for the identical Third Reading 882.

On page 23, Senator Levy moves to discharge the Committee on Rules from Assembly

Bill Number 2235B and substitute it for the identical Third Reading 1028.

On page 30, Senator Johnson moves to discharge the Committee on Rules from Assembly Bill Number 11822A and substitute it for the identical Third Reading 1368.

On page 36, Senator Skelos moves to discharge the Committee on Rules from Assembly Bill Number 10407B and substitute it for the identical Third Reading 1457.

On page 36, Senator Sears moves to discharge the Committee on Rules from Assembly Bill Number 11581B and substitute it for the identical Third Reading 1460.

ACTING PRESIDENT KUHL: Substitutions are ordered.

Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President. Can we take up Calendar 1407.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1407.

ACTING PRESIDENT KUHL: Calendar Number 1407, by Senator Volker, Senate Bill

Number 8606, establish a moratorium on requiring any disconnection from the Letchworth State Park waterline.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of Calendar 1407 has been asked for by Senator Gold.

SENATOR MALTESE: Mr. President. This is an act to establish a moritorium on requiring any disconnection from the Letchworth State Park waterline. Since in my district especially on behalf of Mr. Volker, Senator Volker, I'm a friend of the dairy farmer. In this specific situation, a dairy farmer in Senator Volker's district and in Assemblyman Reynolds' district has been connected to the waterline that goes from the lake to Letchworth Park. This connection was made on property owned by the farmer and which the park received a easement -- on which the park received an easement.

What this amendment seeks to do is protect the farmer from having his main source of water to feed his cattle disconnected

while they attempt to work out an equitable arrangement. But the only person affected by this bill would be this specific farmer, approximately -- even if a new water district is established, which is what they are trying to work out, only seven or eight families, all dairy farmers, would be affected. But as far as this specific bill, it does not seek to reconnect or change anyone else's rights. It only seeks to protect this specific farmer from having his source of water for his cattle disconnected.

ACTING PRESIDENT KUHL: Chair recognized Senator Gold.

SENATOR GOLD: Yes. Does Senator Maltese yield to a question?

ACTING PRESIDENT KUHL: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, is 80th Street and Metropolitan Avenue in your

district?

SENATOR MALTESE: Yes, it is.

SENATOR GOLD: Senator, if I were to tell you that there is a store located at that vicinity, and somebody came into that store and specifically asked the store owner to give them some property which they were denied and the person took the property anyway, the store owner is suing to get it back, but they asked you to put in a bill to let the thief keep the property while they negotiated something amicable, would you put in that bill, Senator?

SENATOR MALTESE: No, I would not. But in this specific situation, we have a farmer who is paying for the water -- not a thief, who is having the water metered by apparently an agreement with the state park and is paying as he utilizes the water.

SENATOR GOLD: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Yes, Senator Gold. On the bill.

SENATOR GOLD: I know, Mr.

President, that deep in your heart you have only love for farmers, so I don't know whether you should be even presiding right now. I understand the explanation given by Senator Maltese helping our distinguished colleague, Senator Volker, but I just want the chamber to understand there was a memo in opposition from Parks and Recreation.

What they basically say -- and I'll read it to you. It's very short. Four years ago, a private landowner illegally connected into the water supply system after - after the landowner had specifically been denied permission to do it. The legislation prohibiting OPRHP from disconnecting this private connection would, in effect, sanction a deliberate, unauthorized activity through which a private entity has appropriated public property owned by the State of New York.

Now, I think it's fascinating. I really think it's fascinating. I don't want to see the farmer hurt, and maybe the farmer ought to be able to get this water. I don't know all

of the details. I just think it's fascinating.

Here we are coming to the closing hours of this session. We have not as yet seen these major crime packages to clamp down on criminals, and I know when we get it the sponsorship is all going to be Republican names. You never even let our side co-sponsor even though you will take our votes along with it. But here's a piece of legislation that says what the heck. This isn't some minority kid in the ghetto who breaks into a store. This isn't Les Miserable. Him you could run over.

But here's a poor farmer who steals the water. He's told you can't do it. He made application. Turned down. You can't do it. He goes onto state land and steals it anyway, and now we want to pass a law that tells the State of New York you can't even disconnect him.

Well, I just think -- I just think it's a fascinating argument. I am thrilled that it is coming from Republican conservatives. If this bill was put in by a

liberal Democrat, you would knock us off the face of the planet. We don't understand the laws. We don't understand what it is to be law abiding. It is incredible.

Not only that, let me tell you this. If this was a store owner from the South Bronx, you would probably want the death penalty.

ACTING PRESIDENT KUHL: Any other speaker wishing to speak on this bill?

Senator Solomon.

SENATOR SOLOMON: It's not 3:00 in the morning, so. Will Senator Maltese yield, please?

ACTING PRESIDENT KUHL: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SOLOMON: Senator, I read the memorandum in opposition, and it was pretty strong language, "private landowner illegally connected into Letchworth State Park water

supply system." Do you have any proof to the contrary?

SENATOR MALTESE: Mr. President. I am advised that contrary to the protestations of Senator Gold that this agreement between the farmer and the park resulted from a stipulation as a result of a lawsuit. It was not a lawsuit in conversion or theft of services but a lawsuit brought in civil court where a stipulation was entered into by both sides which provided that the farmer would pay for the water as metered. So we don't exactly have the situation as laid out by Senator Gold.

In addition, I think if any proof was needed as to how humane this side of the aisle is. Here it is the waning hours of the session and we do not let the plight of an upstate farmer who requires water for his cattle go unheeded. So I think that what this indicates is that we on this side of the aisle worry about every constituent no matter how small the problem.

SENATOR SOLOMON: Mr. President.

SENATOR MALTESE: Senator Solomon, mostly respectfully, I forgot your question.

SENATOR SOLOMON: I know you forgot my question. I asked if you had any proof showing me that it was not illegal.

SENATOR MALTESE: Mr. President.

SENATOR SOLOMON: Don't tell me about the farmer's plight. Just tell me whether there's any proof.

SENATOR MALTESE: I am advised that this was a stipulation. I don't have any proof that it wasn't illegal. But I think if it arose out of a court stipulation, both sides entered before a court of law and came to an agreement.

SENATOR SOLOMON: Mr. President. Another short question.

ACTING PRESIDENT KUHL: Senator Maltese, do you continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator yield.

SENATOR SOLOMON: Can you tell me what the estimated value of the water is on an annual basis? It is not like a water fountain.

SENATOR MALTESE: I am advised the farmer has approximately 750 cows, and - but I don't know the value of the water, but he is paying for it, so I think if we could require expert testimony as to how much water a cow drinks over a normal day, we would probably multiply it by 750 and come up with a reasonable estimate.

SENATOR SOLOMON: I know. On the bill.

ACTING PRESIDENT KUHL: Senator Solomon on the bill.

SENATOR SOLOMON: I was not going to ask Senator Maltese how much water each cow consumes each day, because I have a feeling that it would be kind of difficult for him to come up with that answer, unless there is a farm hidden in his district that I'm not aware of.

But I would suspect that 750 cows drink a lot more water -- or use quite a bit of

water. And I'm really concerned about the fact that this memorandum in opposition is drafted so strongly by the state agency to specifically state that this landowner illegally connected into the water supply.

I'm not unfamiliar with those connections. In fact, in my Senate district, we have people who attempt to illegally connect into the electric supply in many instances. Now, the gas supply when they illegally connect into it, they usually have a little mishap. But they illegally connect into the electric supply on many occasions. And this is basically, when you get down to it, a theft of services from someone, and I think that's a problem with this bill, and I don't think we should sanction a theft of services by passing this bill.

And if the farmer is having a dialogue with a state agency to resolve the problem, let him continue to dialogue. I don't think we should sanction the services and, in effect, give the farmer an edge in his dialogue. If he is in the civil court system,

then he's in the civil court system. And let him stay in the civil court system. Why should we sanction his activities? So I suggest there be a no vote on this bill.

SENATOR DOLLINGER: Mr. President. On the bill.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: This is the reason why we're not good judges. We're good legislators, but we are not particularly good judges when someone asks us to find facts or draw conclusions about what's happening out there in the rest of the world and we've got to adjudicate who's right and who's wrong.

If I could, Mr. President, could I ask the sponsor or substitute for the sponsor, do you have any proof that shows that there is a civil action and that this was undertaken in reliance on some claim of right or some settlement of a lawsuit? And if so, could you put the bill aside, lay it aside, or put it on the table for a day to give us some proof of

that.

SENATOR MALTESE: Mr. President. I'm advised that counsel has been in touch with the law firm Puresutti and Coniglio, who represents the farmer, and the farmer's name is David Smithgall. I do not have proof in my hand at this point in time that a stipulation has been entered into, but I accept as an officer of the court the representation of the attorney to Senate counsel.

I think the point that we and Senator Volker and Assemblyman Reynolds, whose district this is also in, who supports this legislation -- the point they are trying to make, they are not trying to give free water to this particular farmer. We are not trying to adjudicate the matter here in the Senate chamber. What we're attempting to do is take a situation that has already been done, that has already been litigated to some degree and stop a disconnection which would preemptorily end the farmer's access to the waters and probably doom his business.

What we're allowing for here is not a permanent deed, but a temporary hiatus so that the parties would have an opportunity to get together, perhaps the farmer seek alternative sources of waters. And, by the way, just for the purposes of how much water is consumed, I'm advised that the farmer's only source of water is not just this pipeline, but that there are minimal water supply wells on the property but not in sufficient quantity to provide sufficient water for the cows.

So I think what we're trying to do is give them some breathing time where both parties could possibly amicably settle the dispute.

SENATOR DOLLINGER: Again, I appreciate the observations of the sponsor. What I think might be happening, and I will just offer a guess -- I will offer a guess that the State of New York found out that the water was being taken illegally, and the State of New York has moved for a temporary order to shut off and to disconnect it, to tear it up and to back

charge the cost to the farmer who's taking something illegally, and the court has either issued an order requiring that he discontinue taking that water and ordering or permitting the state to remove the connection, and we're going to intervene in that legal dispute and tell the Court that it can't order that, even though this individual is apparently taking the water without the approval of people of this state.

While I may have sympathy for the farmer's ability to find other sources of water, he asked, apparently was told no, and then went ahead and did it anyway. And it seems to me we can't countenance that kind of disregard for the power of the people of this state, for the ability of this Legislature to protect the assets of this state including the water that flows through Letchworth Park.

I've been in the park a number of times, a beautiful place. This doesn't seem to me to make any sense. I appreciate the sponsor's intent, but we're intervening in a legal proceeding. I don't think there is any

basis for it. If somebody is taking something illegally, we should tell him no, you can't do it.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1407 are Senators Connor, DeFrancisco, DiCarlo, Dollinger, Galiber, Gold, Jones, Leichter, Oppenheimer, and Solomon. Ayes 48. Nays 10.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Senator

LaValle, an explanation has been asked for by Senator Gold on Calendar Number 1451.

SENATOR LAVALLE: Mr. President. This legislation establishes incentives to stabilize the school district property tax. We heard earlier this week -- I believe yesterday -- Senator Cook offer a piece of legislation to deal with a problem of grave concern to many of us representing the rural and suburban school districts in this state, whereby property taxes have been escalating despite the fact that we have given to our school districts increasing amounts of state aid.

This proposal very specifically amends the Finance Law because it addresses not the educational portion of the budget in the way we address providing services to our youngsters but rather the concern of the taxpayer and the tax rate problem; and so, whereby a school district freezes their tax levy, the state provides under a formula by this legislation incentives for the school district to maintain a stabilized tax rate.

I believe that it's in the best interest of all parties by maintaining a stable real property tax rate, because the people in the communities will feel less pressure, will feel more -- much better about supporting a school budget and school programs and I believe reduce some of the tensions that we see mounting in our school districts between taxpayers and people who want to provide good programs for our youngsters.

This program would begin with the 1995 tax levy and would begin in terms of financing this in our next -- in succeeding budgets.

ACTING PRESIDENT KUHL: Chair recognizes Senator Gold.

SENATOR GOLD: Thank you.

Mr. President. Would the Senator yield to a question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, you say

that this would give some comfort to people in the communities. And what I would like to know is what communities are we talking about? Are we talking about every community in this state?

SENATOR LAVALLE: Yes.

SENATOR GOLD: Does this include the big five?

SENATOR LAVALLE: Yes, it does, Senator. It's a statewide -- as I understand, it's a statewide bill, but the major beneficiary of this proposal would be those school districts that have high tax rates and actually establish a tax rate.

Now, the City of New York, for instance, does not have a separate tax rate for school purposes, and so this legislation, by definition in a sense, would exclude those districts, as the City, that do not have a separate tax rate for school purposes.

SENATOR GOLD: Yes. All right. Senator, that's what I wanted to clarify. When you say it gives comfort to people in the communities, there is a -- oh, a few million

people in the City of New York who don't get any comfort out of this particular bill. Am I correct?

SENATOR LAVALLE: That is correct.

SENATOR GOLD: Yes. I also understand that there are some people in Buffalo and a few other little places, Rochester, yeah, that also -- and I'm not saying, Senator, that a bill has to apply statewide, but I want to clarify that this does not, as I understand it, apply to every school district.

SENATOR LAVALLE: By the definition in the formula -

SENATOR GOLD: Okay.

SENATOR LAVALLE: -- it would exclude those areas that do not have a real property tax rate for school purposes. That is correct.

SENATOR GOLD: Is that Syracuse, too, Jim? Yes.

Will the Senator yield to another question?

ACTING PRESIDENT KUHL: Senator, would you yield to another question from Senator Gold?

SENATOR LAVALLE: Yes.

SENATOR GOLD: Senator, there has been a term floating around here this year with regard to certain pieces of legislation, "maintenance of effort." Now, as I understand it, that term means that there are certain areas in the state where we are mandating that they spend money, not that they save money and cut taxes but that they actually spend money in the schools; and as a result of the maintenance of effort mandate, they might have to increase their taxes. Is that correct?

SENATOR LAVALLE: Senator, as you know, this legislation does not address that issue. I think you are aware that that issue is being discussed at a -- in a separate forum, that more properly looks at revenues that go into cities, and you are talking about more specifically New York City. And that problem you are oversimplifying by attaching that

discussion to this issue because it's apples and oranges. It is really an entirely different issue.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT KUHL: Would you yield for another question, Senator?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT KUHL: He will.

SENATOR GOLD: Senator, I want to tell you something. There is so much to know around here, I really don't claim to be the expert I should be on everything, but I know school aid formula is very, very complicated, and the way we fund education is complicated. But isn't it fair to say, in the most lay-way words I can think of, that when we talk about "maintenance of effort" for some of the districts, we are basically saying we want to make sure that they put in a certain amount of funding; and when we talk about your bill, we are talking about encouraging them to make

certain kinds of cuts and we're going to give them bonuses based upon that?

SENATOR LAVALLE: Senator, we have -- you know, this discussion, we have during the state aid formula. Senator Leichter usually raises certain aspects. And, again, you are looking at a New York City or a city situation, whereby, there is a general budget and, out of the general budget, the city spends monies for school purposes.

Here, we are talking about independent school districts, that their sole purpose, the state aid that we send to them goes specifically for the schools along with the property taxes that they raise to receive the revenue from state aid and their property taxes to meet their budgetary needs. It is an entirely different situation than that that people who live within cities face.

So you are mixing and matching issues. I am not diminishing the issue that you raise as being an important issue. I know very precisely what you are talking about, but this

bill is entirely different. It's an entirely different issue than the one that you raise.

SENATOR GOLD: Mr. President. If the Senator will yield to a question?

ACTING PRESIDENT KUHL: Senator, would you yield again?

SENATOR LAVALLE: Yes, I will.

SENATOR GOLD: Senator, those of us who represent areas such as the City of New York understand some of the budget process; and when we use phrases like Stavisky-Goodman, for example, we all remember that there was a time when the Legislature felt very pressed to make sure that the money that we voted for education aid went to education. All right?

Now, it may be that under the current system, mayors such as the mayor of the City of New York have to come to this Legislature and have to grab money every place they can get it to put their budgets together, and then we always have this fight as to whether education dollars go to education.

But after all of this is talked

out, the bottom line of it is that we are talking as a Legislature in terms of mandating that the City of New York and other places have some kind of maintenance of effort because we want to make sure these dollars flow. And if by saying maintenance of effort they have to raise their taxes, real estate or otherwise, then sobeit.

But when you get to the rest of the state, we say no, no, no, no. The rest of the state, you know, we got to give them help. We got to give them bonuses.

And isn't this really funding them in the educational field, adding in, no matter what you want to label it, additional education monies while other places such as the big five may have to raise taxes?

SENATOR LAVALLE: Senator, I believe not because real property taxes in several parts of this state have reached confiscatory levels. As a matter of public policy, it is driving people out of their residences. It is driving people out of their

businesses. And so I believe that in terms of outside of some of our cities, I think communities are at a point of rebellion.

Now, the cities -- once again, I go back to the fact that there is a general budget, and that budget funds many, many things, whereby the City Council and the mayor make decisions on how that money is to be spent. That does not, again, I want to repeat, diminish the obligation that they have. And people stood up in this house and in the Assembly to override a governor on Goodman-Stavisky to insure that the dollars that we send for school purposes go for those purposes and that there's not a mixing and matching.

And I would say, Senator, this problem happens to the community colleges, where we send aid to our community colleges in the City University and, many times, they do not get the full benefit of those dollars because within the city budget they may move away the dollars. If we send a million dollars in state aid, a million dollars may be withdrawn of city

contribution. But I think this is not the forum to discuss the maintenance of effort issue, Senator, as it relates to the purpose of this bill.

SENATOR GOLD: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: On the bill, Senator Gold.

SENATOR GOLD: Mr. President. Senator LaValle states some truths and then gives us a bill which may not, in effect, be very fair at all. I don't think anybody in the state underestimates how significant real estate taxes are in many parts of the state and how they affect quality of life, how they affect sale of property, how they affect senior citizens in their ability to maintain their property in their retirement, et cetera, et cetera, et cetera. And I know that I was not the only one who heard the Governor talk about the concept of reexamining how we fund school aid. It may be that we have now come to the point where property tax is not the way to fund

school aid. It may be that as people get older and people get into retirement they don't want to sell their homes because the taxes on real estate will eat up their pensions and they don't have children in the school.

But, Senator LaValle, understanding all of that it's divisive to come here with this bill which tells people in the City of New York and other places that we are not going to help you. Now, we have done a budget, and that budget was negotiated, and we all know how those negotiations are handled when it comes to school aid. They are never fair.

The school aid formula has never been fair as long as I've been up here; and if you want to get more money in the City of New York, then we hear about, "This will do some save harmless here," and "This will be a bunch of money there," and the bottom line is the kids are the last ones anybody ever really thinks about. It's all politics.

But we finished it for this year. We've got our budget. And now we're

talking about planning for the future? Well, if we're planning for the future, Senator LaValle, why don't we plan for the future of kids that are in the City of New York and in Buffalo and Rochester and in Syracuse and in other places also? But we don't do that.

I mean this bill flies in the face of the kind of messages that we send down to Senator Maltese's district and Senator Padavan's and Senator DiCarlo's and Senator DeFrancisco and Senator Volker. I mean we tell those Senators that their districts have to do something else.

And I don't know. To tell you the truth, I know there's a lot of discipline in the Republican Party, particularly in this house, but I'm going to be fascinated to see the way some of my colleagues on the other side vote on this bill and whether or not you can really go back into your districts and suggest that you did your districts a great favor by voting for a piece of legislation that gives bonuses to every place else in this state except your area while

your area is right under the gun and being told that, whether you'd like it or not, you better come up with taxes and you better come up with revenues because you better maintain your effort, and there's no two ways about it.

But there are two ways about it, and that's what's wrong with this bill. The bill is divisive, and it shouldn't be. If you want to look to the future, Senator LaValle, that's great. And when you say Senator Leichter usually says this and that, and Senator Galiber, whatever, speaks outs, that's great. But we can't go on with legislation which takes a piece of this, piece of that and makes no sense when viewed at alone.

We had a couple of bills reported out of rules in the crime area the other day, and one of them I think was starred, but I mean we as Democrats looked at the Majority as if they had blown their minds. You wanted to make a felony out of something which was a theft of some service and make a violation out of somebody putting in faulty fire alarm equipment

which could kill hundreds of people.

I mean now, if that was part of one crime bill, you'd never do it. Because it's one part of one crime bill, we would see how everything meshes with each other. The same thing here. If you're telling us that this program makes sense for some of the people in the state and it was part of a program which made sense for the Big Five and took into account what everybody's problems are, that's one thing; but put alone the way it is, Senator LaValle, I know I as a city legislator could not possibly support this. And it would seem to me that there are people on your side of the aisle who I believe would look foolish going back home and saying that for future budgets, or whatever, we voted to set up this process for people, but it isn't our people.

I think the bill should be opposed.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr.

President. Will the sponsor yield for a question.

ACTING PRESIDENT KUHL: Senator LaValle, would you yield to a question from Senator Dollinger?

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: Yes. Senator, what's the impact of this bill in a school district which has -

ACTING PRESIDENT KUHL: You were ahead of him?

SENATOR DOLLINGER: Do I have the floor, Mr. President? Excuse me.

ACTING PRESIDENT KUHL: You have the floor. I'm sorry.

SENATOR DOLLINGER: What's the impact of this bill on a school district that has a growing student population?

SENATOR LAVALLE: This bill does not deal with state aid.

SENATOR DOLLINGER: No, but my question is as the school district -

SENATOR LAVALLE: It doesn't -

the bill and the formula relates to tax rates and not to student population.

SENATOR DOLLINGER: Right, but as the number of pupils increase in a school district, there's a need -

SENATOR LAVALLE: This bill does not relate -- if you look at the bill and read the bill, it talks about tax rates and compares tax rates. It does not address the problem of a school district with a growing population.

SENATOR DOLLINGER: Okay, but - Again, through you, Mr. President, if Senator LaValle will continue to yield. If the school population is growing, there is a concomitant increase in the need for teachers, for buildings, for lights, for transportation, all of those things. Those are additional costs that would show up on the property -

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: -- tax levy, would they not?

SENATOR LAVALLE: Yes. You see, Senator, in the formula that we just addressed,

we very specifically this year dealt with growth aid outside of the regular formula, so that the needs of the student would be addressed through the state aid formula.

This proposal very specifically amends the Finance Law because its purpose and focus is on growing property taxes and how we stabilize that.

It is our hope that in each and every session -- and I think we made a significant step in this last session to deal with the growth aid problem and the needs of a school district that have greater problems from one year to the next, and so we hope that we address the student problems. I was very specific in that in my remarks.

But what we have failed to address is in too many situations the property tax has continued to escalate, and so we need to look at various methodologies. Senator Cook the other day proposed a methodology to deal with the property tax. I have put forward, as many of my other colleagues, various approaches in

trying to be creative to deal with the problem of financing the education of our 3 million students that we presently spend about $22.6 billion a year, and that continues to grow.

SENATOR DOLLINGER: Right.

SENATOR LAVALLE: So this addresses specifically the tax rate problem.

SENATOR DOLLINGER: Right. But again, through you, Mr. President. But under the current formula, we don't cover dollar for dollar for local school districts the additional expenditures necessary in a growing student population.

SENATOR LAVALLE: Senator, this year, we did. We took the growth aid, the growth problem, and we took it outside of the cap within the formula. So that this year in this budget that we have passed, we did recognize the very problem that you have identified.

SENATOR DOLLINGER: Again, through you, Mr. President. So I make sure I understand this. In the Town of Greece, for

example, the Greece Central School District, which I believe is the eighth largest school district in this state, I represent all of it. Their student population is going to increase by about 800 students.

My understanding is that the additional aid, the additional growth aid, from the State of New York which comes to them alleviates a portion of that additional cost but not the total cost of the two new schools that -- the equivalent of two new schools that they are going to have to add.

The reason why I make that point is because those additional 800 students even after they get the state aid are going to drive the tax levy up because there are additional people with additional needs that are going to create additional and incremental costs.

If that's the case, that growing student population in a suburban school district, they face additional costs, they wouldn't qualify for the treatment under this formula unless they meet the formula

guidelines. Correct?

SENATOR LAVALLE: Senator, I gather you now acknowledge that a district like Greece will at least receive growth aid. The last comment is you qualified your remark by saying all of the expenditures related to growth.

The state aid formula is broken up in several parts. The part that I talked about, the growth aid, relates to operating expenditures.

SENATOR DOLLINGER: Right.

SENATOR LAVALLE: If they need to provide a building for those 800 students, we then go to the building aid formula that will provide the aid for those students. And then we have a transportation aid formula to provide the aid for them to get to and from school.

So it is a rather complex series of formulas that come together to provide the educational needs. But, again, Senator, this bill is outside of addressing the educational need problem. This bill addresses the taxpayer

problem that we have.

SENATOR DOLLINGER: Correct. I understand that, and I appreciate that.

Just one other question, Mr. President. If there is an increase in the teacher salaries that are associated with the school district -- and that would otherwise increase the tax levy, would it not, say there is a 4 percent or a 3 percent raise?

Because, as we know, salaries are the largest portion of the school district budget, we could anticipate something like a concomitant 2 to 3 percent raise or some fraction thereof, 85 percent or 80 percent of that. We would anticipate an increase in the tax levy to that amount.

How is that process affected by this bill?

SENATOR LAVALLE: Senator, once again, the increases whether they be through teacher salaries or otherwise are addressed by our contribution, by increasing our contribution, state aid to education to the

schools. This formula that we passed this year increased the per pupil operating expense ceiling in the formula to address additional needs, whether they be because books went up or because teachers' salaries went up or other employees' salaries went up. That's what state aid to education has primarily funded. When we take apart the per pupil cost, you rightfully have indicated that the majority of that per pupil cost comes from employees' salaries.

And so, hopefully, when we increase aid to school districts, we are paying in part for the increase in salaries.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: On the bill, Senator Dollinger.

SENATOR DOLLINGER: I appreciate Senator LaValle's attempt to provide a further spur to local school districts to reduce or freeze property taxes.

It seems to me that local school districts already have the greatest incentive

possible, the same incentive that probably drives this measure and frankly drives a lot of what we do in this chamber is that at least in my experience local school board members are all elected. They are all accountable to their constituents. They're all accountable to their communities, and they would have every incentive currently. Because of their desire to get re-elected and make sure they're doing the public good, they have every incentive to keep the tax rates down as low as they can.

My community, the 54th Senate District, has had a wonderful experience with exactly that kind of dynamic in the last three or four years as taxpayer groups have become members of school boards, as we've tried to keep down the property taxes, all of that wonderful democratic interplay that works so well at the school board at the local community level is the greatest incentive we have to keep property taxes down.

It seems to me that this bill, one, because it excludes the cities; two,

although I understand Senator LaValle's comment about excess aid covering additional expenses, I also think this will have the perhaps unintended consequences of disqualifying districts that are growing rapidly, such as all three of my school districts are; and, lastly, because I like the concept of local control by school boards - this may be a very powerful argument. It should be made to school boards. School boards can control their own budget. They can vote zero tax increases every single year if that's what they think they need to get re-elected, if that's what they think serving the public interest is.

My guess is, much as the experience in one of my communities suggests, is that often times even a taxpayer group that gets in and says, "We're going to freeze property taxes," nonetheless -- nonetheless -- faces the prospect that their goal as members of the school board is to provide quality education. And what they do is, they take a fine look at that budget, they take a fine look at their

contracts with their teachers or anyone else, and they work hard to minimize expenditures. But in a growing district, it's often difficult for them to qualify under this kind of rigid cap that says you have to freeze or only minimally raise your property taxes.

Because it excludes cities, a major portion of which I represent, and I think may have the consequence of influencing disqualifying growing districts, I would vote in the negative.

SENATOR LAVALLE: Senator Dollinger, before you -

ACTING PRESIDENT KUHL: Senator LaValle.

SENATOR LAVALLE: I just want to indicate that before you vote in the negative on this, what you should know that is that for the Greece School District, you will be denying them $1.6 million in additional aid to address the problem of those taxpayers. So I just hope you realize that when you are voting no on this bill you are denying the people in the Greece School

District real property tax relief.

SENATOR DOLLINGER: Now, Mr. President, since that's the claim that's been made, could you demonstrate to me how that's the case, Senator?

SENATOR LAVALLE: By this formula, Senator. It comes to, I believe, $121 per pupil under the formula and the way -

SENATOR DOLLINGER: That's, I assume, if they keep their tax rate absolutely flat; correct?

SENATOR LAVALLE: If they would qualify under this -

SENATOR DOLLINGER: Have they ever kept their tax rate absolutely flat in the last ten years in the Town of Greece, which continues to grow and continues to have additional -

SENATOR LAVALLE: Well, they have -- they would have an opportunity to make a choice in whether the incentives under this legislation would be sufficient to allow them when they set the tax levy in this year to

qualify for that aid.

So I just tell you that under this formula, your school district -- and I just picked that one; I just happened to look under information I have -- that you will be denying those taxpayers real property tax relief by at least $1-1/2 million.

SENATOR DOLLINGER: Again, Senator, that assumes that they are going to keep the tax rate absolutely flat which they have never been able to do because they faced rising student enrollment.

SENATOR LAVALLE: Well, all I can tell you is what you, in my judgment, will be denying your taxpayers of the Greece School District.

SENATOR DOLLINGER: Well, I don't think I'm denying them that, Mr. President. I appreciate the colloquy from Senator LaValle. I don't think I am. I think what I'm doing is I'm looking at the reality of what they've got to face, and I don't think the reality shows that it will come true as Senator LaValle, who is

looking into a crystal ball that I don't see, suggests that it will.

In addition, I'd point out that the city of Rochester, which comprises about 60 percent of my Senate district, would not get the opportunity to qualify for a nickel under this.

ACTING PRESIDENT KUHL: Senator Galiber.

SENATOR GALIBER: Yes. Senator, I don't have the advantage of facing you since I've got this other seat, but, Senator -

On the bill, rather than ask any questions.

Because any time, in my judgment, that there is some tax relief, there has to be somewhere pushing it's going to cost somebody some money, and I know of your fine work through the years, Senator, with Hostos College and Medgar Evers College, and you are concerned about quality education through this state. But, unfortunately, whatever the formula may be in your jurisdiction, it has to have an overall state educational impact.

I can't imagine changing formulas on education unless we deal with the City of New York and the Big Five. We're talking about population growth where historically we have some 37 percent of the students throughout the state. We get something like 35 percent -- 34 percent. I think it went up a point this year, but certainly not where there is an equity involved.

We talked the other day and I wasn't here, but we were talking about the -- we were beating up on the welfare folks and a lot of subsidies that we talked about, I understand. And school is one of the areas where we have been subsidizing through the years to a large amount of money which is never calculated either in the formulas or when we reach the Big Five.

We need the kind of help in our district that you talk about for Nassau and Suffolk. We have another piece of legislation that one of your colleagues from Nassau or Suffolk has suggested that the seniors over the

age of 70 be relieved of their responsibility to pay taxes on real property. It has to have some ultimate effect on the formula that you make reference to.

Some years ago, we have watched -- at least I have watched through the years that education is one of the big items that we deal with. And when we push more money into education, we find that more and more of that money goes out to Nassau and Suffolk, and I appreciate your political power collectively to accomplish this; however, when we write reports -- and they have been substantiated -- that the superintendents' costs out there, the shrinking classrooms and the cost of high-paid superintendents out there, runs the price of education up, no one pays much attention to that except to say I'm going to take this back home and run on this issue.

Senator, even where CUNY and - SUNY and CUNY are concerned. You know this better than anyone. You have been chairman of Higher Education now for a long while.

Budgetary time comes around, we increase SUNY, we cut CUNY, which is a symbolic way of doing things for the innercity.

You want to freeze income tax in your jurisdiction. We're hurting in New York. There is a connection between maintenance of effort and this, if it's no more than your paying attention as someone who is keenly concerned about education on a higher level, because I'm sure you realize that if we don't get those youngsters up the ladder they will never get into our community colleges. They'll never get into SUNY or CUNY.

So to bring this to us and say that this only applies if we level off -- and there are certainly building monies that are in State Education. We have buildings in the City of New York that are overcrowded, asbestos infested, lead paint, all these things, yet we don't take the opportunity when we have it. Certainly we have it this year, as Senator Gold indicated, that the Governor talked seriously about changing formulas this year because his

sensitivity and our collective sensitivity is that somebody is not getting their proper share, especially in the big Big Five as we make reference to it.

You know in your heart's heart that that's right. We're not getting an equitable share. So as long as you can take it home -- you have been here long enough to be elected over and over again, whether you take this piece of legislation or not. You've done an excellent job, and your constituency knows that, so you should be zooming in, if you will, along with the rest of us here, at least those of us from the City of New York and the others in the five to say, Let's try. Since the Governor's given us this direction this year, let's try to balance out some of the inequities as far as the education formulas are concerned.

So, Senator, I'm going to vote against this bill because I think there are options, that there's ways of negotiating out a fair formula, whether we have pockets of money in state education for building purposes,

transportation or what.

We learned one concept in law school years ago. They still do it. There is no special money. We used to symbolically tie a red ribbon around to separate the money. Money is money. Education money is there; and however you want to use it, we can shift it around and apply it and put it in some of the areas where we are concerned in the Big Five because we're all talking about kids. We're all talking about youngsters. We're talking about crowded classrooms in the City of New York. We're talking about the inability to cut out classrooms, as I mentioned before.

So, Senator, I think there is an opportunity, but we always miss them. That if we pass this piece of legislation -- and I think Senator Norman Levy has a bill where he is going to exclude 50-year-olds and somebody else excluded. You're going to wind up -- your tax base is going to have to change because if Senator Levy gets his bill passed and you get your bill passed, somebody is going to pay for

this education because you are going to start exempting people.

The Governor had the best suggestion. Have a local option, income tax or real property tax. You have a choice. At least if you had that choice, exercised that choice, let the people decide. But it certainly would be much more equitable in terms of the education formulas for the Big Five. I know you are concerned about some of the higher education schools.

SENATOR LAVALLE: Senator, would you yield for one question?

SENATOR GALIBER: Sure.

SENATOR LAVALLE: Would you indicate the differences the way we finance our schools between New York City and Port Jefferson school district where I live? In other words, what I'm simply saying, do you recognize that there is a difference in the way the revenue is collected and disbursed to meet educational purposes between a city and a district like Port Jefferson?

SENATOR GALIBER: Yes, I do. I understand that. I understand also that out in your district the superintendents that I made reference to, the classes are shrinking. The salaries of the superintendents out there are the highest in the State of New York of all education money. Okay? And some folks - taxpayers -- taxpayers from your district have read the report and commented on it and said, Senator, you and Senator Halperin and Senator Mary Ellen Jones, the report that we put out indicated that we got this money floating around, all this humongous out in your education formulas. Yes, there is a big difference, big difference in it, but you have monies that are coming there now that are being misused, and the taxpayers that you are seeking some relief for are the ones who are complaining about the high paid superintendents, the shrinkage of classes, and the misuse of education monies in terms of salaries, and that money is not getting down to the pupils.

You come with a piece of

legislation and say, "That's not enough. We want some more." We're going to give them some more relief. Looks great in a newsletter. The fact of the matter is that we are suffering from an educational standpoint, the Big Five and the City of New York and to suggest that there's no connection between maintenance of effort and this piece of legislation -- maybe the pigeon holes to pocket the money is different, but the concept is still there. The philosophy is still there.

You at the expense of our Big Five, the innercities, are jeopardizing the education of those youngsters who help give some relief in an area where there is money now being spent in education that should not be spent.

SENATOR LAVALLE: Senator, would you yield for one other question?

SENATOR GALIBER: Sure.

ACTING PRESIDENT KUHL: Senator Galiber, would you yield for one more question from Senator LaValle?

SENATOR LAVALLE: Can I ask why

when it comes to revenue sharing the enormous amounts of money and the increases, particularly in this budget for New York City, were you not equally as critical of what superintendents in the City of New York in the community school districts make, or whether they are doing the job for the children that are under their care?

SENATOR GALIBER: As far as the formulas are concerned, some have suggested the superintendents are being paid higher salaries. That's not so. What they are doing for the youngsters in the City of New York needs a great deal of change.

We had a Marchi Commission. The report came out, said, "They are not doing it. Let's change it." We can't get a piece of legislation between both houses, which is not your fault or mine. The best I've seen here out of that entire Marchi Commission, which I served on, one piece of legislation, and I think they suggested increasing the number of school boards. Out of an entire commission, that's all they came up with. Let's increase it from 30,

whatever it is. Give them three more. Which is horrible.

Senator, we're doing a horrible, horrible job in the City of New York. I made some suggestions on changes, not that it's going to make any difference. I'm not even quite sure whether that will change it. I know what will change, if you sincerely, as someone as involved in education as you are, advocate that we change the formula on a state level so that it will impact on the total population of youngsters of our state. Your voice goes a longer way than mine. If this kind of committment we can get from our total body here, we can assure the future of the youngsters in our state. We can assure that there's going to be some changes that take place.

I'm not even concerned about highly paid superintendents. I use that only as a comparison, where we have superintendents who are elected on a political basis through all the horrible things that are happening in our school districts, and how teachers become teachers and

how principals become principals. You don't have much to do with that out in your school district. It's a reality. It's horrible in the City of New York. I can't speak for the other Big Four, but the fact of the matter is that we can certainly bring some more money into it.

And if we're talking about changing and giving relief in one area, you certainly should be talking about the other part of the state. Greatest opportunity in the world. Let's change the formula, whether it be CUNY and SUNY -- and you know this. Like I said before, it's worth saying one more time before I sit down.

Education is probably one of the greatest subsidies that we have for middle class folks. Subsidies, same thing we talked about. We called it welfare the other day. It's another form of subsidy. It applies in the simple category of your concern. We increase SUNY and we cut CUNY, and CUNY represents the City of New York and that's the concept.

ACTING PRESIDENT KUHL: Senator

Stavisky.

SENATOR STAVISKY: Will the sponsor of the bill yield for a question?

ACTING PRESIDENT KUHL: I'm sure he will.

SENATOR LAVALLE: Yes.

SENATOR STAVISKY: Senator LaValle, what is your understanding of the term municipal overburden? Are you familiar with the term?

SENATOR LAVALLE: Yes.

SENATOR STAVISKY: What is your understanding of the term?

SENATOR LAVALLE: Why don't you tell us, Senator.

SENATOR STAVISKY: No, I'm asking you. You're the sponsor of this bill. If it were a Stavisky bill, I would gladly yield. But it's a LaValle bill, so I am asking you. What is your understanding of the concept, municipal overburden?

SENATOR LAVALLE: We establish a baseline and we say anything beyond that there

is an overburden. The municipality is over burdened.

SENATOR STAVISKY: Not quite. But thank you very much, Senator.

SENATOR LAVALLE: Why did you ask me the question?

SENATOR STAVISKY: I thought you would have a more diversified explanation.

Municipal overburden, Senator LaValle and my colleagues, refers to the assumption of costs that large cities and sometimes small cities are required to assume in order to provide essential services for their constituents. The net effect is that not only are real property taxes used in the City of New York, in Buffalo, in Rochester, in Syracuse and Yonkers, as well as in small cities, but sometimes they are also required -- in order to meet those needs, those burgeoning needs, they are required to impose an income tax and a local sales tax and a business tax and fees and all kinds of revenue sources that are imposed on the constituents living in those cities, and the

cumulative effect can be just as great as the highest real estate tax that is imposed on any school district covered by your legislation.

What I'm saying, in effect, Senator LaValle, I wish that you had developed a true statewide bill instead of a narrowly defined, provincial bill that benefits only certain school districts and doesn't take into account that municipal overburden affects city school districts that often are strapped for money and whose constituents and taxpayers make contributions above and beyond the real estate tax which, when these contributions are paid for the support of essential services, are as onerous, Senator LaValle, as onerous as anything that you tried to remedy in your piece of legislation.

Senator and my colleagues, let us stop this business of looking out only for our own school districts and begin to look out for the school systems throughout the State of New York in a fair and equitable manner. Let ideas like this, together with ideas for addressing

municipal overburden, be dealt with on a bipartisan manner by legislators in the Majority and Minority in both houses of the Legislature, because I tell you that dividing line doesn't mean that all wisdom starts and stops at the aisle and there are things that could be proposed that would make -

ACTING PRESIDENT KUHL: Senator Stavisky, I'm going to beg your indulgence while the stenographer changes her tape.

SENATOR STAVISKY: What I am suggesting is an end to the business of looking out for only our own school districts and for getting others that also have pain and are overburdened, and that's what I propose we begin to do here and stop this business of one house bills that do not fairly and equitably deal with multiple educational needs.

Senator Marchi has a right to recognize the overburden that is imposed on his constituents, and other legislators in the City of New York and in Rochester and Buffalo and Yonkers and Syracuse have a right to be

concerned over the municipal overburden that is imposed on their constituents, and I know Senator Marchi is a fair legislator, and I wish that everyone would follow his example in trying to deal with the total needs and not being provincial and shortsighted and petty in the way that legislation is proposed.

If there was a desire to do something like this, do it during the budget negotiations, invite other legislators to join with you. We would never fail to respond to a request for a meeting on school finance because it effects every legislator here in this chamber and in the other house. And that's what I would like to see, a spirit of cooperation, a spirit of mutual assistance, a fair approach, not this kind of help me and forget about others who may have even greater overburden for their taxpayers.

And for these reasons, I would suggest that this is not a well-founded bill. This is a special interest bill to benefit some parts of the state and not the rest of the

state.

In many cases, the rest of the state may have equal problems. There are problems of poor people. There are problems of broken homes. There are problems of limited English proficiency. There are problems of reading skill deficiency. There are problems of children with disabilities. And the largest percentage of these special needs are invariably found in the cities which are excluded from this LaValle bill, and that I'm sure was not your intention. I hope it was simply an oversight.

Let us together show that a better bill to help school districts throughout the State of New York could be fashioned on a bipartisan basis.

For that reason, I will urge my colleagues to vote in the negative on this bill.

ACTING PRESIDENT KUHL: Senator Jones.

SENATOR JONES: Yes, on the bill. I had two things, I guess, maybe uppermost in my mind and heart when I came here

two years ago; and as all of you know, I came from a lifetime of children and education, and I think I saw two things that had to happen. We had to provide an equal and an adequate education for all the children in our state, but I also knew we had to do something for the property owners because we are overburdening them, and we all know that, in taxes to pay for this education.

I helped to spend over $400 million yesterday that everyone of us sitting here knows in our heart we don't have, because I thought it was at least worth looking at and discussing, and maybe it would relieve the taxpayers. And I'm willing to support Senator LaValle today even though I agree with my colleagues who are saying that it's not equal and adequate for all the children.

I'm probably in a unique position since I represent almost eleven suburban school districts and I represent a portion of the city, so I'm definitely between, as somebody described it yesterday, a rock and a hard place.

But I think what that says is we're not doing what we need to do. We've got some pieces out here, but somehow we've got to put these pieces together. I was sitting here today thinking it's almost like I'm operating in a field of dreams. I think we all want something to happen, but we're not getting there. Reality seems to be missing from all the equations.

I know Senator LaValle cares about education. I've sat next to him on the Education Committee this year, and I know how he feels about it, and I know Senator Cook does too. But, somehow, we still haven't met the goal of this equal and adequate education for everybody and a real genuine relief for taxpayers.

So I'm going to hope that all of these are out here now and I'm going to support them, and I hope somewhere the things will happen that Senator Stavisky just said, that we get together and maybe we do address all these, and hopefully next year we can do the right

thing by all the children and at the same time maybe even the right thing for our taxpayers.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Yes. I would like to explain my vote, Mr. President.

ACTING PRESIDENT KUHL: All right. Senator Leichter to explain his vote.

SENATOR LEICHTER: I'm sorry that I can't agree with this act of faith on the part of Senator Jones that if we pass enough unrealistic bills that that will lead us to some solution. Not only is this bill unrealistic, it's highly unfair to over 50 percent of the children of the State of New York.

And I just marvel at the discipline of the Republican Party to see legislators from my city which is so badly injured by this bill but they will vote for it. I can't believe that. And legislators from other parts of the state, Syracuse and other cities, that are disadvantaged by this bill.

But, my friends, there is something else about this bill which I think makes it not only unrealistic but I think deceptive. Nobody mentioned but this bill has a fiscal note to it of $250 million. How is that money going to be raised? I want to relieve taxpayers, and I want to relieve particularly taxpayers of the real estate tax because it's a regressive, burdensome tax. But then you've got to say how you are going to replace that money, and I don't see Senator LaValle doing it.

He has picked up the Cook magic wand which is that we can say we'll spend money, we will provide for government services, but we never have to pay for it because we're not engaged in serious legislation. We're engaged

in press release legislation.

So, Senator Jones, I'm sorry, I don't think that's going to lead us to the solution.

Mr. President. I vote in the negative.

ACTING PRESIDENT KUHL: Senator Leichter in the negative.

Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1451 are Senators Babbush, Connor, DeFrancisco, Dollinger, Galiber, Gold, Kruger, Leichter, Markowitz, Mendez, Montgomery, Ohrenstein, Onorato, Smith, Solomon and Stavisky. Ayes 42. Nays 16.

ACTING PRESIDENT FARLEY: That bill is passed.

SENATOR PRESENT: Mr. President. Can we take up 1105.

ACTING PRESIDENT FARLEY: 1105. The Secretary will read it.

THE SECRETARY: Calendar Number

1105, by Senator Stafford, Senate Bill Number 7970A, proposing an amendment to the constitution in relation to the use of certain forest preserve land.

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

SENATOR STAFFORD: Thank you, Mr. President. As you all remember, with the support of this body, the Assembly and the Governor's office, as a matter of fact when the whole program started for the Olympics our present Governor was Secretary of State, was very involved and helpful. We constructed a biathlon course and that involves skiing and shooting, and there are about 76 miles of trials -- 75 acres, I'm sorry -- 75 acres that the course is presently on.

Many of us realize that technically the course really isn't in accordance with the forever wild provision, and we have worked with a number of organizations including the Adirondack Mountain Club, which is

supporting this resolution, the Governor's office, the Governor and others, and we will be again putting 75 acres back into the forest preserve, and we will have this course so that we will be able to maintain it as it should be maintained for a world class course.

I would say this, and of course this is my area, but I'm very aware that it affects all of our areas of the state. It is really important that we keep up these various venues because people do come in from all areas of the globe, and it's for the good of the areas and it's for the good of the state.

So, again, I would ask that this resolution be passed so we can do what the resolution calls for.

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Senator yield for a question?

SENATOR STAFFORD: Sure.

SENATOR OPPENHEIMER: I think you just said something that I wasn't aware of. Did

you say there would be 75 acres of replacement land?

SENATOR STAFFORD: At least.

SENATOR OPPENHEIMER: At least. That is nowhere noted, unless it's been amended subsequently. I see no mention of where that land is and the size of the land.

SENATOR STAFFORD: Line 18, Senator. "Lands of equal to or greater than the value of the lands removed from the forest preserve."

SENATOR OPPENHEIMER: If you would yield for another question?

SENATOR STAFFORD: Sure.

ACTING PRESIDENT FARLEY: Would you yield for another question, Senator Stafford?

SENATOR OPPENHEIMER: Is it specified what the land is and where it is and the size of it, other than just some general reference?

SENATOR STAFFORD: I have a great deal of confidence in this Legislature. And as

you notice, it says it will be subject to legislative action, and you certainly have my word that it will be done. I'm sure I can rely upon you supporting that.

SENATOR OPPENHEIMER: If this is in, and I have no reason to disbelieve the Senator. On the bill.

ACTING PRESIDENT FARLEY: On the bill.

SENATOR OPPENHEIMER: I only know that this -- from the memorandums that I have that this is considered to be a disastrous precedent, because we are taking land that is supposed to be forever wild as mentioned by Senator Stafford previously, and that's an illegal use and hardly worthy of a state constitutional amendment. However, I was unaware that there is an exchange of land. I would merely say at this juncture until I find out more specific information that this is one of our few if the only three smoke stakes from the Environmental Planning Lobby, which means that they consider this about as bad as you can

get. So unless I have some information otherwise, I would suggest that those of you who care about maintaining the forever wild nature of our Adirondack Park area, those specific areas that are forever wild, that you vote against this and then we will see what develops as far as a swap of land.

ACTING PRESIDENT FARLEY: Call the roll on the resolution.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1105 are Senators Babbush, Connor, Dollinger, Gold, Jones, Kruger, Leichter, Markowitz, Ohrenstein, Onorato, Oppenheimer, Stachowski and Stavisky. Ayes 45. Nays 13.

ACTING PRESIDENT FARLEY: The resolution is adopted.

Senator Kruger, why do you rise?

SENATOR KRUGER: Mr. President. I ask to be recorded in the negative on Calendar Number 261.

ACTING PRESIDENT FARLEY: 261?

SENATOR KRUGER: Yes.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT FARLEY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar Number 261.

ACTING PRESIDENT FARLEY: 261, without objection.

Regular order. Secretary will read it.

THE SECRETARY: Calendar Number 1454, substituted earlier today, by Member of the Assembly Pordum, Assembly Bill Number 10681, an act to amend the General Municipal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57. Nays 1. Senator Galiber recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT FARLEY: Senator Stavisky.

SENATOR STAVISKY: Without objection, may I be recorded in the negative on Calendar 1407.

ACTING PRESIDENT FARLEY: 1407, Senator Stavisky will be in the negative, without objection.

Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Due to other legislative business, I was out of the chamber. On bill Number 1451, I request unanimous consent to be in the negative.

ACTING PRESIDENT FARLEY: Without objection, Senator Waldon is in the negative on

Calendar 1451.

SENATOR WALDON: Thank you, Mr. President.

THE SECRETARY: Calendar Number 1457, substituted earlier today, by Member of the Assembly Balboni, Assembly Bill Number 10407B, Estates, Powers and Trusts Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Mr. President. If I can explain my vote on this. I found the bill very, very confusing, and I want to thank Assemblyman Balboni, who was able to come over here and give me a really fine explanation, and I vote in the affirmative.

ACTING PRESIDENT FARLEY:

Continue the roll call.

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

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

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

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

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1460, substituted earlier today.

SENATOR GOLD: Excuse me, Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes. Can we reconsider 1459 the one we just did, please?

ACTING PRESIDENT FARLEY: Hold on. It just went out the door.

We got it. The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is before the house.

SENATOR GOLD: Mr. President. Could we please lay that aside temporarily.

ACTING PRESIDENT FARLEY: All right with you, Senator Present?

SENATOR PRESENT: Yes.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

SENATOR GOLD: Thank you.

ACTING PRESIDENT FARLEY: Senator Waldon.

SENATOR WALDON: Mr. President. Please suffer an interruption again.

ACTING PRESIDENT FARLEY: Would you take the conversations outside the chamber, please.

Senator Waldon, you have the floor.

SENATOR WALDON: Yes. I request unanimous consent to be recorded in the negative. I think Calendar Number is 698. Is that the correct one?

ACTING PRESIDENT FARLEY: I don't know.

SENATOR WALDON: It is 698.

ACTING PRESIDENT FARLEY: Is that what you want? 698, without objection.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: You're welcome.

THE SECRETARY: Calendar Number 1460, substituted earlier today, by the Assembly Committee on Rules, Assembly Bill Number 11581B, an act to amend Chapter 147 of the Laws of 1994, amending the General Business Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: That

bill is passed.

THE SECRETARY: Calendar Number 1462, by Senator Lack, Senate Bill Number 8527, in relation to appointment of certain non-judicial officers and employees of the unified court system.

ACTING PRESIDENT FARLEY: Read the last system.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar number 1464, by Senator Cook, Senate Bill Number 8653, in relation to making an additional apportion ment of building aid to the Ellenville Central School District.

ACTING PRESIDENT FARLEY: Read the last section. There's a home rule message

or not? Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Gold.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: I asked that 1459 be reconsidered. We don't have an objection to it, though.

ACTING PRESIDENT FARLEY: May we call up 1459.

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

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

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

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR PRESENT: Lay it aside for the day.

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

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Would you recognize Senator Marchi.

ACTING PRESIDENT FARLEY: Senator Marchi.

SENATOR MARCHI: There is at the desk a privileged resolution, and I request that it be read in its entirety.

ACTING PRESIDENT FARLEY: The Secretary will read Senator Marchi's privileged resolution in its entirety.

THE SECRETARY: Legislative Resolution, by Senators Marchi, DiCarlo and Maltese, honoring the late Michael J.Petrides of Staten Island.

WHEREAS, this legislative body learned with sadness of the death on June 30th of Michael J. Petrides of Staten Island, educator, engineer, political leader, member of the New York City Board of Education, and key adviser to governmental figures and institutions;

Because it is the custom of this legislative body to declare its appreciation for the work of those like Michael J. Petrides who perform outstanding service in the interests of

the public -- the interests of the public in New York State;

Michael J. Petrides earned the respect and admiration of all who knew him during the course of an illustrious professional and public service career;

Mr. Petrides prepared for his professional career by attending and graduating from the City College of New York with a Bachelor's Degree in electrical engineering and from New York University where he earned a Master's Degree in electrical engineering;

Mr. Petrides served as a faculty member of the College of Staten Island beginning in 1965 and attained the status of Professor of Engineering Technology and was advanced to the chairmanship of the Department of Electrical Technology at the College of Staten Island in the 1970s;

Mr. Petrides' professional tenure also included service as Associate Dean of the faculty of CSI from 1977 to 1984. During that time, he developed many educational and training

programs with public agencies and unions including the New York City schools and the United Federation of Teachers;

Mr. Petrides won community- and Citywide esteem when, as Dean of Administration for the College of Staten Island from 1985 to 1990, he produced plans for a new consolidated campus for the College of Staten Island, a capital project of more than 400 million;

Mr. Petrides also served as a senior executive officer overseeing ten of the college's support departments including the offices of financial aid facilities, institutional research, the registrar and the computer center;

Mr. Petrides made signal contributions to the public schools of New York City in his service as a member of the City Board of Education, to which he was appointed by Borough President Guy Molinari for a four-year term beginning July 1, 1990 and also as a member of the Staten Island Community School Board, to which he was elected in 1973 and re-elected in

1975. During that tenure he served as Community School Board chairman in 1974;

Mr. Petrides took an additional public service duties -- took on additional public service duties in January of 1994 when Mayor Rudolph Giuliani appointed him as special adviser to the mayor, an unsalaried position;

Michael Petrides added expertise and sage counsel to the work of the New York State Legislature's Temporary Commission on New York City Schools Governance, to which he was appointed in September 1989;

Mr. Petrides performed valuable service as a member of the Education Subcommittee of the Staten Island Charter Commission, the state panel assigned to explore possible secession of Staten Island from New York City;

Mr. Petrides' wide ranging service also included the vice-chairmanship of the New York City Districting Commission from 1990 to 1991 and as an expert consultant to the state Supreme Court-appointed Congressional

Reapportionment Panel;

Michael Petrides also won respect and praise for his involvement in the political life of his community and city as witness his effective service as campaign manager for the elections and reelections of Staten Island Borough President Guy V. Molinari and for Congresswoman Susan Molinari, and for the campaigns of Rudolph Giuliani for Mayor of New York in 1989 and 1993;

Mr. Petrides earned acclaim and respect for his many contributions to the public advancement, but none more notable than his efforts to restore cohesion and moral authority to the City's educational system;

Mr. Petrides was also known for his many services to charitable and civic endeavors;

Mr. Petrides' passing removes from the public scene an individual and leader of extraordinary ability and character who earned the respect and esteem of all who knew him;

Because it is the custom of this legislative body to pay homage to such individuals;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations and voice its admiration and respect for Michael Petrides and his enviable record of accomplishments; and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be conveyed to Mrs. Petrides and the other members of the Petrides family.

ACTING PRESIDENT FARLEY: On the resolution, Senator Marchi.

SENATOR MARCHI: Mr. President, it certainly was not in the fullness of time. Michael Petrides was 53 years of age and, for a person as vital as he was and uniquely gifted in so many different areas and for the distinctive contributions that he consistently made to the people of my community and the people of this City and state, we certainly extend our sympathy and condolences to his family.

Senator Galiber and I both worked with Mike Petrides in our school study proceedings, and he indicated to me that he would like to be included on as a sponsor. So we miss his passing and -- and extend to his family respect and affection which he certainly earned in great measure in his brief but brilliant period of service and living in the community of Staten Island and the city of New York.

ACTING PRESIDENT FARLEY: Senator DiCarlo.

SENATOR DiCARLO: Mr. President, I also rise to mourn the death of Mike Petrides. I've known Mike -- I knew Mike for a number of years, and besides the fact that he was a valued member of the Board of Education in the city of New York, I remember Mike as probably one of the finest political minds that I have ever encountered. Sometimes we were on opposite ends, but most of the time we were together. He was a fine man and he will be missed.

ACTING PRESIDENT FARLEY: Senator Maltese on the resolution.

SENATOR MALTESE: Mike Petrides, I think, showed especially in the last few months the type of human being he is by -- or he was by suffering through in this last terrible period and, at the same time, constantly reassuring his friends, his wife, his children, his family.

I think what he has done for not only Staten Island but the City and the state will remain with us far, far into the future. In Staten Island he was a friend to many of the people not only in public office, being so close to the Borough President and the Congresswoman and so many -- so many other close friends, but also at the same time friendly with so many of the students during his tenure at the College of Staten Island, and always available at any hour of the day or night for a telephone call, a communication, a consultation on politics. He truly loved politics and, as Senator DiCarlo has indicated, as Senator John Marchi has indicated,

he was a master of it.

He was a family man. He loved his family and made certain that he spent a great deal of time with them. He faced his - his end, his untimely end, very, very bravely. He was a good friend to all of us, and I and many others will miss him a great deal.

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

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present, what's your pleasure?

SENATOR PRESENT: Mr. President, I move that we adopt the Resolution Calendar.

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

SENATOR GOLD: One second, sir.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Hold on. You want to open one of them up, Senator?

SENATOR DiCARLO: Yes, Mr. President. I have two resolutions at the desk. I ask the titles be read and they be opened up to the membership, 4191 and 4192.

ACTING PRESIDENT FARLEY: Can we adopt the Resolution Calendar first? We're on that adoption. Just a moment. We'll read the titles to Senator DiCarlo's resolutions.

THE SECRETARY: Legislative Resolution 4191, by Senators DiCarlo and Larkin, commemorating the 50th Anniversary of the retaking of the Philippine Islands by Allied forces and the landing at Leyte Province by General Douglas MacArthur October 20th, 1994.

Also Legislative Resolution Number 4193, by Senator DiCarlo, honoring New York State's veterans on November 11, 1994, Veterans Day.

ACTING PRESIDENT FARLEY: All in favor of adopting the resolutions.

SENATOR GOLD: Mr. President, I

assume those are the two that we'll have everybody on unless they indicate otherwise.

ACTING PRESIDENT FARLEY: That's up to the Acting Majority Leader.

SENATOR PRESENT: Mr. President, following past practices, everyone will be on except those who decline.

ACTING PRESIDENT FARLEY: Without objection. If you have an objection to the resolution, please notify the desk. Otherwise your name will be on it.

All in favor of the resolution say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolutions are adopted.

Now, on the Resolution Calendar, all in favor of adopting the Resolution Calendar please say aye.

(Response of "Aye.")

Those opposed no.

SENATOR GOLD: No.

The Resolution Calendar is adopted.

SENATOR SEWARD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, do we have any housekeeping? Let's take care of it. Following that, we'll stand at ease.

ACTING PRESIDENT FARLEY: Senator Seward. I think we have a housekeeper.

SENATOR SEWARD: Yes, Mr. President. I would inquire of the clerk how I was reported as voting on Calendar Number 1435.

ACTING PRESIDENT FARLEY: You were recorded in the affirmative -- in the negative. In the negative, I'm sorry.

SENATOR SEWARD: I would ask to be recorded in the affirmative on that bill.

ACTING PRESIDENT FARLEY: Without objection, you will be recorded in the affirmative. Are there any other motions or housekeeping on the floor?

If you could wait just a moment,

Senator Present, we have a motion that is coming down, from where I don't know.

SENATOR PRESENT: Then we'll be at ease.

ACTING PRESIDENT FARLEY: From Senate desk operations.

Senator Daly for a motion that has arrived.

SENATOR DALY: Mr. President, I wish to call up my bill, Print Number 7884, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Daly, Senate Bill Number 7884-A, an act to authorize the legislative body of the county of Niagara to permit payment of county and municipal taxes.

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR DALY: I now move to reconsider the vote by which the bill passed this house.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

ACTING PRESIDENT FARLEY: Bill is before the house. Senator Daly.

SENATOR DALY: Mr. President, I now move to discharge from the Committee on Rules, Assembly Print 9588-A, and substitute it for my identical bill.

ACTING PRESIDENT FARLEY: Substitution is ordered. Do you have any amendments to that?

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

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

SENATOR PRESENT: Is that the amendment we were waiting for?

ACTING PRESIDENT FARLEY: That's the amendment we were waiting for.

SENATOR PRESENT: Mr. Cornell, do

you have another motion?

ACTING PRESIDENT FARLEY: We have a procedural snag here.

SENATOR PRESENT: Let's unsnag it.

ACTING PRESIDENT FARLEY: That bill is restored to third reading, without objection.

Senator Present.

SENATOR PRESENT: Mr. Cornell, do you have something you need?

ACTING PRESIDENT FARLEY: The Senate will stand easy for just a few seconds.

The Senate is going to stand at ease for just a few minutes.

(The Senate stood at ease from 5:16 to 5:19 p.m.)

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: I believe Senator Montgomery has something she would like to take care of.

ACTING PRESIDENT FARLEY: Senator

Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I'd like unanimous consent to be in the negative on 1105.

ACTING PRESIDENT FARLEY: 1105, Senator Montgomery will be in the negative without objection.

Senator Goodman.

SENATOR GOODMAN: Mr. President, may I please be in the negative on Calendar Number 1105?

ACTING PRESIDENT FARLEY: 1105, Senator Goodman will be in the negative without objection.

SENATOR LEVY: Mr. President.

ACTING PRESIDENT FARLEY: Yes.

SENATOR LEVY: Mr. President.

ACTING PRESIDENT FARLEY: Hold on. Senator Levy.

SENATOR LEVY: Yes. There will be a meeting of the Transportation Committee in Room 124 at 5:45 to consider the nomination of

Peter Kalikow to be a member of the Metropolitan Transportation Authority.

ACTING PRESIDENT FARLEY: The Transportation Committee will be meeting in Room 124 of the Capitol at 5:45 for the purpose of a confirmation hearing.

SENATOR GOLD: Is he appearing?

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: Senate will come to order. The Chair recognizes Senator Present.

SENATOR PRESENT: Can we call up Calendar 890.

ACTING PRESIDENT KUHL: Call up Calendar Number 890, which is not on the active list. Ask the Secretary to read.

THE SECRETARY: Calendar Number -- on page 20, Calendar Number 890, by Senator Daly, Senate Bill Number 7511-A, an act relating to constituting Chapter 34 of the Consolidated Laws and to amend the Partnership Law, the Business Corporation Law, the Arts and Cultural Affairs Law and the Tax Law and the General City

Law and the Administrative Code of the city of New York.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Is there a message of necessity at the desk on this bill?

ACTING PRESIDENT KUHL: I'm informed by the Secretary that there is a message of necessity at the desk.

SENATOR PRESENT: Mr. President, I move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The message of necessity is accepted. Secretary will read the last section.

THE SECRETARY: Section 76. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

SENATOR LEICHTER: Explanation, please.

SENATOR DALY: May I explain my vote, or explanation?

ACTING PRESIDENT KUHL: Senator Daly to explain the bill.

SENATOR DALY: This bill is probably the most important bill to come out of the Corporations Committee this year or in several years.

It allows the formation of -

ACTING PRESIDENT KUHL: Senator Daly, excuse me for just one moment. There's a little noise in the chamber. We're having a difficult time here transcribing what's to be said, so we ask the members to take their places, staffs to take their places and for any conversations that are being held in the back of the chambers, would ask the members to either take those conversations outside or the staff to take them outside.

Senator Daly.

SENATOR DALY: Mr. President, this bill has as its primary purpose the es tablishment of two new business entities in New York State which, when formed and functioning, will make New York State much more attractive to business, for a business, in which to organize.

The two entities are called, one, the limited liability company and the second is a limited liability partnership. These companies have the tax attributes of a partnership, the single taxation, while they contain also the liability benefits of a corporation.

This has become a very popular structure for the organization of new business in this country. They began back in 1978 in Wyoming and truly came into their own in the late '80s with the tax reform measures that occurred in Washington at that time, and with the IRS interpreting those laws to allow a company to form which, as I said, as a limited liability company can add the tax benefits of a

single taxation and the tax -- I should say the liability benefits of a corporation.

Because of this, LLCs have been formed in over 44 states already, and it's very important that New York State join with that growing list. I would point out that the primary benefit from this -- from this type of business entity is the attraction into New York and particularly New York City, and I want to point this out to my New York City colleagues because I think it's important, that they realize that this new kind of business entity is going to be very, very advantageous to the City.

I know that New York City is on a -- is attempting to add to its reputation as the international capital of the world, and foreign corporations like this type of business entity. They're used to this type of business entity in the nations in which -- the other nations in which they do business, and I think you'll find that, as foreign corporations come over into New York City, the fact that we have

-- we allow them in New York State to form as limited liability companies will be an advantage to the City in attracting foreign companies.

As far as the fiscal impact, we do have a -- a fee which has been agreed upon with the Assembly and the Governor and the Senate of $50 for a partner, per member in a limited liability company, and for partner in a limited liability partnership with a $10,000 cap which would be -- which would mean that a partnership or a company would have more than - if they had more than 200 partners or members, that they would be capped at $10,000.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Is there any other member wishing to speak on the bill? Secretary will read the last section.

THE SECRETARY: Section 76. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR DALY: Mr. President, may

I explain my vote.

ACTING PRESIDENT KUHL: Senator Daly to explain his vote.

SENATOR DALY: I would like to point out that we've been working on this for three years and certainly my counsel, Richard Runes, has spent a great deal of time in putting this together and, in his particular case, I would like to recognize his efforts.

I vote yes.

ACTING PRESIDENT KUHL: Senator Daly in the affirmative. Announce the results.

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, can we continue to stand at ease.

ACTING PRESIDENT KUHL: The Senate will continue to stand at ease.

(The Senate stood at ease from 5:58 to 6:30 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332, an immediate meeting of the Rules Committee in Room 332. The Senate will continue to stand at ease.

ACTING PRESIDENT KUHL: For those who didn't hear, there will be an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

The Chair recognizes Senator LaValle.

SENATOR LAVALLE: Yes, Mr. President. If I can have unanimous consent to be recorded in the negative on Calendar Number 1337, Senate Print Number 6851-A.

ACTING PRESIDENT KUHL: Without objection, Senator LaValle will be recorded in the negative on Calendar Number 1337.

The Senate will stand at ease.

(The Senate stood at ease from 6:31 to 7:27 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, I'm going to call an immediate conference of the Majority in Room 332 and we will now receive the report of the Rules Committee.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Majority in the Majority Conference Room, Room 332.

The Chair recognizes Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President.

There will be an immediate conference of the Minority.

ACTING PRESIDENT KUHL: Immediate conference of the Minority in the Minority Conference Room.

We'll return to reports of

standing committees, ask the Secretary to read.

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

Senate Bill Number 113-A, by Senator Montgomery, city of New York to reconvey its interests in certain real property;

1196-A, by Senator Levy, establish a Temporary State Commission on Real Property Taxation;

1226-B, by Senator Goodman, Administrative Code of the city of New York;

1304, by Senator Levy, restore funds to school districts;

2763-A, by Senator Larkin, Administrative Code of the city of New York;

3330, by Senator Waldon, an act to amend the Social Services Law;

5145-A, by Senator Maltese, Executive Law;

6616-B, by Senator Seward, city of Oneonta to discontinue the use and sell certain park lands;

6704-A, by Senator Libous, the city of New York to reconvey its interests in certain lands;

6878, by Senator Johnson, Local Finance Law;

7117, by Senator Present, County Law;

7159-A, by Senator Skelos, providing for retirement credits for Lawrence Bergman;

7162, by Senator Bruno, Public Authorities Law;

7197-A, by Senator Velella, Education Law;

7212-A, by Senator Bruno, Economic Development Law;

7245, by Senator Marino, proposing an amendment to the Constitution;

7413, by Senator Smith, city of New York to reconvey its interest in certain real property;

7650-A, by Senator DeFrancisco, Department of Social Services to contract for

chronic care management;

7700-A, by Senator Present, General Municipal Law;

7733-A, by Senator Stafford, State Finance Law;

7802-A, by Senator -- by Senator Tully, an act to amend the Public Health Law;

7863, by Senator Spano, an act to amend the Labor Law;

7904-A, by Senator Bruno, Labor Law;

8014-A, by Senator Spano, Civil Service Law;

8071-B, by Senator Skelos, an act to amend the Insurance Law;

8074-A by Senator Larkin, Real Property Tax Law;

8151-A, by Senator Skelos, Public Authorities Law;

8161-A, by Senator Larkin, Local Finance Law;

8187-D, by Senator Lack, an act to amend the Penal Law;

8218-B, by Senator Nolan, an act to amend the Tax Law;

8233-A, by Senator Skelos, town of Hempstead to lease certain lands;

8237, by Senator Tully, Executive Law;

8314-A, by Senator LaValle, Social Services Law;

8329-A, by Senator Volker, Criminal Procedure Law;

8374-A, by Senator Wright, computation of the indirect component of the basic reimbursement rate received by Mercy Hospital;

8395, by Senator Tully, Public Health Law;

8401, by Senator Daly, Executive Law;

8420-A, by Senator Velella, Retirement and Social Security Law;

8560-A, by Senator Larkin, Real Property Tax Law;

8569-A, by Senator Velella,

Insurance Law;

8618, by Senator DiCarlo, Education Law;

8631, by Senator Wright, Labor Law;

8632-A, by Senator Seward, Public Service Law;

8650, by Senator Spano, Criminal Procedure Law;

8671, by Senator Stafford, State Finance Law;

8683, by Senator Cook, Judiciary Law;

8686, by Senator Bruno, Civil Service Law;

8696, by Senator Stafford, amends Chapter 656 -- 656 of the Laws of 1993;

8705, by Senator Lack, an act to amend Chapter 502 of the Laws of 1992;

8710, by the Committee on Rules, grant Patricia Schuster retroactive membership in the Teachers Retirement System;

8712, by Senator Present, an act

to amend the Town Law;

8715, by Senator Maltese, an act to amend the Tax Law;

8725, by Senator Levy, Public Buildings Law;

8727, by the Committee on Rules, authorizing the town of Greece to discontinue the use of a portion of a road;

8735, by the Committee on Rules, Administrative Code of the city of New York;

8737, by the Committee on Rules, Real Property Tax Law;

8741, by Senator Babbush, Commissioner of General Services to sell certain lands;

8743, by Senator Nozzolio, amends Chapter 615 of the Laws of 1992;

8764, by Senator Seward, State Finance Law;

8769-A, by Senator Bruno, General Municipal Law;

8773, by Senator Cook, Commissioner of Health to identify certain

unresolved early intervention programs;

8777, by Senator Volker, providing a retirement incentive for the city of Buffalo;

8839, by the Committee on Rules, State Finance Law;

7729, by Senator Markowitz, authorizing the city of New York to reconvey its interest in certain real property;

All bills reported directly for third reading.

ACTING PRESIDENT KUHL: All bills are reported directly to third reading.

A reminder that all members of the Majority should report immediately to the Majority Conference Room for a Majority conference. All members of the Minority should report immediately to the Minority Conference Room for a Minority conference.

The Senate will stand at ease.

(The Senate stood at ease from 7:50 to 8:21 p.m.)

ACTING PRESIDENT KUHL: Senate

will come to order.

The chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, I think we got a little housekeeping on the calendar.

ACTING PRESIDENT KUHL: We've got a few motions. Recognize Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Libous, on page 18, I offer the following amendments to Calendar 856, Senate Print 7586-A, and ask that said bill retain its place on Third Reading Calendar.

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

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, I offer the following amendments to Calendar Number 646, Senate Print 6579-C, and ask that said bill retain its place, for Senator DeFrancisco.

ACTING PRESIDENT KUHL:

Amendments received and adopted; bill will retain its place on the Third Reading Calendar.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Levy, please place a sponsor's star on Calendar 1028.

ACTING PRESIDENT KUHL: A sponsor's star is placed on Calendar Number 1028.

The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, the Senate will stand in recess until 11:00 p.m.

ACTING PRESIDENT KUHL: The Senate stands in recess until 11:00 p.m. this evening.

(The Senate stood in recess from 8:23 p.m. until 5:17 a.m., July 1, 1994.)

SENATOR NANULA: Mr. President.

ACTING PRESIDENT VELELLA: Senator Nanula.

SENATOR NANULA: I'd like unanimous consent to be recorded in the negative

on Calendar Numbers 1105, 1443, 261 and 1451.

ACTING PRESIDENT VALELLA:

Without objection, so ordered.

Senator Paterson.

SENATOR PATERSON: Mr. President, with unanimous consent of whoever is still here, I'd like to be recorded in the negative on Calendars 1105, 261, 1440, 1451 and 1407.

ACTING PRESIDENT VELELLA:

Without objection.

Senator Stafford.

SENATOR STAFFORD: Thank you. Could I, on behalf of Senator Levy, please remove the sponsor's star on Calendar Number 1028.

ACTING PRESIDENT VELELLA: Star is removed.

SENATOR STAFFORD: On behalf of Senator Saland, please remove a sponsor's star on Calendar 1414.

ACTING PRESIDENT VELELLA: Star is removed.

Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

I wish to call up my bill, Print Number 1520-A, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT VELELLA: Secretary will read.

THE SECRETARY: By Senator Goodman, Senate Bill 1520-A, an act to amend the Tax Law.

SENATOR TULLY: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT VELELLA: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

SENATOR TULLY: Mr. President, on behalf of Senator Goodman, I now offer the following amendments.

ACTING PRESIDENT VELELLA: Amendments received.

Senator Tully.

SENATOR TULLY: Mr. President, on page number 9, I offer the following amendments to Calendar Number 478, Senate Print 5881-C, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT VELELLA: Amendments received.

SENATOR TULLY: And that was done on behalf of a wonderful Senator named Saland.

On behalf of Senator LaValle, Mr. President, on a page number to be determined, I offer the following amendments to Calendar Number 1502, Senate Print Number 8314-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT VELELLA: Amendments received.

Senator Tully.

SENATOR TULLY: Mr. President, on a page to be determined, I offer the following amendments to Calendar Number 1472, Senate Print Number 1226-B, and ask that said bill retain its place on the Third Reading Calendar on behalf of

Senator Goodman.

ACTING PRESIDENT VELELLA: Amendments received.

SENATOR PRESENT: Mr. President, can we come to messages from the Assembly.

ACTING PRESIDENT VELELLA: The Chair hands down a message from the Assembly. Secretary will read.

THE SECRETARY: The Assembly has sent to the Senate Assembly Bill Number 11973, by the Assembly Committee on Rules, an act to amend the Insurance Law, in relation to continuing the purpose and extending the existence of the Medical Malpractice Insurance Association.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT VELELLA: Senator Present.

SENATOR PRESENT: Senator Gold?

ACTING PRESIDENT VELELLA: The bill is advanced to third reading.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT VELELLA: There is a message of necessity.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT VELELLA: All those in favor of receiving the message, say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT VELELLA: Senator Gold.

SENATOR GOLD: I know it's late and it may have been my ears, but I want to make sure this is 11703-A, is that correct?

ACTING PRESIDENT VELELLA: That's correct, Senator.

SENATOR GOLD: Thank you.

ACTING PRESIDENT VELELLA: Read the last section.

THE SECRETARY: Section 6. This

act shall take effect July 1.

ACTING PRESIDENT VELELLA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT VELELLA: The bill is passed.

Senator Present.

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

ACTING PRESIDENT VELELLA: The Senate stands in recess until noon today, adjourned.

(Whereupon at 5:31 a.m., July 1, 1994, the Senate adjourned.)