ALBANY, NEW YORK

July 2, 1994

1:59 a.m.

REGULAR SESSION

SENATOR NICHOLAS A. SPANO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT SPANO: The Senate will come to order. All please rise for the pledge of Allegiance to the Flag.

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

In the absence of clergy, please bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Friday, July 1st, 1994. The Senate met pursuant to adjournment. The Journal of Thursday, June 30th, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Motions and resolutions.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Call up Calendar 1552.

ACTING PRESIDENT SPANO: The Secretary will read Calendar 1552.

THE SECRETARY: Calendar Number 1552, by Senator Kuhl, Senate Bill Number 8150-A, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Call up Calendar 1527.

ACTING PRESIDENT SPANO: The Secretary will read Calendar 1527.

THE SECRETARY: Calendar Number 1527, by the Assembly Committee on Rules, Assembly Bill Number 12107, an act to authorize the Commissioner of General Services to sell certain lands in Kings County.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SPANO: The bill is passed.

SENATOR PRESENT: Mr. President, Calendar 1533, please.

ACTING PRESIDENT SPANO: The Secretary will read Calendar 1533.

THE SECRETARY: Calendar Number 1533, by the Senate Committee on Rules, Senate Bill Number 8839, an act to amend the State Finance Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Calendar 1562.

ACTING PRESIDENT SPANO: The Secretary will read Calendar 1562.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT SPANO: Lay aside Calendar 1532.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT SPANO: The Senate will come to order.

Senator Present.

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

ACTING PRESIDENT SPANO: The Secretary will read.

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

Member of the Citizen's Policy and Complaint Review Council: Joseph W. Burke of Utica.

Member of the Correction Medical Review Board: Michael Baden, M.D., of New York City.

Member of the New York Job Development Authority: Karen Noble Hanson of Rochester and David Peirez, Esq. of Great Neck.

Member of the New York State Bridge Authority: Raina E. Maissel of Wappingers Falls.

Member of the New York State Housing Finance Agency: Mark Russell Chassin Chassin, M.D., of Slingerlands.

Member of the Board of Directors of the New York State Science and Technology Foundation: David N. Campbell of Buffalo.

Member of the Republic Airport Commission: S. Lawrence Hornstein of Freeport and Margaret Marino-Castaldo of Lindenhurst.

Member of the Small Business Advisory Board: John Wang of Roslyn.

Member of the State Public Transportation Board: Walter George Rich of Cooperstown.

Member of the Stewart Airport Commission: Arthur N. Wilcox, Jr. of Middletown.

ACTING PRESIDENT SPANO: The question is on the confirmations of the nominees. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominees are confirmed.

The Secretary will read.

Senator Leichter.

SENATOR LEICHTER: Mr. President, I just want to inquire, was -- among the nominees that were approved, was John Dyson included -

ACTING PRESIDENT SPANO: No.

SENATOR LEICHTER: -- both as to his appointment as a member of the MTA and also his appointment as a trustee of Cornell University?

ACTING PRESIDENT SPANO: Neither of those were confirmed yet, Senator.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT SPANO: The Secretary will read.

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

Board of Trustees of the City University of New York, Jerome Berg of Staten Island; Edith B. Everett of New York City; James

P. Murphy of New York City; Harold Jacobs of Lawrence; Herbert Berman, Esq. of Forest Hills; and Herman Badillo of the Bronx.

ACTING PRESIDENT SPANO: Senator Marchi.

SENATOR MARCHI: I would suggest that the bells be rung. I'm not going to call for a slow roll call, but I don't -- I would like to see at least some substance, some presence here on the floor on the question that we're -- the nominations that we are now going to discuss. So if we can make an appeal for those who are outside the chamber and within range of our voice, that they be here, then I think we might proceed.

ACTING PRESIDENT SPANO: Could we please ask the Sergeant-at-arms to ask the members to come into the chamber. At Senator Marchi's request, we're ringing the bells in the Capitol and ask all Senators to please be present in the chamber.

Senator Marchi. Can we please have some order in the chamber.

SENATOR MARCHI: Are you going to -- will you please start the process. We already have the name of Mr. Berg, right?

ACTING PRESIDENT SPANO: The question is on the -

SENATOR MARCHI: It was reported earlier today.

ACTING PRESIDENT SPANO: The question is on the appointments and reappointments to the Board of Trustees of City University. There are five appointments, Senator Marchi. There are five appointments plus Mr. Berg from the previous list, so there are six.

SENATOR MARCHI: That's correct.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Can we take up the nomination of Mr. Berg first?

SENATOR GOLD: Without objection.

THE SECRETARY: The nomination of Jerome Berg of Staten Island, member of the Board of Trustees of the City University of New

York.

ACTING PRESIDENT SPANO: Senator Marchi.

SENATOR MARCHI: Mr. President, Mr. Berg has not served on the board yet and is going to be filling a -- well, a prospective vacancy as soon as he occupies the seat.

He's uniquely qualified and has been favorably reported out of committee. I will reserve my comments for the balance of the nominations.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yeah, thank you, Mr. President.

Since I was the one who asked that Mr. Berg's appointment be laid aside, I think that it's only fair that the record be entirely clear that I did that in order to have all of the nominees out here and that there is nothing negative that I know of about Mr. Berg nor should anybody interpret my request as being negative, and I intend to support the

nomination, along with my colleague, Senator Marchi.

ACTING PRESIDENT SPANO: The question is on the confirmation. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

Senator Present, shall we continue with the -- Senator Present.

SENATOR PRESENT: Mr. President, let's take up the other five nominations.

ACTING PRESIDENT SPANO: The Secretary will read.

THE SECRETARY: Board of Trustees of the City University of New York: Edith B. Everett of New York City; James P. Murphy of New York City; Harold Jacobs of Lawrence; Herbert Berman, Esq. of Forest Hills; and Herman Badillo of the Bronx.

ACTING PRESIDENT SPANO: Senator Marchi.

SENATOR MARCHI: Mr. President, if I were voting on an individual basis, I would indicate some selectivity, but I will vote and I will oppose the -- personally, just my own vote, on the collective group, and I'm doing this for the purpose of giving visibility to a situation, I think, that requires a lot of attention and understanding of the trauma and the distress that the people of my community have suffered as a result of inadvertence and unfairness, I think, with respect to President Volpe.

President Volpe was the president of the College of Staten Island and was summarily dismissed and in a process which partially made up the treatment that he was accorded following the dedication of the consolidated campus which he played a material role in bringing about.

The situation that I'm going to point to, I think it ought to be noticed by those who are in a position to influence the course of events in the future. We have 21 separate institutions in the City University of

New York, the graduate school and university center, and I -- these names may or may not be obsolete, but the pattern is unique and consistent:

Dr. Frances Degen Horowitz, Bernard Baruch College; Matthew Goldstein, Brooklyn College; Vernon Latin, the City College; and that may be a vacancy here, but is Dr. Yolanda Moses. I'm not sure. Hunter College, Dr. Paul LeClerc; John Jay College of Criminal Justice, Gerald Lynch; Herbert Lehman College, Ricardo Fernandez; New York City Technical College, Charles Merideth; City University Medical School and Sophie Davis School of Biomedical Education, Dean Stanford Roman, Dr.; City University of the School of Law at Queens College, Haywood Burns; Queens College, Dr. Shirley Strum Kenny who now is in Stony Brook, I believe; the College of Staten Island, Dr. Marlene Springer, a southerner who brought excellent credentials. She was selected in consideration of two candidates, both of whom were acknowledged as possessing superior

qualities and qualifications for the office that they were seeking. She is presently the president of the College of Staten Island. I have no quarrel with Dr. Springer, and I wish her well in her missions. She brought her qualities in good faith and was -- did have the substance to bring to her candidacy.

York College, Josephine Davis; Bronx Community College, Leo Corbin -- Corbie (Acting); Eugenio Maria De Hostos Community College, Dr. Isaura Santiago Santiago; Kingsborough Community College, Leon Goldstein; Fiorello La Guardia College, Raymond Bowen; Borough of Manhattan Community College, Dr. Stephen Curtis; Medgar Evers, Edison O. Jackson and Queensborough Community College, Dr. Kurt Schmeller.

You will notice, Mr. President, that we have 21 institutions and 21 presidents, none of whom are of Italian origin. I have taken great pains to point out that I am not a professional ethnic and there is no seat that I feel should be required to any special category

other than the qualifications that they bring, but in a university, urban university, you will notice that there is great attention paid to the host community in which they are -- and the host constituency in which they are serving, and this has been uniformly respected, in each and every case.

Now, it can't be when there was a choice between a Dr. Springer who was qualified and a Dr. Carrubba, Robert W. Carrubba, who is a New Yorker, a Danforth Foundation teacher fellow with a doctorate from Princeton University; at Pennsylvania State University, Professor of Classics; an associate dean of the graduate school; American Council of Education fellow in academic administration; classicist in both Latin and Greek, treasurer of the American Philosophical -- Philological Association, six years; the founding dean of the graduate school of the University of North Carolina and provost and vice-chancellor of the University of Wisconsin, acknowledged as having comparable qualities to the candidate that was selected.

I was informed by the chancellor that the -- there was a preference on the part of the constituent groups for Dr. Springer, and there was a slight preference for that reason. My speaking to constituent groups did not indicate that there was a fairly even division.

Now, what was the expectation of the people of Staten Island? I point out the fact that they probably had the largest Italo American population proportionately of any county in the state of New York. There had been this traumatic experience of seeing at least for a few days, the humiliation that was inflicted on Dr. Volpe, and there was partial -- there was a partial making up of what had happened, but nevertheless, it did leave a troubled constituency out there with the circumstances that had occurred. So the expectation was that here was the only -- the only Italian-American who is serving as president of one of the 21; suddenly there are none.

Now, I ask you, what is the matter -- what was the matter with Robert W.

Carrubba? Was he chopped liver? Was he someone that -- beyond serious consideration? In a situation as close as that where they -- where there was an honest differences of opinion but agreement on the fact that both were qualified, we continue the same pattern that we have known before.

Was I trying to make this an Italian seat? No, because if I may name the person who came from Staten Island that I suggested that he submit his name, and you would know him if I mentioned his name, was uniquely qualified, and I think would have been accepted into that community and he was not of Italian origin.

I don't want to point an accusing finger at a particular individual, because I think there's a mind set here that these things could be assayed with indifference, that there wasn't an interest in seeing this take place, in seeing that fairness was indulged in in making a selection of a figure, and you have to remember that this is Staten Island, a very -- a

community that is very inclusive, that knows each other, and extensive networking. Dr. Volpe was also well liked because he was extensively involved in the entire community. It was not just the academic setting that he was in, but in the entire community of the Island, so that he was warmly accepted by everyone, whether they went to college or not, from St. George to Tottenville, from the length and breath of the Island. So that's the type of a community that a president was serving in in this community.

I just hope out of this experience, Mr. President, I'm going to enter a dissenting vote on the nominees, this group of nominees, to indicate my displeasure at the events that have taken place, but I hope that it will serve a useful purpose, because this system cannot go on. If there's a qualified person, that person should be recognized. I mean, this -- is there an antipathy? Probably not, but there is an indifference, and certainly a contemptuous reckoning of the effect that this -- these acts of -- these disinclinations to

consider in 21 out of 21, even one -- even one, and most appropriately, in the ones -- one institution where it would have been the most dramatic, simply cannot -- cannot go on. It can not go on without rendering a disservice to the City University, and I'm sure that those who are -- who have been nominated, those who serve on the faculty, those who are elated and all of us who have an interest in the City University of New York, do not want to see that happen, but it is a condition that cannot persist, and I'm going to enter a dissenting vote for the purposes I indicated, and prayerfully, I have the expectation; otherwise, I believe that this body will have to take more concrete action with respect to the studied indifference to a significant portion of the community that makes up this city and that also make up the student body of the City University. It cannot stand. It will not be permitted to stand because it's going to have, I believe, the attention of many members of this chamber, whatever their background is.

ACTING PRESIDENT SPANO: Senator LaValle.

SENATOR LAVALLE: Thank you, Mr. President.

It's always difficult to follow Senator Marchi who speaks with such authority and passion and really a sense of caring which he exemplified this evening.

We spent a great deal of time, not only this evening in the Finance Committee, as the chairman guided us through, I think a very heated discussion, a very thorough discussion, on the nominees, but also spent a good deal of time, Senate Higher Education Committee, questioning the nominees, and in the interim, there has been a flurry of activity on the part of a number of members asking questions, and what tonight's discussion in the Finance Committee was all about was whether we, tonight, have all the information that we need on individuals who are reappointments, with the exception of Mr. Berman and the nominee from Staten Island that we did earlier, who comes in

also with a clean slate.

We have shown -- over a period of time, we showed in the budget that we care very much about the City University. There's a very distinguished university with individuals who have been Nobel Prize winners, CEOs of corporations and other distinguished individuals. We care not only in giving the institution the money, the energy it needs to do its job, but tonight, and in the preceding weeks, this Legislature very clearly is saying, we care about the governing structure, the people who make the decisions about the public policy of our public universities. Tonight, we happen to be talking about the City University. On another occasion, we'll be talking about State University.

So many times we are accused of passing on nominees without a lot of debate or not a lot of discussion, even though it does happen in committee. This set of nominees, I believe went through a very rigorous debate tonight in the Finance Committee. I think that

the individuals who have served, Mr. Badillo, Ms. Everett, Chairman Murphy, Mr. Jacobs, have all -- they have been fine individuals. We are not questioning their motivations. What we are questioning tonight is whether they have the energy and the capacity to establish a public policy that is consistent with the many stake holders that they must deal with, and we, as a Legislature, are one of the stakeholders.

Senator Marchi very clearly tonight indicated a problem that seems to be systemic. Just but a year ago we had a dispute in which many members were involved in the Calandra Institute in which they felt the dollars that we put in the budget were not properly utilized.

That is not so much the debate tonight. The debate tonight is over a contentiousness about how public dollars are spent, how the CEO is operating, and whether the dollars are being utilized wisely. In my judgment, we, in this Legislature, do not have all of the facts to make a decision.

If it was up to me, I would ask that this vote be held for a day or two before we had all the facts, but the nominees are before us this evening, and so we must try to reach a decision on their prior records, with faith and trust that they will be guided by the debate and the discussion tonight and fulfill their responsibilities with the kind of energy that we are demanding of them on this night.

I feel as chairman, that on the information that I have, I'm going to be consistent in the vote that I cast in the Finance Committee. I voted in the affirmative for Mr. Badillo and I voted in the negative on the other -- on the other nominees, and I will be consistent with that tonight, and I am doing so as the chairman of the Higher Education Committee, because it is important that a message -- and I know that I've talked to Chairman Murphy in the short time between the Finance Committee and this point in time, and I felt good about those discussions, and I hope that he will move forward in the spirit of the

discussions that we had.

This is very, very serious business. We're talking about a lot of money that we spend on our public universities and more importantly, we are expending those dollars because we are making an investment in our students and in our future and higher education is integral to the economic development strategy and plans of this state. If higher education succeeds, we as New Yorkers succeed.

I want to thank Senator Stafford very much for your very capable handling of the deliberations in the Finance Committee, Senator, and for allowing a very open, free-spirited and productive discussion to go on in your committee. I think all -- all of us will benefit by your leadership you displayed tonight.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yes, Mr. President. Firstly, I would like to clarify the situation, one nominee. Mr. Berg from Staten

Island is a new nominee. I think it should be pointed out that Herbert Berman is a new appointment, also.

(Whereupon, there was comment from the floor.)

Yes. No, I understand that.

And while people are talking about many differentiations, Herbert Berman, who happens to be a constituent of mine, is an individual who is extraordinarily well qualified, has not been part of the board. He is a graduate of Harvard Law School and NYU, and I can give you the total of his background, and I'm trying to hold this down. It's quarter to 3:00 in the morning. But I believe a check of his resume -- Phi Beta Kappa, et cetera -- you will find that he is someone who really has earned the vote of confidence from this body.

As far as the rest of it is concerned -- and, again, I'll try and be brief. I have spoken to the five nominees. I am not on the Higher Education Committee. I had hoped that they might appear before the Finance

Committee, and that apparently did not work out, but I did speak to each of them individually.

As far as Mr. Badillo is concerned, I don't have the slightest problem. I think that he has made it perfectly clear as a member of the board that problems with the chancellor are such that he would like to take action. As far as some of the others, perhaps this process has, so to speak, given them religion. I don't know. I hope so. But my conclusions of the process briefly are these:

I think the situation with Mr. Volpe was absurd. It was ridiculous. There was no reason to have his presidency undone, and I think it was handled in a clumsy manner.

I have heard members of the board, some of these nominees, tell me that they thought that the chancellor was a person with new fresh ideas. That may or may not be true, but what is true is that she has acted as a bull in a china shop because it's not only a question of having good ideas, it's a question of dealing with the individuals you have to deal with on a

day-by-day basis.

Now, Senator Marchi made reference to the fact that Queens College has lost a president, Shirley Strum Kenny, and I will say to the body, don't shed any tears for Shirley Strum Kenny because she will now become the president of Stony Brook, a significant increase in salary, and she's doing fine. So I don't care, quotes/unquotes, about Shirley Strum Kenny in this debate. What I care about is that a clumsy chancellor created a situation where we lost her from the CUNY system.

The Calandra lawsuit I felt was an embarrassment all the way, and I felt that the board at some point should have done something about that. I don't know what they thought they were standing up for, but it was an embarrassment to all of us.

Reference was made by Senator LaValle of the New York Times investigations and I don't know whether Senator Connor intends to speak or not, but I thought his remarks in the committee were excellent. And basically we

should not be in a situation where we are judging or holding back, waiting for newspapers to act. What is of significance is that the board itself has made it clear that they are doing their own audit. That they are looking into the charges themselves; and, after all, what then should they do?

One of my criticisms of governmental agencies from time to time is that they don't clean their own house. You can't be responsible if something goes wrong all the time, but you can stand up to it and try to clean your own house. I think that is something that is being done.

I think one of healthiest things which is being done for CUNY is today -- as a matter of fact, it's this week. I think that members of this board have gone through a week of shivering and shaking and wondering, and that might be what is necessary.

If you take a look at the credentials, I think the Governor has complied with the Constitution. He has given us people

who are qualified. The Senate's job is not, I don't believe, to second guess but to determine whether or not we confirm people, qualified people, from the Governor.

It is my hope that the assurances that I have received from the board, particularly from its chairman, that the chancellor will not be on any pedestal, that the chancellor will be judged the way that she should be judged, fairly. She should certainly -- she's entitled to that, but if she's wrong and if she's hurting the system, the thousands of children who depend upon the integrity of that system are entitled to have something done about it.

With that in mind, I intend to support the nominees, all of the nominees. And I point out one more time that in the case of Mr. Berman that is a new appointment, and I think he deserves the opportunity to serve.

ACTING PRESIDENT SPANO: Senator Maltese.

SENATOR MALTESE: Mr. President.

I wish to simply echo and reiterate the remarks stated earlier by my good friend and colleague Senator John Marchi, who has stated them far more eloquently than I could and register the same dissent without any comment or evaluation of the individual merits and qualifications of the other candidates. Those of whom I know are very impressive.

So I wish the record to indicate my dissent on the other candidates with the exception of Mr. Berg.

ACTING PRESIDENT SPANO: Senator DiCarlo.

SENATOR DiCARLO: Mr. President. I rise in support of my colleague from Staten Island, and we serve representing Staten Island together. And let me say at the outset that I am in no way in favor of a quota system and I never have and I never will be, but I think there is something rotten going on.

There are 900,000 Italian Americans who live in New York City. And most people, when you say that number, they get taken

aback and they say, "You're kidding!"

-- 900,000 Italian-Americans in New York City.

And Senator Marchi said there are 21 institutions in the CUNY system in New York City and not one of them is headed by an Italian-American.

We are not the type of people who take to the streets. We are not the type of people who get angry. Maybe it's our fault, but it is an absolute disgrace that this is happening.

I intend to vote for my constituents against every reappointment to this system. They should be ashamed of themselves. I, for one, see through what they have done. My constituents see what they have done, and I would like to be recorded in the negative for myself and my constituents on Edith Everett, James P. Murphy, Harold Jacobs, and the other two are new appointments, except for Herman Badillo, who's a friend; and because he is already there, I vote against him also.

ACTING PRESIDENT SPANO: Senator

Connor.

SENATOR CONNOR: Thank you, Mr. President. I will be brief at this hour. Once again, we find ourselves discussing a very serious matter, discussing as is appropriate, using this opportunity to reflect upon our concerns for one of the major institutions in our state and certainly the major educational institution in our city. We find ourselves doing it in the wee hours of the morning, many of us after having been up all night last night. Enough said. It certainly reflects on this institution poorly, in my opinion.

Be that as it may, I am going to vote for these nominees, although I want the record to be perfectly clear. I represented Staten Island, as I've said before on the floor sometimes in lighter veins, for ten years. I came to know the College of Staten Island as an institution, as a resource, as a vital resource for the people of Staten Island as well as the people of Brooklyn. I believe at least half of the students in the College of Staten Island

hailed from Brooklyn, and I came to know Dr. Volpe very well. I knew of his plans, the St. George campus. When they had two campuses, the St. George campus was in my district. I came to know him very well, know many members of his administration.

Working together with Senator Marchi and our colleagues in the Assembly, we embarked in support of a plan to consolidate the campus. We were supportive on many other programs. Dr. Volpe was a fine scholar, a committed administrator and an enlightened human being, who was totally dedicated to that institution.

Subsequent to my being reapportioned out of Staten Island, events unfolded which disturbed me very, very much. I think things were handled in a way that Dr. Volpe was really left with no other choice but to leave. I think commitments that were made were reneged upon. I think that situation was, in my opinion, handled very, very poorly by the chancellor. Senator Gold has pointed out there

were other situations where the chancellor appears to have handled a situation poorly at great expense to the institutions involved in terms of the losses.

I have over the years been very, very proud to represent a portion of those 900,000 Italian-Americans which Senator DiCarlo told us about. I think we all represent some of that, more or less, and I followed with great curiosity over the years -- more than curiosity, concern -- various lawsuits, sometimes by individual professors, sometimes by groups, which alleged discrimination in the CUNY system against Italian-American faculty, against programs that reflected Italian-American studies orientation. Many of these lawsuits were successful. They involved denials of tenure, promotion, and so on.

And I really do hold the board of trustees responsible. I believe that once it became apparent to all that these allegations of discrimination had merit, the board of trustees should have taken steps to diffuse the issue by

meeting the concern expressed there. I don't know whether this situation -- you know, you can play with it intellectually. Does it reflect out and out hostility to an ethnic group? Does it reflect ignorant stereotyping on the part of certain administrators and faculty toward Italian-American faculty members and programs and students? Or is it another embodiment of the so-called political correctness that often infects educational institutions so that one philosophical view or another predominates and scholars who share a different political philosophy are viewed not as scholars with a different opinion as they ought to be and as presenting diversity and a chance for interchange and tension which brings about thought and reflection, but are sometimes viewed as, gee, they're troglodytes or they're crazy radicals, back and forth, whichever way, in a way that's not representative of what the ideals of academia ought to be, that, in fact, become a corruption of the concept of university.

So I share very, very deeply

those concerns, Senator Marchi, and am always available -- and I have written my share of letters about this to the chancellor and the trustees -- always available to agitate and take political action as needs be to correct that.

With respect to the concerns that Senator LaValle brought about, events that are apparently unfolding in the New York Times or whatever, I will repeat what I said in the committee. The Constitution and statutes involved say the Governor nominates and we confirm, not that the Governor nominates and the New York Times confirms or any other newspaper confirms. It's our responsibility to make a judgment. As Senator Gold pointed out, we do it with all the information we have that's verifiable. Our committees have the power to investigate, to subpoena, to get beyond the facts.

To say, "Well, I hear there are serious allegations that may come out in a newspaper story shortly," is just not the way we can do business. We have all learned in

politics certainly that you can't believe everything you read, although sometimes it's true, but there are other processes to bring out the truth. And, you know, to say, well, it's - you know, I don't -- would we be concerned if serious allegations were going to be raised in a few weeks by, I don't know, the Post? Probably. How about the Village Voice? Maybe some of us. The National Enquirer? I mean a newspaper is a newspaper, and we certainly can't base any action on that nor should we delay moving forward with these nominees.

So I'm going to vote for them. I have different levels of regard for the performance of the incumbents in different situations. I have differed with some of them, the actions they've taken. But on the whole, my judgment as a Senator is they are qualified to serve. They have been nominated by the Governor. I certainly will badger them, cojole them, or whatever, to hold them to some of the standards I think they ought to be held to and to get them to address some of the problems that

are quite apparent.

But, Mr. President, I am going to vote for them.

Thank you.

ACTING PRESIDENT SPANO: The question is on the confirmation of the afore mentioned nominees.

Senator Padavan.

SENATOR PADAVAN: Mr. President. I would like to have my votes recorded as follows: In opposition to the reappointment of Edith B. Everett and the reappointment of Harold Jacobs. In all other instances, I vote in the affirmative.

ACTING PRESIDENT SPANO: The question is on the confirmation of the afore mentioned nominees. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(Response of "Nay.")

The nominees are concerned.

Senator Present.

SENATOR PRESENT: Mr. President. There being no further business, I move we adjourn -- that we stand in recess until tomorrow at -- today -- today. We'll get it straight. Stand in recess until 10:00 a.m.

ACTING PRESIDENT SPANO: Senate will stand in recess until 10:00 a.m.

Senator Present.

Can we please have some order for an announcement.

SENATOR PRESENT: Mr. President. I would like to remind the members that we didn't change -- we are in today, and most of you have been checked in.

ACTING PRESIDENT SPANO: Senate will stand in recess until 10:00 a.m.

(Whereupon, at 3:05 a.m., Senate recessed.)

ALBANY, NEW YORK

July 2, 1994

11:23 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

....At 11:08 a.m....

SENATOR PRESENT: I'm calling all members of the Senate to report to the Senate as soon as possible. We've got a long agenda today. I'd like you here to support your bills. You'll be able to speak when you want. If you're not here, your bill may be passed over. Please come to the chamber immediately.

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

ACTING PRESIDENT KUHL: The Senate will come to order.

Return to motions and resolutions. Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Tully, please place a sponsor's star on Calendar Number 1573.

ACTING PRESIDENT KUHL: Calendar Number 1573 will be starred at the request of the sponsor.

Senator Present, we have some substitutions from the Assembly here.

SENATOR PRESENT: Let's make the substitutions.

ACTING PRESIDENT KUHL: Secretary will read the substitutions.

THE SECRETARY: On page 4 of today's calendar, Senator Stafford moves to discharge the Committee on Rules from Assembly Bill Number 1702-C and substitute it for the identical Third Reading Number 24.

On page 6, Senator Velella moves to discharge the Committee on Rules from Assembly Bill Number 1917-A and substitute it for the identical Third Reading 352.

On page 6, Senator DiCarlo moves to discharge the Committee on Rules from Assembly Bill Number 1605-B and substitute it for the identical Third Reading 393.

On page 9, Senator Bruno moves to discharge the Committee on Rules from Assembly Bill Number 1409-A and substitute it for the identical Third Reading 584.

On page 13, Senator Johnson moves to discharge the Committee on Rules from Assembly Bill Number 11931-A and substitute it for the identical Third Reading 718.

On page 18, Senator Farley moves to discharge the Committee on Rules from Assembly Bill Number 1069-A and substitute it for the identical Calendar Number 1032.

On page 21, Senator Goodman moves to discharge the Committee on Rules from Assembly Bill Number 8600-C and substitute it for the identical Third Reading 1240.

On page 21, Senator Farley moves to discharge the Committee on Rules from Assembly Bill Number 11868-A and substitute it for the identical Third Reading 1253.

On page 25, Senator Padavan moves to discharge the Committee on Rules from Assembly Bill Number 12181 and substitute it for the identical Third Reading 1566.

On page 30, Senator Skelos moves to discharge the Committee on Rules from Assembly Bill Number 12109 and substitute it for the identical Third Reading 1601.

ACTING PRESIDENT KUHL: All substitutions are ordered.

SENATOR DALY: Mr. President.

ACTING PRESIDENT KUHL: Senator Daly.

SENATOR DALY: Page 21, Calendar Number 1309, Assembly 9588-A, would you recommit that -- strike the enacting clause and recommit the bill, 1309. Calendar Number 1309.

ACTING PRESIDENT KUHL: Calendar Number 1309, the enacting clause is stricken and it's recommitted.

The Chair recognizes Senator Present.

SENATOR PRESENT: Thank you.

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

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

THE SECRETARY: On page 4, Calendar Number 24, substituted earlier today, by member of the Assembly Tokasz, Assembly Bill Number 16702-C, an act to amend the Tax Law, exempting volunteer fire departments and companies and ambulance companies from payment of a motor fuel tax.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 41, by Senator Tully, Senate Bill Number 233-A, an act to amend the Criminal Procedure 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 95, by Senator Johnson, Senate Bill Number 661-A, an act to amend the Environmental Conservation 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 393, substituted earlier today, by member of the Assembly Lentol, Assembly Bill Number 60 -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR LACK: Excuse me, Mr. President. Are there live lists? They're not on -- we don't have any in the back of the room;

on all the desks, they're not on.

ACTING PRESIDENT KUHL: Thank you for bringing it to our attention, Senator Lack. We'll make sure that the Secretary or the Sergeant-at-Arms gets you some of those before we proceed.

Senator Lack, have you been provided with an active list at this time?

SENATOR LACK: Yes, I have.

ACTING PRESIDENT KUHL: O.K. The Secretary will continue to call the non-controversial calendar.

THE SECRETARY: Calendar Number 486, by Senator Levy, Senate Bill Number 1245-A, an act to amend the Public Authorities 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.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 537, by Senator Levy, Senate Bill Number 7430-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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 584, substituted earlier today, by member of the Assembly Tonko, Assembly Bill Number 1499-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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 607, by member of the Assembly Bragman, Assembly Bill Number 748-C, an act to amend the Vehicle and Traffic Law and the Education Law.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 635, by member of the Assembly Lentol, Assembly Bill Number 6438-B, an act to amend the Civil Practice Law and Rules.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 692, by Senator Maltese, Senate Bill Number 7444-A, an act to amend the Criminal Procedure 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.

SENATOR GOLD: Lay -

ACTING PRESIDENT KUHL: 690 - Calendar Number 692 is being called.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 718, substituted earlier today, by the Assembly

Committee on Rules, Assembly Bill Number 11931-A, an act to amend the Environmental Conservation 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 885, by Senator Volker, Senate Bill Number 2109-C, 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 952, by the Assembly Committee on Rules, Assembly Bill Number 11493-A, an act to amend the Public Service 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1028.

SENATOR PRESENT: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1092, by member of the Assembly Clark, Assembly Bill Number 10114-B, an act to amend the Executive Law.

SENATOR GOLD: Hold on one second, please.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1104, by Senator Johnson, Senate Bill Number 7837-B, an act to amend 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1124, by Senator Lack, Senate Bill Number 7166-A, an act to amend the Public Authorities Law, Long Island Rail Road.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1240, substituted earlier today, by the Assembly

Committee on Rules, Assembly Bill Number 8600-C, an act to amend the General City 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1246, by Senator Hannon, Senate Bill Number 8530-A, an act to amend the Insurance Law and the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: Read the last section.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1253, substituted earlier today, by the Assembly

Committee on Rules, Assembly Bill Number 11868 A, an act to amend the Public Housing 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1314, by Senator Padavan, Senate Bill Number 8102-A, an act to amend the Navigation 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1316, by Senator Tully, Senate Bill Number 8392, an act to amend the Public Health Law.

SENATOR GOLD: Mr. President, what number?

ACTING PRESIDENT KUHL: 1316, Calendar Number 1316 is being called.

SENATOR PRESENT: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR GOLD: Hold on. 1309 was done, and 1314 was done, are we right there?

ACTING PRESIDENT KUHL: Senator Gold, Calendar Number 1314 was recommitted by Senator Daly just a few minutes ago.

SENATOR GOLD: I'm sorry, and now we've just passed this phenomenal Padavan bill that's going to protect us all on the water. Fine.

ACTING PRESIDENT KUHL: Secretary will continue to call the non-controversial

calendar.

THE SECRETARY: Calendar Number 1318, by Senator Holland.

SENATOR HOLLAND: Star the bill.

ACTING PRESIDENT KUHL: Star the bill at the request of the sponsor.

THE SECRETARY: Calendar Number 1325, by Senator Saland, Senate Bill Number 797-C, an act to amend the State Finance Law and the Election Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR GOLD: Lay aside.

THE SECRETARY: Calendar Number 1369, by Senator Daly, Senate Bill Number 7968-B, an act to amend the Environmental Conservation 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1386, by Senator Tully.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1397, by Senator Johnson, Senate Bill Number 8020-A, an act to amend the Education Law.

SENATOR GOLD: Last section - lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1410, by the Assembly Committee on Rules, Assembly Bill Number 12153, Retirement and Social Security Law.

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: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1473, by Senator Levy, Senate Bill Number 1304, to restore funds to school districts.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1546, by Senator Present, Senate Bill Number 7014, an act to amend the General Municipal Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1549, by the Assembly Committee on Rules, Assembly Bill Number 8886-A, an act to amend the Public Health Law.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1551, by Senator -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1564, by Senator Volker, Senate Bill Number 8821.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1565, by the Committee on Rules.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 1566, substituted earlier today, by the Assembly Committee on Rules, Assembly Bill Number 12181, Education Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Hold on one minute. Lay it aside for Senator Galiber.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1572.

ACTING PRESIDENT KUHL: Senator Present, Senator Gold, there's no home rule message at the desk, so we're forced to lay the bill aside. Lay the bill aside.

THE SECRETARY: Calendar Number 1573, by Senator Tully, Senate Bill Number 48...

ACTING PRESIDENT KUHL: 1573 was starred at the request of the sponsor.

THE SECRETARY: Calendar Number 1574, by Senator -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1575, by member of the Assembly McLaughlin, Assembly Bill -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1576, by the Assembly Committee on Rules, Assembly Bill Number 11473, re-opening the optional retirement plan for Joseph N. Torre.

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: Announce the results when tabulated.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58, nays 2, Senators Dollinger and Gold recorded in the

negative -- excuse me. In relation to Calendar Number 1576, Senators Dollinger, Gold, Leichter and Mendez recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar 1577, by Senator Saland, Senate Bill Number 7961-A, an act to amend the Election Law.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR GOLD: Thank you.

THE SECRETARY: Calendar Number 1578, by the Assembly Committee on Rules, Assembly Bill Number 12115, an act to amend the Public Health Law.

SENATOR GOLD: Hold on one second. 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1579, by Senator Lack, Senate Bill Number 8213-B, 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 58, nays 2, Senators Cook and Wright recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1581, by member of the Assembly Kaufman,

Assembly Bill Number 9219-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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1582, by the Assembly Committee on Rules, Assembly Bill Number 11851-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.)

SENATOR LIBOUS: Would you lay that aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1583, by the Assembly Committee on Rules, Assembly Bill Number 11946, 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1584, by the Assembly Committee on Rules, Assembly Bill Number 12048, fire protection in the village of Liverpool.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1585, by Senator Levy, Senate Bill Number 8726.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1586, by the Assembly Committee on Rules, Assembly Bill Number 12087, an act to amend a chapter of the laws of 1994.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1589, by Senator Maltese, Senate Bill Number 8750, an act to authorize Edward Kneafsey to purchase retirement service credit.

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.

SENATOR GOLD: Mr. President.

SENATOR LEICHTER: Mr.

President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: I believe I was the only one that asked that 1582 be laid aside.

ACTING PRESIDENT KUHL: Senator Leichter, can we complete the roll call and I'll be right back to you.

SENATOR LEICHTER: Oh, I'm sorry.

THE SECRETARY: Those recorded in the negative on Calendar 1589 are Senators Dollinger, Gold and Leichter, ayes 57, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President, if you would call 1582 again. I laid that aside by mistake, and I believe I was the only one who had a question on it.

ACTING PRESIDENT KUHL: Secretary will call 1582.

THE SECRETARY: By the Committee on Rules, Assembly Bill Number 11851-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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1591, by the Assembly Committee on Rules, Assembly Bill Number 12146, validating certain zoning ordinances enacted by the town of Clermont.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1592, by the Assembly Committee on Rules, Assembly Bill Number 12118, 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1593, by Senator Bruno, Senate Bill Number 8766-A, an act to amend the Tax 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1594, by the Assembly Committee on Rules, Assembly Bill Number 12127, authorizing the city of Troy to issue serial bonds.

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1596, by the Assembly Committee on Rules, Assembly Bill Number 12113, 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 immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1597, by Senator Lack.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Present.

SENATOR PRESENT: Can you lay

aside 1597, 1598, 1599 and 1600.

ACTING PRESIDENT KUHL: Calendars Numbers 1597, 1598, 1599 and 1600 will be laid aside.

SENATOR PRESENT: And we'll take those up first when we go to non-controversial.

ACTING PRESIDENT KUHL: Fine.

THE SECRETARY: Calendar Number 1601, substituted earlier today, by the Assembly Committee on Rules, Assembly Bill Number 12109 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 60.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR LACK: Mr. President.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Lack.

SENATOR LACK: Mr. President, can I please move to reconsider the vote on 1579.

ACTING PRESIDENT KUHL: Secretary will call the roll on reconsideration. Excuse me. Secretary will read.

THE SECRETARY: By Senator Lack, Senate Bill Number 8213-B.

ACTING PRESIDENT KUHL: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: Senator Lack, the bill is before the house.

SENATOR LACK: O.K. Can we just lay it aside temporarily until we can uncross it.

ACTING PRESIDENT KUHL: Bill will be laid aside.

The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President,

can we go to controversial calendar and start with Calendar 1597 and when we finish those four bills, go to regular order, please.

ACTING PRESIDENT KUHL: The Chair will direct the Secretary to call the controversial calendar starting with Calendar Number 1597.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Yes. Before you do that, may I have unanimous consent to be recorded in the negative on Calendar 1369?

ACTING PRESIDENT KUHL: 1369, Senator? Senator, without objection, Senator Leichter will be recorded in the negative on Calendar Number 1369.

Senator Goodman.

SENATOR GOODMAN: Same request, negative on 1369, please.

ACTING PRESIDENT KUHL: Without objection, Senator Goodman will be recorded in the negative on Calendar Number 1369.

Can we have some order in the

house. Lot of movement, got some long debates to take care of, lot of bills to take care of before we conclude the session today, so I'll ask the staff at the back of the chamber either to find seats, the members to find seats, if they have conversations to take place, please take them out of the chamber.

Secretary will call Calendar Number 1597.

THE SECRETARY: On page 30, Calendar Number 1597, by Senator Lack, Senate Bill Number 8188, proposing an amendment to the Constitution in relation to the number of judicial departments and districts.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Gold.

SENATOR GOLD: Mr. President, this is an issue which has been around for a while, and I just think it would be very helpful if the distinguished chairman of Judiciary spent a little more time than he might, but to just give us the background and go into this

particular bill.

SENATOR LACK: Thank you.

ACTING PRESIDENT KUHL: Senator Lack for an explanation.

SENATOR LACK: Yeah. Thank you, Senator Gold.

Mr. President, in the interests of time, could I please ask that we consider all as one, Calendars 1597, 1598, 1599 and 1600, instead of the Secretary reading it, can I please, with Senator Gold's permission and Senator Present's permission, deem this discus sion to be on all four of those Constitutional Amendments, and then we just take the vote on all four afterwards.

ACTING PRESIDENT KUHL: Senator Gold, do you have any objection to that?

SENATOR GOLD: Mr. President, I do not have any objection anticipating that we're not going to have anywhere near a two-hour debate, God forbid, unless there is an issue that people want and then we'll go into it. But other than that, I think Senator Lack's

suggestion makes sense.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Yes, separate bills.

Thank you, Mr. President.

All four of these, Mr. President, are Constitutional Amendments to establish a new appellate department in the state of New York. I appreciate -

ACTING PRESIDENT KUHL: Is that your staff standing directly behind you?

SENATOR LACK: No.

ACTING PRESIDENT KUHL: Senator Johnson, would you take your conversation out of the chamber. Thank you.

SENATOR LACK: Thank you, Mr. President, and I appreciate Senator Gold asking for somewhat of an explanation, and I will indulge, if you will indulge me, I will be happy to give it to you.

The last time the appellate departments in the state of New York were

realigned was exactly one hundred years ago in 1894, and in 1894 the demographic complex of the state of New York was a lot different obviously than it is in 1994, and where this has been felt the most are in the Second Department, which in 1894, comprised the then somewhat urban county of Kings, the Borough of Brooklyn, the bucolic and semi-rural Borough of Queens and the totally rural counties of Nassau, Suffolk, Westchester and the four northern counties of what is now currently the Ninth Judicial District, and that was considered to be one quarter of the state of New York; hence the Second Department, and we had four departments.

At the time of the 1894 realignment of the appellate departments, everything was equal between the four. Well, it's a hundred years later. There have been no changes in the departments, and the Second Department, which still comprises those same nine counties, now has over 50 percent of the population of the state and last year did 43 percent of the appeals in this state. It now

has 20 justices of the Appellate Division, and instead of sitting in panels of five judges each, they sit in panels of four judges each and if you've been reading the reports that I've put out entitled JUSTICE DELAYED, you will know that we have a totally unequal system of appellate justice in the state of New York.

Just recently, Senator Nozzolio, myself and my counsel, visited the Fourth Department located in Rochester. We met with its presiding justice, Justice Dolores Denman, and the Fourth Department, as has the Second Department, the Third Department and the First Department has been trying to help the Second Department by taking cases that are taking too long in the Second Department and working on them.

Justice Denman told me that she recently opened up a Second Department case which was a four-year-old custody case that had been lying around the Second Department for four years undecided and one of the Appellate Division justices in Rochester, only half

kiddingly said, "We didn't know whether to decide the custody matter or to officiate at the child's wedding." It was absolutely ridiculous that this had taken four years to accomplish.

As of last Friday morning, the chief administrative judge in the state of New York, Judge Milonas, informed me that the First Department, which is comprised of New York and Bronx Counties, is absolutely current, which meant as of Friday afternoon, last Friday afternoon, you had an appeal and you walked into New York County and filed that appeal, theoretically, it could be -- it could have been heard this Monday morning. As a practical matter, it would take a few weeks. The same appeal filed across the river in Brooklyn would take over two years. That is absolutely ludicrous.

What to do about it? Well, it's a Constitutional Amendment to realign the appellate departments. One would think that would be a fairly simple matter to accomplish, but it hasn't been. In 1967, at the

Constitutional Convention, it was tried. It failed. A then Democratic member of the Assembly Eli Wager, who is now -- Wager, sorry, sorry, now a Supreme Court Justice.

SENATOR GOLD: Formerly.

SENATOR LACK: Formerly -- a retired member of the Supreme Court, thank you, Senator Gold -- first proposed -- first proposed that a new Fifth Department be comprised of what is now the Tenth and Eleventh Judicial Districts of the counties of Queens, Nassau and Suffolk. That was first put in this Legislature in 1970.

24 years later, nothing has happened. We're fortunate that this year Presiding Justice Guy Mangano, himself a former Democratic member of this house, is the first - the first presiding justice of the Second Department to endorse an idea, a concept, to split up the Second Department and create a Second and Fifth Department. That proposal has been endorsed and adopted by Chief Justice Kaye, Chief Administrative Judge Milonas, Presiding Justice Denman of the Fourth Department, who sat

on the Appellate Division Reassignment Task Force, and just lately by Governor Cuomo himself, who has said that the now Kaye-Mangano proposal for realignment, including the Tenth and Eleventh Judicial Districts, is certainly the way to go.

The Senate, up 'til last year, has not agreed with that. This Senate Majority, the last time it spoke on creating a Fifth Department, proposed a Constitutional Amendment which would take the Ninth and Tenth Judicial Districts and create a new Fifth Department. That's the counties of Nassau, Suffolk, West chester, and the four counties north and west of Westchester. That, of course, has received absolutely no support any place else and has failed to ever achieve complete first passage, let alone second passage.

This year, thanks to Senator Marino's recognition of the dire straits of the current Second Department, the Senate has put forward the Democratic proposal of Chief Judge Kaye, Presiding Justice Mangano, Governor Cuomo,

Presiding Justice Denman, and is advancing a Fifth Department to be comprised of the Tenth and Eleventh Judicial Circuits -- Districts, Nassau, Suffolk and Queens.

Much to our distress, the Assembly says it's a Republican proposal; we don't want to look at it, and they haven't. I find that totally inconceivable, so today, on the last day of session, the Senate is putting forward four proposed Constitutional Amendments, a smorgasbord, as it were, to the Assembly: Choose one, choose two, choose three, choose four, choose any, and please give it first passage.

The Assembly has said so far, We want to study this situation. There had been an Appellate Division Task Force organized by the chief judge that has reported, create a Fifth Department. There have been bills for 24 years in this Legislature.

The Governor, the chief judge, the chief administrative judge, all endorse a proposal that is before us at this moment. But

I understand if the Assembly wants to be able to study it. That's why we are advancing four proposals.

The first one, which is calendar 1597, is Chief Judge Kaye's proposal, create a Fifth Department, give first passage this year in this Legislature to a Fifth Department to be comprised of the counties of Queens, Nassau and Suffolk. We will endorse that today. We will pass that and send that to the Assembly.

The second, Calendar 1598, contains the same language for creation of a Fifth Department, together with an understanding that the Assembly is interested in somewhat of a more diverse composition of members of the Appellate Division and that calendar number contains an amendment to the Constitution which would authorize Court of Claims judges to be posted to the Appellate Division. Court of Claims judges, of course, are proposed by the Governor and confirmed by this body.

Understanding the Assembly's reluctance to be bound into a Fifth Department

that is endorsed by every Democratic jurist in this state, we understand that, Calendar 1599 is an undefined Constitutional Amendment for an unstructured Fifth Department giving the Assembly and the Senate, if we so choose, a year to define the actual geographic boundaries of the Fifth Department and provide that prior to the vote of the people of the second passage in November of 1995, by August 1st of 1995 the Legislature shall enact the statute which defines the boundaries, the geographic boundaries of the Fifth Department; and finally Calendar 1600 incorporates that idea contained in 1599 together with the concept of posting Court of Claims judges to the Appellate Division.

So we're advancing to the Assembly today the entire panoply of ideas. They are free to choose, free to adopt. I would only hope that they would do just that. If you've looked at the JUSTICE DELAYED reports that I have been putting out for the last month, you will know the sad and sorry state of

justice. There's one you haven't gotten because of time, and that's Case Number 7, which is entitled "Breast Feeding is No Issue For a Four-Year-Old." Arose in the Second Department, a realignment of visitation rights, because a mother wanted to breast feed her child. It was finally decided when the child was four years old, obviously many years after the mother gave up breast feeding. The mother, by the way, gave up breast feeding during the pendency of the action because the visitation could never be realigned that was convenient enough for her breast feeding. That is ludicrous, absolutely ludicrous.

What's even worse, as I've been informed by Presiding Justice Mangano and if you look at the cases in the Second Department, you can see that there are many litigants where there is a choice of what department to commence an action in, that depending on what type of result they want, will purposely go into the Second Department, knowing that if there is a verdict for a plaintiff, the final judgment to

that plaintiff can be for stalled for years pending appeal, and you can force a settlement because the plaintiff might not want to wait three to four years once appeal is settled and finally decided in the Second Department.

For the 50 percent of the people of this state that live within the Second Department, that is wrong. I earnestly implore the Assembly to pick Calendar 1597, Calendar 1598, Calendar 1599 or Calendar 1600, pick one of those today, and pass it.

And one final word in an economic sense. Everybody who lives within the city of New York or the county of Monroe, tied to the passage of the fifth -- establishment of a Fifth Department, is a take-over of court facilities by the state. The First and Second Department, the costs thereof are maintained by the city of New York. The costs of the Fourth Department are maintained by the County of Monroe. If we establish a Fifth Department, we'll be able - the state will be able to pay for all those facilities.

Again, I urge the Assembly, please give passage to this today.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you so much.

Will Senator Lack yield for one question?

ACTING PRESIDENT KUHL: Senator Lack, do you yield?

SENATOR LACK: I yield, Senator.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: First of all, Senator, are the four departments that exist today defined in the Constitution itself, or are they done by statute?

SENATOR LACK: They're defined in the Constitution.

SENATOR GOLD: I just wanted that out there, because one of your proposals defines it and one of them suggests that we, as a

Legislature do it.

All right. Thank you. That's really the only question I have.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: Yes. First of all, I would like to point out that in this general discussion, there is a proposal which is around having been submitted by Francis T. Murphy, the presiding justice of the Appellate Division First Department in New York, and a truly distinguished jurist, and his suggestion was that we allow three-justice benches at the Appellate Division level rather than five justice benches, which would obviously expand the capacity of each of the districts to handle case loads.

Having said that, I will say this: I intend personally, and always being personally, to support at least the first bill which creates the Fifth Department and for those of you who are not from the areas involved,

there is just one or two statistics which I think tells it all. We have four departments in this state, but 50 percent of our population lives within the Second Department, Guy Mangano's department, where he is the presiding justice, and they decide -- that one department decides 42 percent of all the cases decided.

So you can see that even cutting the number of justices involved might not alleviate that particular log jam.

I think that the proposal to define the Fifth Department sways me more than the proposals to leave it to the Legislature and, while I appreciate Senator Lack's approach of sending over a smorgasbord, I think that part of the voting process is for us to also send messages to the Assembly as to what our feelings are.

So Senator Lack, again, only speaking for myself, I intend to support 1597, which would define in the Constitution the Fifth Department just as we have always done.

I also personally do not have a

problem with the concept of allowing Court of Claims judges to be in that pool. I would oppose the concept of an unstructured Fifth Department. I have seen, and too many people on this side have felt the sting of what legislative reapportionment can do and, when it comes to the judiciary, I think we owe the responsibility to define these departments and then have that done.

Similarly, I would oppose a bill which would suggest a Fifth Department and leave it to us, again, by statute to do it. I think that the more hands off we are on the judiciary, the better. They are coming to us for help. They need the help. We ought to give it to them and then I think we should be out of the process, but I think certainly it's time to pass this, and like to recognize Senator Lack for the work in this area. It certainly has been a huge burden.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Yes, Mr.

President, I rise as the ranking member of the Judiciary Committee, and I think we're dealing here with an issue that really cries out for resolution, that really does not speak well about the legislative process that for years we've been unable to deal with what is a terrible situation in the courts; it's been described by Senator Lack and Senator Gold; it really is a disgrace and causes grievous harm to people who are in the Second Department, because it's just impossible to have their appeals heard in a timely basis. Unfortunately, this really has been mired in politics, and I give a great deal of credit to Senator Lack saying, Let's cut the gordian knot, let's get -- let's get this done, and I think his approach makes sense.

He's putting forward four proposals and saying, O.K. Take your pick; we're willing to do it. We're showing our good faith and while, along with Senator Gold, I may prefer one over the other, and maybe 1597 is the best way to go, and that's the proposal by the chief judge, but I think there's a justification of

showing the willingness of this house to get this done by saying, We're giving you a choice. Now, it's up to the Assembly to act, and I think that we are showing our good faith. We're doing this in a non-political way, rare because this is in this Legislature, but it needs to be done. This cries for resolution, and I would urge my colleagues to support these bills.

SENATOR DOLLINGER: Mr. President, I rise to commend Senator Lack for his work. I think there's nothing more frustrating to a lawyer than to win a case at the trial court, win a motion at the trial court and find that your opponent gets a four-year period in which he can tie up, through appeal, and frustrate either the will of a jury or in the case of a motion, a summary motion, the will of the court below that grants your clients relief.

The other thing that's frustrating to a lawyer is, of course, the indecision that that breeds in the counseling of your client when you attempt to explain to them

what is the prospect on appeal, what happens on appeal. If you've got delayed justice, you've really got justice denied, and I think that Senator Lack and his work have really demon strated in the Second Department justice is being denied.

I do have one question for Senator Lack, if he would yield, Mr. President.

ACTING PRESIDENT KUHL: Senator Lack, do you yield?

SENATOR LACK: Yes.

ACTING PRESIDENT KUHL: Senator Lack yields.

SENATOR DOLLINGER: Senator Lack, I understand your comments and particularly pertinent since I practice in the Appellate Division Fourth Department, Rochester, and am concerned about Monroe County's support of that facility.

My question is, I read the Constitutional Amendment. I don't see in the context of the amendment a linkage between those concepts. If you could, just enlighten me as to

how that linkage will occur and when it would - how it would come to pass.

SENATOR LACK: Surely, Senator Dollinger. Senator Daly is just asking me the same question. There is nothing in the four Constitutional Amendments because you don't need a Constitutional Amendment to take over the court facilities. What I had said and said publicly and discussed with the second floor, and they would certainly agree, is that upon seconds passage of one of the four, hopefully - I happen to agree with Senator Leichter and Senator Gold but the bill that I originally introduced which is Calendar Number 1597, we would pass a court facility take-over that would, with the establishment of five departments, also acknowledge the state's responsibility to take over the court facility costs for the three appellate departments in the City, two in the city of New York and the one paid for by your home county of Monroe. It is not in here. That would be done by legislation concurrent with second passage next year.

SENATOR DOLLINGER: O.K. Again, Mr. President, I take the words of the Judiciary chair and his colleagues at the value of a commitment to Monroe County that, if this goes, I can also understand, quite frankly, the need perhaps from a practical political basis, to generate support for this in the upstate communities since this is really affecting downstate justice, although I think that that's important for people. I can understand the parochial need to build enthusiasm for this by providing some relief in Monroe County.

I have one other question that just occurred to me, and perhaps if Senator Lack would just yield for one more question.

SENATOR LACK: Surely.

SENATOR DOLLINGER: You described this as a smorgasbord. Would you prefer an affirmative vote on all aspects of this smorgasbord or do we get to sort of categorize them by our preference of yeses or noes. I also favor the initial proposal 1597 which I think is the broadest, the most effective, the right way

to do it, but I have some questions as Senator Gold did about the way the Legislature would configure it after the Constitutional Amendment.

Would you prefer all yeses or can we -

SENATOR LACK: Well, Senator Dollinger, all I can tell you that, if you look at the date of introduction, you'll see that 1597, the bill that you considered along with me in the Judiciary Committee and was sent on to the Rules Committee and to the floor is the bill, the resolution, that I quote/unquote introduced. Obviously I favor it.

I totally agree with Senator Gold and Senator Leichter that setting forth in the Constitution as it was meant to be the geographical boundaries of the various appellate departments of this state is what we should be doing and preserving the separation between the Legislature, the Executive and the Judiciary as was meant by the -- by the founding fathers. I acknowledge all that.

If you look and you'll see that Resolutions 1598, 1599 and 1600 were introduced yesterday to complete the panoply of -- that could be offered to -- to the Assembly in hopes that they would buy one. It's -- it's obviously the result of our conversations with the Assembly that they have some trepidations in declaring themselves with respect to a definitive structure of a Fifth Department that has produced at least Calendars Number 1599 and 1600.

Personally, I would prefer Calendar 1597 or 1598. I plan to vote in the affirmative, obviously, for all four of them. Any member, just so they don't get defeated, that wants to indicate a preference to the Assembly one versus the other, I, as far as I'm concerned, feel free to do so.

SENATOR DOLLINGER: O.K. Mr. President, then, I gather from that that this is not multiple choice, but only one right answers. There could be several right answers. Again, I just join my colleagues, Senator

Leichter and Senator Gold. I think this is a good move and the right move at the right time. It's probably 20 years late in coming. I commend Senator Lack for his leadership in getting it here.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on this resolution?

(There was no response.)

Question is on the resolution. The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The resolution is adopted.

THE SECRETARY: Calendar Number 1598, by Senator Lack, Senate Bill Number 8868, proposing an amendment to the Constitution, in relation to the number of judicial departments and districts.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The resolution is adopted.

THE SECRETARY: Calendar Number 1599, by Senator Lack, Senate Bill Number 8869, proposing an amendment to the Constitution, in relation to the number of judicial departments.

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

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 58, nays two, Senators Gold and Onorato recorded in the negative.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Gold.

SENATOR GOLD: Yes, just to explain my vote. There is also, I believe, a provision in here creating a Twelfth District in

Bronx County. I want the record to indicate that, if that was a separate bill, I would vote in favor of it.

I vote no.

THE SECRETARY: Calendar Number 1600, by Senator Lack, Senate Bill Number 8870, proposing an amendment to the Constitution, in relation to the number of judicial departments.

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

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR LACK: Mr. President, may I explain my vote?

ACTING PRESIDENT KUHL: Senator Lack to explain his vote.

SENATOR LACK: Not to dwell any longer on the subject, Mr. President, with my apologies, but now that we have passed all four of these resolutions, on the process of sending them over to the Assembly, I would earnestly

hope since it's only twenty of one on what I assume is going to be the last rather long day of session, that my staff and I are available to any member of the Assembly to be able to discuss these resolutions, and I would earnestly hope that the Assembly chooses one of the four and enacts it before the end of this session.

Thank you.

ACTING PRESIDENT KUHL: Senator Lack in the affirmative. Thank you.

THE SECRETARY: Ayes 58, nays two, Senators Connor and Gold recorded in the negative.

ACTING PRESIDENT KUHL: The resolution is adopted.

SENATOR PADAVAN: Controversial calendar 393.

ACTING PRESIDENT KUHL: Secretary will call the controversial calendar beginning with 393.

THE SECRETARY: On page 6, Calendar Number 393, substituted earlier today by member of the Assembly Lentol, Assembly Bill

Number 6903-B, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: Senator DiCarlo?

SENATOR GOLD: Yeah, Senator. I certainly want to move this along as best we can and I think that the process we've been doing is fine but, if you don't have any problem, Senator DiCarlo, I'd like to temporarily hold this. I'm waiting for one of my members who I know has a interest in this, not in opposition necessarily, but who may want to be heard on the bill.

SENATOR DiCARLO: O.K. Fine.

SENATOR GOLD: Can we come back to it.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Yes, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Numbers 1598 and 1599?

ACTING PRESIDENT KUHL: Without objection, Senator Connor will be recorded in the negative on Calendar Number 1598 and 1599.

Secretary will continued the controversial calendar.

THE SECRETARY: Calendar Number 486, by Senator Levy, Senate Bill Number 1245-A, an act to amend the Public Authorities Law.

SENATOR GOLD: Will Senator Levy yield to a question?

SENATOR PADAVAN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 607, by member of the Assembly Bragman, Assembly Bill Number 748-C, an act to amend the Vehicle and Traffic Law and the Education Law.

SENATOR GOLD: Hold on. Yeah, explanation.

SENATOR PADAVAN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay it

aside temporarily.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Yes, Senator Padavan.

SENATOR PADAVAN: I think it might be appropriate if we somehow communicate with the members on both sides -

SENATOR GOLD: Yes.

SENATOR PADAVAN: -- that if we're going to deal with these bills as we want to today, that we've got to be here to do so. Laying these bills aside now at this juncture just doesn't make sense; so if you could somehow add some weight to that admonition, I'd appreciate it.

ACTING PRESIDENT KUHL: Directive from the acting floor leader is that members who have bills on the active calendar be here for presentation of them. If they are, in fact, passed there is an opportunity maybe not to repeat returning to them so that the bills' opportunity for passage will be lost.

Senator Padavan.

SENATOR PADAVAN: I would like to announce an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332. Immediate meeting of the Rules Committee, Room 332.

SENATOR PADAVAN: Continue the order, Mr. President.

ACTING PRESIDENT KUHL: Secretary will continue the controversial calendar.

THE SECRETARY: Calendar Number 1028, by member of the Assembly Nolan, Assembly Bill Number 2235-B, an act to amend the Public Authorities Law.

SENATOR PADAVAN: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1246, by Senator Hannon, Senate Bill Number 8530-A, an act to amend the Insurance Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: An explanation has been asked of Calendar Number 20 -

SENATOR GOLD: Hold on one minute.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Yeah, I want to make sure that the -- the Senators understand that Senator Padavan's remarks go on both sides. I mean we are trying to hold bills also for members of the Minority to debate that have an interest, and I would urge that any of them that have asked to hold bills aside please come to the chamber because we have passed the non-controversial calendar.

Having said that, with the indulgence of the Majority Leader, if we could hold this for Senator Solomon I'll try and get him into the chamber, and we'll come back shortly. Is that all right?

SENATOR HANNON: No.

SENATOR GOLD: Oh, come on,

Kemp.

SENATOR PADAVAN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside, 1246, temporarily.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you. I'd like unanimous consent to be in the no on 1369.

ACTING PRESIDENT KUHL: Without objection, Senator Oppenheimer will be recorded in the negative on Calendar Number 1369.

Ladies and gentlemen, if I may have your attention, let's just kind of quiet it down in the chamber. There are too many conversations taking place. It's not that I can't hear; it's the stenographer can't hear. So let's quiet it down. We'll be able to process the whole event much faster. Thank you.

Secretary will continue to call the roll -- or excuse me, call the controversial calendar.

THE SECRETARY: Calendar Number 1316, by -

SENATOR GOLD: Hold on.

Mr. President, I am informed that, if Senator Hannon would like to go forward, we will go forward with this bill.

SENATOR PADAVAN: 1246.

ACTING PRESIDENT KUHL: Secretary will call Calendar Number 1246.

THE SECRETARY: Calendar Number 1246, by Senator Hannon, Senate Bill Number 8530-A, an act to amend the Insurance Law and the Vehicle and Traffic Law.

SENATOR GOLD: Can we get a brief explanation?

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

SENATOR HANNON: This provision would clarify existing law with regard to the

priority of insurance when a claim is made involving the use of a rental vehicle.

SENATOR GOLD: That's the whole thing?

SENATOR HANNON: That was the explanation that had been requested. Would you like to go into the technical details?

SENATOR GOLD: Senator Hannon, I want to apologize to you publicly. I certainly didn't mean to disturb you by asking for an explanation of your bill.

Mr. President.

SENATOR HANNON: No, I mean, what would you like to ask?

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: I would like to have the bill explained so people can understand the bill. If that's all there is to it, then fine.

SENATOR HANNON: We add a new - we add a new subsection (k) to Section 1 of Section 3420 of the Insurance Law so that we

would establish that an insurance policy of any person or organization which is in the business of renting rental vehicles within the state is secondary to the insurance of that which has - is possessed by the rental vehicle operator, all of which must be pursuant to a written rental agreement between the owner and the operator, and it may not be for a period of time that would be longer than 30 days provided those 30 days are continuous.

ACTING PRESIDENT KUHL: Senator Gold, you have the floor.

SENATOR HANNON: Section 2 of the bill amends Section 345 of the V & T Law to conform this change.

SENATOR GOLD: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: Want to thank Senator Hannon for the explanation.

Mr. President, while I do not pretend to have the expertise of my ranking

member on the committee, I will do my best, and I guess the best I can do is to start out by saying this bill is terrible. What the bill does basically is change the liability issue from rental car companies to the consumer, so any way you look at it, I don't see how the consumer who has automobile insurance will not have their rates go up as a result of this legislation, and I have opposition to this bill by NYPIRG, by the Consumer Protection Board, by State Farm Insurance, by telephone, by the New York State Trial Lawyers, and I certainly urge everyone who is consumer orientated in this field to vote against the bill and do so on a slow roll call.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President.

Would Senator Hannon yield to a question?

ACTING PRESIDENT KUHL: Senator Hannon, would you yield to Senator Waldon for a

question?

SENATOR HANNON: Yes, Senator.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Thank you very much, Mr. President.

Senator Hannon, let me create a hypothetical and then ask a couple of questions if I may. I'm a person who does not own a car. Therefore, I have no requirement for auto insurance. I go to rent a car. Is the rental company obligated to rent to me a car?

SENATOR HANNON: The rental company is not obligated. They -- the various different processes, different companies go through. I'm not an expert on all of them, but in general over the past several years, different companies have come up with different standards. Some will access the records of the Motor Vehicle Department in this state in order to determine driving records. There will be various questions asked. Presuming you meet the individual criteria, those will be -- you'll get

a car.

SENATOR WALDON: But there's no mandate that the rental car rent to me a car if I don't have insurance; is that correct?

SENATOR HANNON: Mandate? I don't believe so.

SENATOR WALDON: May I continue, Mr. President?

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

SENATOR HANNON: Yes, but, Senator, Mr. President, I can hardly hear Senator Waldon, not because of him but because of the door being opened.

ACTING PRESIDENT KUHL: Once again may we have it quiet in the chamber and could the Sergeant-at-Arms make sure that the door is closed to the outside conversation, please.

SENATOR WALDON: Senator Hannon.

SENATOR HANNON: Maybe I can give you -- I was asked to carry this bill by Avis.

SENATOR WALDON: Pardon?

SENATOR HANNON: I was asked to carry this bill by Avis, which is a company within my district.

SENATOR WALDON: They try harder.

SENATOR HANNON: And I asked what do they use as their criteria, and they pointed out that they want to see that you have a valid driver's license, that it ought not to be suspended, nor should it be revoked, invalid or surrendered. They look to see whether or not there's been two or more convictions for speeding or reckless driving within the past 24 months. They look to see whether someone's been convicted for driving while intoxicated or driving under the influence, driving -- or someone's been convicted of leaving the scene of an accident, or whether someone has been convicted of possession of a stolen vehicle or has used a vehicle during a crime.

SENATOR WALDON: I appreciate that, Senator Hannon. If I may continue, Mr. President.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President.

But, Senator, the point I'm trying to be enlightened about is, if someone who were poor, has no car, came even to Avis to rent a car, because of this insurance requirement Avis could not rent them a car?

SENATOR HANNON: Oh, in that situation, no, Senator. What happens then, if they don't have insurance, then under current law and under -- continuing unchanged under this bill, the insurance that Avis has would cover that individual so that they would be able to rent the car provided they just haven't gone through the -- they've passed these thresholds that are in their criteria -- other companies have other thresholds -- but the insurance coverage would be that of the company. That's

not changed.

SENATOR WALDON: May I continue, Mr. President? Mr. President, would the gentleman continue to yield?

ACTING PRESIDENT KUHL: Senator Hannon, you continue to yield? He does.

SENATOR WALDON: Senator Hannon -- thank you, Mr. President -- I don't think that was responsive to my question. That is their discretion. They can rent if they so choose. There's no obligation for them to rent to me as a poor person who has no insurance because I own no car; is that correct?

SENATOR HANNON: No.

SENATOR WALDON: They're obligated to rent to me?

SENATOR HANNON: No, they're not obligated, but there's no discrimination. I believe that was the verb in your sentence. What I'm saying is to you, that it's only these, it's the only standards they do, and they say that they apply these quite uniformly because they want them to be companywide standards, is

that these are the standards. But that's really in a sense, Senator, I would argue, a peripheral question to this bill. We don't deal with it here, and we don't offer it here.

SENATOR WALDON: Senator, with all due respect, it may be peripheral from your perspective. By the way, I didn't use the word "discriminate." I think if the record were recalled, it would show that, but I appreciate your putting it in, because that's what I'm getting to that, if the companies have no mandate to rent, someone who's poor, not black, not Latino, just poor, would go to rent a car they could be discriminated based upon their poverty and/or color and/or ethnic origin by a company because there's no requirement that they rent to them.

SENATOR HANNON: Well, you take the use of a hypothetical, and I think push it far beyond what usually is done in a debate. Nobody that I know of now has been restricted.

SENATOR WALDON: Mr. President. Mr. President, I can not hear Senator Hannon.

Would you please -

ACTING PRESIDENT KUHL: Your point is very well taken, Senator Waldon. This is the third time in the last 20 minutes I've had to ask the chamber to quiet down.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: If you have to have a conversation, take it outside the room.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Thank you.

SENATOR HANNON: Nobody I know has even alleged any of the actions that you've built into your hypothetical, so that I don't believe -- and believe me, I apparently, especially with other companies, there have been complaints and -- but none of them deal at all with what you bring up.

SENATOR WALDON: Would the Senator continue to yield, Mr. President?

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator, why is it that you're addressing the liability problem, personal liability problem, with this bill, but not the property damage piece?

SENATOR HANNON: Actually all problems are addressed in the bill, Senator.

SENATOR WALDON: So you're telling me that -

SENATOR HANNON: But because of the provision of no-fault insurance, coverage under no-fault remains with the company that insures the driver, as it is now and will continue, so much of -- some people in the insurance industry, despite what they say about this shifting, that's erroneous as a matter of fact, because we have no-fault and the primary coverage for personal is on the company that insures the driver.

Let me point out, it's that company that rates the driver in this state. When you get coverage, the company goes after the driver. They say, are you male? Where do you live? What's your driving record? And then they issue a policy, and the premium is based on the differentiation, the underwriting that comes about.

They're the -- they don't ask you, do you rent a car once a year. So they have everything within their control. In contrast, and the reason for many of the other things that have come about in the last few years by companies is the fact that the rental companies have absolute liability under New York's statutes. No matter if they take due diligence once the car has been rented, no matter if they have a written agreement that says you, renter, shall behave reasonably, shall not let somebody else use this car, shall drive it only yourself unless we have somebody else authorized to do so. They have a strict liability.

Under that strict liability, the suits against them have climbed to the nth degree. When the trial -- I had two, three years ago, a very comprehensive bill that would have changed vicarious liability in this state, and the trial lawyers came after me like there is no tomorrow and said to me, "Hannon, tell those companies they better do a better job of screening," quote and unquote, from the president.

Well, that's what they've reacted. I didn't tell them anything. They just know the handwriting is on the wall. They couldn't afford to be in the business of renting cars and also losing money. So some did geographic differentiation in their rental rates. Others did it by different standards as to your prior record, and all of that, but that's the result of when you have this liability. It's continuing, and I would point out to you that what this bill proposes to do is not something unique, is not some idea that no one has ever heard of. It's done by most of the

companies now renting. This bill clarifies law, and it's not something unique that would be unique in New York State law. It's done in 36 other states, not just the little states - Florida, California, Illinois.

This is hardly a unique thing and if I can interpolate as to the point you're getting to as to the availability of rental cars to people who don't own cars, unless we make these changes, these companies in the business are going to further and further restrict their free enterprise and go to a much more restrictive system.

SENATOR WALDON: Would the gentleman continue to yield, Mr. President?

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

SENATOR HANNON: Yes, sir.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President.

Senator Hannon, I have a son, big

guy, six-two, 280, plays offensive tackle for high school/college. Went away to school and got a driver's license. Minute the insurance company found out he was living in college for four years, and a very reputable insurance company, moment they found out that John Patrick Waldon was my son, they kicked my insurance costs up. John Patrick Waldon, a couple of years later, had an auto accident. He had stopped on the Grand Central Parkway because the traffic had stopped. Somebody who ran in the back of him totaled their car, did very little damage to -- excuse me, reporters -- the Volvo that he was driving, but the insurance spiraled up.

With that information as a base, if the insurer renter has an accident, whose insurance goes up, his and, in turn, the collective public or the rental car company's insurance goes up?

SENATOR HANNON: You could make the argument that they would -- if they couldn't have rented, they would be driving the car they

own and the accident would have happened in the car they own, so the total pool of accidents would have not gone up. But that's a hypothetical, so let me address it by the point of, if a renter right now has that accident, my guess is, given the fact that 75 to 80 percent of the rentals are by out-of-state renters, that it's not going to affect the New York pool in a statistically significant way one iota.

SENATOR WALDON: Wait a minute. Mr. President, may I continue?

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Honestly, Senator, I did not intend what you just said.

SENATOR HANNON: Well, my point is you say that it's going to affect the pool of losses in this state. Would that be -- or you're saying that who will bear the burden of that.

SENATOR WALDON: I'm not interested, if I may continue Mr. President, I'm really not interested in the pool. I'm interested in the individual consumers, renters who live in the 10th Senatorial District. What happens to them -- and by the way, they don't normally -- the people I know don't normally rent here in New York State; if they're on vacation they go to Florida and they rent, or they go to Colorado and they rent, or they go upstate and they rent, or they go out to the Island where you're from and they rent.

SENATOR HANNON: Aha!

SENATOR WALDON: But now, please, what happens Rosedale, Cambria Heights, St. Albans, they don't rent there.

SENATOR HANNON: Aha! Senator that's the point, Senator. Most of the rental is done in other states. Most other states have this type of statute, so that when it happens in those other states, it gets into their pool but we're not reciprocating. When the people from out of state rent in New York, it's not being

shipped back to the insurance company in the other state. That's what the this fight is about. Some of the companies who are national in scope are worried about what's going to happen to the other states. They're not worried about the costs of insurance to the New York driver.

SENATOR WALDON: O.K. Thank you, Senator Hannon. If I may.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: Mr. President, on the bill.

I hear your argument and, as we used to say in Brooklyn on Patkin Avenue, I hear you hummin' but I'm not hummin'. I don't think it, in fact, does what you say it does. I think this bill shifts the liability to the person I represent. I think that person is the least capable of paying. I don't think that we have to do what the federal government people did to people like Chrysler, prop them up, in terms of the insurance companies. I think that the most

important person for me to be concerned about is the voter/renter/individual insurer who lives in my district.

I also wonder why we're doing this when we're trying to limit insurance costs in New York State, why we are again burdening or burdening the individual person in terms of this insurance. I think the person, meaning entity corporate person, is best able to pay for these kinds of liabilities and these kinds of insurance costs, and I would urge all of my colleagues to recognize that we have an obligation not just to the business sector, but, every now and again, to the individual consumer and I hope we would exercise that right and that obligation by voting against this legislation.

ACTING PRESIDENT KUHL: The Chair recognizes Senator DeFrancisco.

SENATOR DeFRANCISCO: On the bill.

ACTING PRESIDENT KUHL: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: This has

been categorized or characterized as an anti business bill and, excuse me, anti-consumer bill and a pro-business bill.

But it seems to me somebody has to pay the cost of the insurance, and it would seem to me logically -- logical that if I'm renting a car from a rental car company and that company has to provide the insurance for that car, that in some way that's going to affect the cost of the rental car. You know, these aren't things done in the abstract. If it's an additional cost to the rental car company, it would seem logical that they're going to pass the cost on to somebody, and it would be the person who is renting a car.

So how this could be categorized as an anti-consumer bill is beyond me. By the insurance -- by the car rental companies having to increase their costs, it's going to affect the consumer.

And the other fact, it's happened to me on many occasions when I go into a rental car company to purchase or to rent the car, I'm

always asked do I want to purchase the insurance, and I think what's happening in many instances is people who may have coverage already under their individual insurance policy may be buying that insurance unknowing and unknowingly, and as a result you are paying twice for insurance while you're driving the motor -- the car that you're renting.

So to me this is a consumer bill. In the long run, it's going to fix who's got to have the insurance and how those respective risks are going to be allocated. So I think this is a consumer bill. It makes a lot of sense, and I hope we would all support it.

ACTING PRESIDENT KUHL: Senator Dollinger.

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

ACTING PRESIDENT KUHL: Senator Hannon, do you yield to a question from Senator Dollinger? Senator yields.

SENATOR DOLLINGER: Senator, this

bill makes the renters' insurance the primary coverage and the rental company's insurance coverage the excess coverage, is that correct?

SENATOR HANNON: Yes.

SENATOR DOLLINGER: Just refresh my recollection. I've been looking for the sponsor's memo. Is the current status in New York that those are concurrent policies?

SENATOR HANNON: The current status is all over the place. Avis is probably the only one who is not making the owner's coverage primary. I have checked; it was alleged to me, so I had it independently checked Hertz is doing it, National, Budget, Enterprise, they're already doing it now. Companies, insurance companies, are cooperating with them. It's being done now.

One company has decided they don't like this. Avis has a good reason to say notwithstanding this bill doesn't become law we're going to do it anyway. I mean it -- it's -- what's happened is this has become some type of talisman, some symbol of a debate.

The original NYPIRG memos was devastating. The only trouble was it wasn't on this bill. They had to withdraw it and rewrite it. Others have had to do it. This has nothing to do with collision damage waiver, I mean it's a smoke screen, so I hope I would -- if you've heard a lot, it's because they're on the wrong bill.

SENATOR DOLLINGER: Mr. President, on the bill.

I agree with Senator Hannon, and frankly, I -

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: -- agree with the sentiments expressed by Senator DeFrancisco. I don't see this as fundamentally shifting anything. One is the rental car company will continue to maintain the insurance. They've still got to pick up the cost because they've got to cover themselves for the fact that the renter may default for some reason, may not have an active policy, may not have disclosed it or

something. So they're going to maintain their fleet coverage. The user, the operator of the vehicle, if he's already got insurance, driving insurance, automobile insurance, has that little rider that says it covers rental car companies. Most people that have a car and that rent one are covered, and it's going to be their primary coverage.

What I see happening is that, if you make it primary, you may reduce the overall fleet coverage cost because there'll be fewer instances in which the no-fault is tapped and the actual liability policy is tapped, the fleet policy is tapped, if you put the driver as the primary or the driver and his insurance carrier as the primary coverage.

I also agree with Senator DeFrancisco. I think that this all comes out in the wash in the way of higher costs for rental cars and, frankly, at least what I've heard here, I'm surprised there's opposition and what may be, and I haven't seen all the memos, may be the vehemence of the opposition, but it seems to

me like it's good bill that will reduce overall costs for renting cars in this state, which is something we should be trying to do.

I'll be voting in the affirmative, Mr. President.

ACTING PRESIDENT KUHL: Just a moment while we make an equipment change here.

(Short pause.)

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 60. Excuse me.

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1246 are Senat ors Bruno, Gold, Kruger, Nanula, Ohrenstein, Onorato, Paterson, Smith, Stachowski and

Waldon. Ayes 50, nays 10.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR PADAVAN: Mr. President, may we return to motions and resolutions. I believe there is a resolution at the desk.

ACTING PRESIDENT KUHL: We'll return to motions and resolutions. The Chair recognizes Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Tully, I wish to call up his bill, Print Number 6775-A, recalled from the Assembly which is now at the did he being.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator Tully, Senate Bill Number 6775-A, an act to amend the Public Health Law.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

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

ACTING PRESIDENT KUHL: Amendments are received.

SENATOR PADAVAN: Mr. President, could we return to Calendar Number 116.

ACTING PRESIDENT KUHL: Calendar -- Secretary will call Calendar Number 116.

Senator Padavan, I'm informed by the desk that the bill is high.

SENATOR PADAVAN: There's a substitution, is there not?

ACTING PRESIDENT KUHL: Senator Padavan, they don't have a substitution at the desk right now. It will take them a couple of minutes to find out where that substitution is.

SENATOR PADAVAN: Just lay it aside for the moment.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

SENATOR PADAVAN: Stand at ease for a moment, please.

ACTING PRESIDENT KUHL: Senate will stand at ease for a moment.

(The Senate stood at ease.)

SENATOR PADAVAN: Mr. President, return to Calendar Number 116, please.

ACTING PRESIDENT FARLEY: 116. Calendar 116, the Secretary will read.

THE SECRETARY: Calendar Number 116, Senator Skelos moves to discharge the Committee on Rules from Assembly Bill Number 11736-A, and substitute it for the identical Third Reading 116, an act to amend the Education Law, the Executive Law and the Public Health Law.

ACTING PRESIDENT FARLEY: Read the last section. Oh, there's a substitution. Substitution is ordered. Now, you can 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 60.

ACTING PRESIDENT FARLEY: That bill is passed.

We have a motion, Senator Padavan, that Senator Libous is going to give us.

SENATOR LIBOUS: Mr. President, I wish to call up Senator Volker's bill, Senate Print 2109-C, which was recalled from the Assembly which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: Calendar Number 885, by Senator Volker, Senate Bill Number 2109-C, Public Authorities Law.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT FARLEY: Call

the roll on reconsideration.

SENATOR LIBOUS: And ask that the bill be restored to the order of third reading.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: Bill is restored to third reading. Senator Libous.

SENATOR LIBOUS: Mr. President, I now move to discharge from the Committee on Rules Assembly Print Number 9787-A and substitute it for Senator Volker's identical bill, and then I would like to lay this aside.

ACTING PRESIDENT FARLEY: Substitution is ordered and the bill is laid aside.

Senator Padavan?

SENATOR LACK: Mr. President.

ACTING PRESIDENT FARLEY: Senator Lack.

SENATOR LACK: Yes. I believe

Calendar 1579 was crossed. We brought it back. If we could please do the substitution and re-pass, I'd appreciate it.

ACTING PRESIDENT FARLEY: Secretary will read the substitution.

THE SECRETARY: Calendar Number 1579, Senator Lack moves to discharge the Committee on Rules from Assembly Bill Number 11724-B and substitute it for the identical Calendar Number 1579.

ACTING PRESIDENT FARLEY: Substitution is ordered.

SENATOR LACK: Mr. President, can I ask for the same vote, please, with respect to the substituted Assembly bill?

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: Unanimous.

ACTING PRESIDENT FARLEY: No, it wasn't unanimous but the same vote. Do we have that vote? We're going to resurrect the last vote. We'll announce the results in a moment.

THE SECRETARY: Ayes 58, nays 2, Senators Oppenheimer -

ACTING PRESIDENT FARLEY: Senator Wright.

THE SECRETARY: Those recorded in the negative on Calendar Number 1579 are Senators Cook, Oppenheimer, Saland and Wright. Ayes 56, nays 4.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PADAVAN: 13 -- Mr. President could we do 1397, please.

ACTING PRESIDENT FARLEY: 1397, the Secretary will read.

SENATOR GALIBER: Explanation.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

SENATOR GALIBER: While -- while there -

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: While there's a pause, Mr. President, would you grant me unanimous consent of the body to be recorded in the negative on 1576 and 1589 and 1246.

ACTING PRESIDENT FARLEY: Senator Galiber will be reported in the negative on those three bills.

SENATOR PADAVAN: Mr. President, can we call up Calendar Number 393.

ACTING PRESIDENT FARLEY: 393, the Secretary will read it.

THE SECRETARY: Calendar Number 393, by member of the Assembly Lentol, Assembly Bill Number 6903-B, an act to amend the Penal Law, in relation to the sale of controlled substances on school grounds.

SENATOR GALIBER: Explanation.

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

SENATOR DiCARLO: Mr. President,

this bill is the -- really the culmination of a number of years of hard work. This bill was originally passed in 1986 by Senator Chris Mega, my predecessor, and a funny thing happened on the way to passing this bill.

This bill became law, and this is known as a school yard drug bill. This bill increased the penalties for the sale of drugs to -- to people and children within one thousand feet of schools. The intent of the bill was wonderful. After it passed, the problem that we found was that, in the bill, it said to persons under the age of 19. So what had happened was, what Chris Mega wanted to do with the bill was to put people in prison who sell drugs to kids but the bill said it didn't count if the sale was to people under 19 years of age. It wasn't to people under 19 years of age.

So what happened was you couldn't do "buy and bust" operations on school property and you couldn't put these people in prison for longer periods of time. So, in 1987, Chris Mega tried to amend the bill and was successful here

in the Senate and was successful in '87, '88, '90, '91, '92, '93, but the state Assembly refused to amend the bill. They refused to take the age requirement out of the bill so that the sale to anybody within one thousand feet of schools would be an increased penalty.

It's taken a lot of work to get this bill here today. I can not understand why it's taken seven years on a bill that passes unanimously in this house year after year with both Republicans and Democrats, why it took seven years for us to try and put people away who are selling drugs to our children.

We negotiated this bill this year with the Assembly to try and finally pass it so that it would be effective. This bill, this amendment, was supported by everybody in the state, all law enforcement agencies. It passed unanimously in this house, and the Assembly still wouldn't pass it. After long negotiations, originally the Assembly said, we would pass the amendment and pass the bill if you reduced it from a thousand feet to 350 feet. That made no

sense to me, but in order to try and get this bill finally enacted, we agreed to reduce it from a thousand to 350 feet.

After further negotiations, we agreed -- they agreed to bring it back up to a thousand feet, but they insisted that we put into the statute that it excluded personal property within that one thousand feet. We agreed to that. Finally, after seven years of working on this bill, one year for me, they came back to us in the last few days and they said there was a problem.

They didn't want to pass this again. They were refusing to go along with the bill that they have had agreed to. I have to thank those people who came before me for this finally happening. Number one, I'd like to thank former Senator Chris Mega who originally passed this bill seven years ago, and I'd also like to thank my staff and his staff who worked on this for many, many years, especially my counsel, Bart Bloom and my legislative director, Joan Fontana.

I don't understand why it's taken so long. When I came into chamber today, we were visited by some young children, Senator Pataki's children. We now have Emily, who is 15, who is seated next to me, and I was talking to somebody and I said, you know, here is a piece of legislation that was passed seven years ago with all the right reasons, to try and protect our children. There isn't one person in this house who voted against this bill, in my recollection, when it passed here four months ago. For us to have had to go seven years without this legislation so that we can enforce this law is outrageous. God knows how many children are addicted to drugs today or possibly dead because the other house refused to fix this bill.

I'm just proud and happy that finally this bill and this change has finally been made. I'm very happy that this is going to become a reality, and it's about time that we started protecting the most innocent among us, our children.

I would move, and I would hope that it would get unanimous support as it did the last time we passed it.

Thank you.

ACTING PRESIDENT FARLEY: Read - Senator Jones.

SENATOR JONES: Yes. Will the gentleman yield to a question, please?

SENATOR DiCARLO: Yes.

SENATOR JONES: I'm not able to find a copy of the bill here. I just want to know, I know one of the big problems with our own local police, I heard you mention 19, and I know one of their biggest concerns is that they can use an undercover policeman who is over 19. Would they be allowed to do this under this bill?

SENATOR DiCARLO: Yes. That's exactly the reason why nothing was happening under the old law because it's very difficult to get police officers who are under the age of 19 to do "buy and bust" operations. Law enforcement is very much in support of this bill.

SENATOR JONES: Great.

SENATOR DiCARLO: And now we can do "buy and bust" operations within one thousand feet of all schools in the state of New York.

SENATOR JONES: Regardless of the age.

SENATOR DiCARLO: Yes.

SENATOR JONES: Thank you, Senator.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR OPPENHEIMER: Mr. President. Mr. President.

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

SENATOR OPPENHEIMER: I made a mistaken vote on Calendar 1579. I would like it to be in the affirmative.

ACTING PRESIDENT FARLEY: In the affirmative on 1579?

SENATOR OPPENHEIMER: M-m h-m-m.

ACTING PRESIDENT FARLEY: The clerk will recall -- will record Senator Oppenheimer in the affirmative as opposed to the negative on Calendar 1579.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT FARLEY: Senator Padavan.

SENATOR PADAVAN: Call up Calendar Number 1397, please.

ACTING PRESIDENT FARLEY: 1397, Secretary will read.

THE SECRETARY: Calendar Number 1397, by Senator Johnson, Senate Bill Number 8020-A, an act to amend the Education Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GALIBER: Explanation.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

SENATOR PADAVAN: Mr. President, 1574, please.

ACTING PRESIDENT FARLEY: 1574.

THE SECRETARY: Calendar Number 1574, by Senator Saland, Senate Bill Number 5979-A, an act to amend the Tax Law, the Labor Law, the General Municipal Law, the State Finance Law and the Executive Law.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: If we were to read the record of last year's debate, we would find that it was about three sentences because we keep getting this business every year. It's opposed by D.C. 37 and AFSCME, CSEA, and in the past Senator Connor and Espada and Galiber and myself, Gonzalez, Leichter, Markowitz, Mendez, Montgomery, Ohrenstein, Onorato, Smith, Solomon, Stachowski, Stavisky and Waldon all have understood this bill and voted no.

Last section.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1574 are Senators Babbush, Galiber, Gold, Kruger, Leichter, Nanula, Onorato, Smith and Stachowski. Ayes 51, nays 9.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 1246, 1246.

ACTING PRESIDENT FARLEY: Without

objection, Senator Leichter will be in the negative.

SENATOR GOLD: Senator Ohrenstein.

ACTING PRESIDENT FARLEY: And Senator Ohrenstein, and Senator Mendez.

SENATOR PADAVAN: Mr. President, take up 1397.

ACTING PRESIDENT FARLEY: 1397, Secretary will read it.

THE SECRETARY: Calendar Number 1397, by Senator Johnson, Senate Bill Number 8020-A, an act to amend the Education Law.

SENATOR GALIBER: Explanation, please.

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

SENATOR JOHNSON: Mr. President, this bill puts into the Education Law the definition of the term "drug dosage form" to recognize that prescription drugs are manufactured in different formulations and

utilize different technologies to vary the efficacy and toxicity.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GALIBER: No.

THE SECRETARY: Section 2.

ACTING PRESIDENT FARLEY: Hold on. Senator Galiber.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Galiber has the floor.

SENATOR GALIBER: I have a -- if the Senator would yield to a question? You know, with the rise on this issue of the economics on its way up and I realize that this piece of legislation means a great deal to parts of this state, more importantly parts of a particular county which is contiguous perhaps to yours.

It's my understanding that this would save some 700 to 900 jobs, the Pfizer people, is that correct, Senator?

SENATOR JOHNSON: That's correct.

SENATOR GALIBER: That the Pfizer people said that, if this doesn't happen, that they're going to move out, or is this just a guesstimate that, if this does go through, that they might jeopardize these jobs and move out of the jurisdiction?

SENATOR JOHNSON: Well, no, I don't think -- Well, Senator, I think it's true that this may be beneficial to a pharmacist -- a pharmacy manufacturing company in Brooklyn but, beyond that, this is a legitimate new formulation of a drug which is more efficacious and more helpful, and less expensive than the previous formulation.

SENATOR GALIBER: Do you have any idea of what the cost factor may be if this piece of legislation is passed in terms of the Medicaid prescriptions in the sense of generic drugs? Let me not put it that way. It's my understanding, Senator, rather than ask the question, it's my understanding that, if this

piece of legislation is passed, that there's a substantial amount of cost, something to the effect that brand name drugs account for the remaining 54 percent of the Medicaid prescriptions. They are budgeted at $37 million dollars this year for the state's share and the total expenditure of $130 million.

I'm interested in saving the jobs, but do the jobs become more expensive in terms of the cost, the rising cost as far as the drug itself is concerned?

SENATOR JOHNSON: Senator, I think that's -

SENATOR GALIBER: I have a memo from the DSS. They estimate that the additional cost to the Medicaid general fund for the 12 month period 1994 and 1995 would be some 27 - $29 million dollars. Is that $25 million dollars, how does that balance out with the 7 to 900 jobs which I'm interested maintaining?

SENATOR JOHNSON: Senator, we're not talking about anything but one or more drugs which may be developed with a different dosage

form. It's already under law permissive, permissive substitution here in places where everything is the same, including dosage form and strength.

We're just defining "dosage form." We're not changing the generic substitution law.

SENATOR GALIBER: What I'm suggesting, I think I'm sure you're -- Mr. President.

ACTING PRESIDENT FARLEY: Senator Galiber has another question.

SENATOR GALIBER: So you understand where I'm coming from, for example, the so-called new drug is not available for generic substitution and that that's the area, once we get a new drug and there's no substitution for the generic substitution, no level for that. This runs the cost that we can not create the generic substitution.

SENATOR JOHNSON: Well, Senator, I think there's a question of whether this new drug, I mean I have a memo from the Epilepsy

Association. They feel this new dosage form is more effective for them, so it makes sense to use the newly devised drug or the delivery system rather than a generic substitute for the old drug. It's more efficacious and more in expensive and if it helps to make people better faster, then it's probably a saving, Senator, so I wouldn't -- I mean I wouldn't say we have to go back to kerosene or turpentine on sugar for sore throats because that's what they had when I was a kid or hold a bag of salt on your ear.

They have new drugs now that have been developed by people that make money; that's what their business is.

SENATOR GALIBER: O.K., fine. Well, we try, Senator, but apparently I'm not making myself clear.

Mr. President, on the bill.

ACTING PRESIDENT FARLEY: Senator Galiber on the bill.

SENATOR GALIBER: I have no intentions of voting against this legislation. I'm concerned about the number of jobs that are

going to be saved as a result of, or the possibility of saving these jobs.

I just wanted to point out for the record that, as a result of saving these jobs, which is a worthwhile effort, that there's going to be an additional cost just like when you push in a balloon on one side, something comes out on the other side.

Inasmuch as we can not substitute a generic drug, this may be a cost factor that we are or are not prepared to absorb, and I just want to make that point, so I have no objection to the bill except that as long as we realize that there is a heavy cost factor for passing this piece of legislation, the cost of saving 700 to 900 jobs. Is it worth it? Perhaps so.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR JOHNSON: I would just -

ACTING PRESIDENT FARLEY: Senator Johnson. Read the last section.

SENATOR JOHNSON: I'm not here to engage in a debate with Senator Galiber because

he's a sincere person and there's ups and downs and plus and minuses to everything. I would say if the new drug is more efficacious, you have to take fewer pills for a shorter period of time, there may very well be a saving, so I don't think it's necessarily so that this will increase costs, and I think everyone should be comfortable knowing that.

ACTING PRESIDENT FARLEY: Senator Smith.

SENATOR SMITH: Mr. President, on the bill.

I believe that the discussion that Senator Galiber is trying to -- or what he is trying to get at is that a generic company will not be able to produce the pill. Therefore, there would be an additional cost involved.

SENATOR GALIBER: I thought I made -- I wasn't trying. I thought I made myself crystal clear. I wasn't trying to show that. That's exactly what I was saying. I wasn't trying.

SENATOR SMITH: Well, maybe it got convoluted, but the point is also that generic companies are eligible after a period of time to reproduce these drugs that other companies have founded, and the company has spent a lot of money and research in development and they should be able to recoup that money.

However, that's not even the issue here. The issue here is that these are life-saving drugs, and I think that has more importance than whether it may cost a few dollars or not, and also the fact that it will save jobs. But the life-saving factor is important, and that is what we should be looking at.

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.)

SENATOR LEICHTER: Mr.

President.

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: Yes. Mr. President, I agree with Senator Galiber and I - I think it's also correct that he just didn't try. I think he made a very compelling, very persuasive case that this bill is going to lead to an enormous increase in costs to the consumer and it's going to lead to enormous increase in Medicaid costs, because it's going to make it so much more difficult to -- for doctors to prescribe generic drugs.

One of the efforts that we've made has been to increase generic drugs. I think all of us know from our own experience, from experience with members of our family the enormously high cost of drug purchases, and the way this bill is written, it obviously has its -- as its intent to make it more difficult to prescribe generic drugs.

Now, I have great sympathy for Senator Smith's concern. They're trying to keep

some jobs, but sometimes the price is just too high, and I must say some of these companies that come to us and say, You pass this bill or else we're going to have to move out. Sometimes we pass the bill and then they move south anyhow, out of the state. I don't think this is a way really to try to maintain 900 jobs by socking it to all of the consumers in the state of New York.

Mr. President, I vote in the negative.

ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the negative.

Senator Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: I'm -- I'm a little bit confused. The ability for the generic substitution would be -- that would be available within a very brief, I guess I -- if I may ask the sponsor a question if the sponsor would just yield for a moment.

ACTING PRESIDENT KUHL: Senator Oppenheimer, we're on a roll call.

SENATOR OPPENHEIMER: I know. O.K. Well, then, I'm just going to have to say I -- I am going to vote in the negative though I do believe that the generic substitution would be available within a very brief period after the termination of calling this drug or the dosage by a different name or size, that it would very shortly thereafter be available in generic substitution, but since I'm not certain of that, I'm going to vote in the no.

ACTING PRESIDENT KUHL: Senator Oppenheimer will be recorded in the negative.

Senator Connor to explain his vote.

SENATOR CONNOR: Thank you, Mr. President.

You know, it's my understanding that this -- this form of dosage would be available to generics within a reasonable period of time, and it, frankly, is my view that the - despite some increased costs, the company that develops a new unique dosage form or configuration ought to be allowed to recover

some of its costs, and you know, in the instance of what Senator Leichter said, once upon a time Brooklyn was, I guess, the national home of the pharmaceutical industry, and over the years we've lost Squibb. They left behind a park in my neighborhood called Squibb Park. We've lost other large pharmaceuticals to other states, to other countries.

We have maintained interestingly enough through -- in days when there was enormous flight of businesses from Brooklyn, one large pharmaceutical company, Pfizer, and they've had an interesting experience because they had plants around the world, and around the country. Their Brooklyn work force is the most productive work force they have throughout their company. It is a work force that, by and large, is made up of people who are immigrants, members of minority groups, and they are productive workers and Pfizer has been a good citizen of Brooklyn. It has stayed there. It didn't run away. It operates in a way that the surrounding neighborhood, the workers feel that they are

really part of the community, and I'm willing to give the benefit of the doubt to such a good citizen, such a good corporate citizen. So I vote aye.

ACTING PRESIDENT KUHL: Senator Connor in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1397 are Senators Gold, LaValle, Leichter, Nanula, Ohrenstein, and Oppenheimer. Ayes 54, nays 6.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT KUHL: Senator Gonzalez.

SENATOR GONZALEZ: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 1574.

ACTING PRESIDENT KUHL: Without objection, Senator Gonzalez will be recorded in

the negative on Calendar Number 1574.

Senator Markowitz.

SENATOR MARKOWITZ: Yes. I also would like to be recorded in the negative on Calendar Number 1574.

ACTING PRESIDENT KUHL: Without objection, Senator Markowitz will be recorded in the negative on Calendar Number 1574.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I'd like unanimous consent to be recorded in the negative on Calendar Number 1574.

ACTING PRESIDENT KUHL: Without objection, Senator Connor will be recorded in the negative on Calendar Number 1574.

Senator Larkin.

SENATOR LARKIN: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar Number 1246.

ACTING PRESIDENT KUHL: Without objection, Senator Larkin will be recorded in

the negative on Calendar Number 1246.

SENATOR SEWARD: Mr. President.

ACTING PRESIDENT KUHL: Senator Seward.

SENATOR SEWARD: Yes. I would ask unanimous consent to be recorded in the negative on Calendar Number 1579.

ACTING PRESIDENT KUHL: Without objection, Senator Seward will be recorded in the negative on Calendar Number 1579.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 1579.

ACTING PRESIDENT KUHL: Without objection, Senator Nozzolio will be recorded in the negative on Calendar Number 1579.

Senator LaValle.

SENATOR LAVALLE: May I have unanimous consent to be recorded in the negative on Calendar Number 1246, please.

ACTING PRESIDENT KUHL: Without objection, Senator LaValle will be recorded in

the negative on Calendar Number 1246.

The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, may we call up Calendar Number 843.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 843.

THE SECRETARY: Calendar Number 843, by Senator Goodman, Senate Bill Number 1520-B, an act to amend the Tax Law.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: I'm informed by the Secretary that there is a message of necessity at the desk, Senator Present.

SENATOR PRESENT: Mr. President I move that we accept the message.

ACTING PRESIDENT KUHL: 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 message is accepted.

Secretary will read the last section.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Goodman, an explanation has been asked for by Senator Gold on Calendar Number 846.

SENATOR GOODMAN: Mr. President, this bill is one which amends the Administrative Code of the city of New York to substantially revise the unincorporated business tax dealing with the following essential categories:

Number one is the treatment of individuals and unincorporated entities engaged in both the purchase and sale of property for their own account and in other business activities, as well as the method of taxing income from certain investment activities, and second, treatment of real property, less -- oh, excuse me. Are we on the wrong one?

Sorry about that. I beg your

pardon, Mr. President. There was an accidental interpolation of memoranda here, and I thought we were on a different bill.

Let me start again. This bill exempts newspapers and periodicals published in electronic read-out or display form from sales and use tax. If you'd like some more, I can give it to you, but that's the gist of it.

Would you like a further explanation, Senator?

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Would you call

up 1472.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1472.

THE SECRETARY: Calendar Number 1472, by Senator Goodman, Senate Bill Number 1226-C, Administrative Code of the city of New York.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: Secretary informs me that a message is here, Senator Present.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity. All those in favor, signify by saying aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The message is accepted. The

bill is before the house.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Explanation has been asked for. Senator Goodman, for an explanation on 1472, been asked for by Senator Gold.

SENATOR GOODMAN: Mr. President, this reminds me a little of the two Englishmen who were seated in adjoining deck chairs when the Titanic sank. They met 30 years later crossing to Europe on another ocean liner and found themselves in adjacent deck chairs. One turned to the other and said, "As I was saying when we were so rudely interrupted...."

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Explanation satisfactory?

SENATOR GOLD: Not even close. Not even close.

SENATOR GOODMAN: If you will just allow the stenographer to take what I just said about the bill preceding which is actually this bill, I will pick up from there.

I started to say seriously, Senator, this is a tax -- this is a bill which amends the Administrative Code of the city of New York to substantially revise the unincorporated business tax. As I've given you category one, and I was in the midst of category two which is -

SENATOR GOLD: Can you give it again, Senator?

SENATOR GOODMAN: I'll be very glad to.

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: Amends the Administrative Code of the city of New York to substantially revise the position of the deck chairs on the Staten Island ferry. No, that's wrong too, Senator, to substantially revise the unincorporated business tax dialing with the following:

First, the treatment of individuals and unincorporated entities engaged in both the sale and purchase of property for

their own account and other business activities, as well as the method of taxing income from certain investment activities; and, second, the treatment of real property lessees or certain fiduciaries involved in owning, leasing or managing of property; and, three, the treatment of income from partnerships subject to the unincorporated business tax.

Now, Senator, this is a complex piece of legislation. The full memo describing it occupies three 8-1/2 x 14 closely single spaced pages, and I have given you the broad outline, and I'll be glad to amplify on this a bit more if it is your desire, but perhaps there's some specific area which you'd like to explore.

SENATOR GOLD: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: If the Senator would yield to a question?

ACTING PRESIDENT KUHL: Senator

Goodman, do you yield? The Senator yields.

SENATOR GOLD: Senator Goodman, I think you're right. The bill is 12 pages and God forbid that we vote on it and understand it. I don't want to confuse the legislative process at this late date.

But, Senator, first of all, can you tell me what the revenue loss is to the city of New York?

SENATOR GOODMAN: Just a moment, Senator. For the current fiscal year year?

SENATOR GOLD: Pardon me?

SENATOR GOODMAN: The current fiscal year; that is to say the one which began the day before yesterday?

I'm informed that the bill will have no revenue impact in fiscal year '95 but will cost the City in fiscal year '96 and thereafter.

May I say that the city of New York strongly supports this measure?

SENATOR GOLD: Senator, if you'll yield to a question.

I understand it's a City bill and I was just wondering how it fits into their plan, financial plan and why? There are people -- this deals with unincorporated business tax which basically, the term itself declines itself of people who are in business. They are not corporations; they're in business, and we have a tax, and this applies throughout the city of New York, everybody doing business. I was wondering the rationale for the city administration wanting to give a tax benefit for people doing business in these particular areas?

SENATOR GOODMAN: Let me see if I can provide it. The bill is an important step towards bringing New York City's unincorporated business tax into closer conformity with the general corporation tax, and it improves the administration to certain UBT exemptions. The changes proposed in this legislation would develop in response to concerns that have been expressed over the years by the private sector, particularly the state Bar Association, CPAs and firms in the real estate and financial service

sectors. The specific provisions are the result of extensive consultation with those groups. Maybe I could give you just a little bit more nutrition on this, Senator.

SENATOR GOLD: Senator, if you would yield to a question.

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

SENATOR GOLD: Senator, if you will yield to a question.

SENATOR GOODMAN: Excuse me, Senator.

SENATOR GOLD: Can I ask the question?

SENATOR GOODMAN: You certainly may, but with your permission -

SENATOR GOLD: Thank you. The question, Senator Goodman, was this. I don't mean to be impolite.

Senator Goodman, as one of the admirers of your wonderful use of the English language, your extraordinary breath of vocabulary and your marvelous -

SENATOR GOODMAN: Should I duck, Senator? I feel a missile coming.

SENATOR GOLD: -- your marvelous wit, I would just say that there are some of us who don't have that capacity to take the six or seven or eight pages from the city which make it sound more complex than it is and, Senator, what I'm always worried about, particularly in the closing days of sessions, are not a bill -- and I think Senator Pataki has a bill today, I may or may not agree, but it's plain English. He's got an idea; it's plain English, about four or five lines. I may agree with it, I might not agree with it. In my years in the Legislature, the ones that always made me duck are the ones that are either 12 or 70 or whatever pages and you see new language and it's usually -- if it's 70 pages, the problem is usually on page 46 or something like that.

I just want to know in plain English, Senator, and I know that your intellect surpasses mine, but talk down to me and I promise not to be offended, all right? In plain

English, who are the people and what are the situations as soon as you have -- where the Guiliani administration is saying, these people shouldn't pay unincorporated business tax and other people should. The guy that owns the grocery store, the bodega, the newsstand, whatever, these people pay unincorporated business tax. I just want to know, and I will be glad to vote for it, who are the people we're really talking about here that are getting the $10 million benefit? That's all.

SENATOR GOODMAN: Senator, in all seriousness, that's an appropriate question and I think you're entitled to as full an answer as I am capable of giving you so I will try my best to be responsive.

The unincorporated business tax is a city income tax on proprietorships and partnerships. Since its inception in 1966, this tax has been four percent. An enriched UBT tax credit was added in 1987 which eliminated the tax liability for nearly 30,000 small businesses. The UBT is expected to generate

approximately $414 million in 1994.

Now, merely to refresh your recollection, this tax and substantially the form which we have before us, this reduction measure has been with us for two years. It has not passed prior to this, but it is not for those who have furrowed tax matters, unfamiliar or suddenly uncorked at five minutes to 12:00 in the session.

The UBT includes the following exemptions which are the focus of the bill. The additional exemption allows partnerships to claim an exemption for distributions to partners who are themselves subject to the UBT or the city general corporation tax or to the banking corporation tax. The solely purchasing and selling property for one's own account exemption provides a full exemption to individuals or entities engaged solely in trading or investing in property or stock option contracts for their own benefit.

SENATOR GOLD: Would the Senator yield to a question?

SENATOR GOODMAN: Just a moment, Senator. I'm not quite finished.

SENATOR GOLD: I'm trying to be helpful, believe me.

SENATOR GOODMAN: I assure you I'm aware of that and I shall be as brief as I can. In fact, why don't I just yield, Senator. Go ahead, if you would like.

ACTING PRESIDENT KUHL: The Senator yields, Senator Gold.

SENATOR GOLD: Senator, to begin with in the first sentence, as I understand it, we're basically saying that there right now is a double taxation and that we're trying to eliminate that, that there are people who are having monies passed through who are subject to the tax, so we're not taxing them the first time but we are collecting the tax, is that correct? Say yes and you're okay.

SENATOR GOODMAN: In a number of instances that's an accurate description.

SENATOR GOLD: All right. And in the second situation, Senator, as I understand

it, we're talking about people who basically are trading for their own account. They're not in business in the normal sense. They're just people who may or may not make some money in terms of their own trade, is that correct?

SENATOR GOODMAN: No, they're in business in the normal sense. It depends how you define "normal". I'm not trying to be technical with you. This relates to the businesses I just described which are legitimate businesses; real estate enterprises, financial enterprises and the like, okay?

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 60.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, if I could also have unanimous consent to be recorded in the negative on 1579.

ACTING PRESIDENT KUHL: Without objection, Senator Libous will be recorded in the negative on Calendar Number 1579.

Senator Mendez.

SENATOR MENDEZ: Mr. President, I would like to have unanimous consent to be recorded in the negative on Calendar Number 1397, 1397.

ACTING PRESIDENT KUHL: Without objection, Senator Mendez will be recorded in the negative on Calendar Number 1397.

The Secretary will call Calendar Number 1428 and continue in record order on the controversial calendar.

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

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator

Pataki, an explanation has been asked for on Calendar Number 1428, by Senator Gold.

SENATOR PATAKI: Mr. President, what this bill does is amends Subdivisions (3) of Section 440.10 of the Criminal Procedure Law.

That section provides when a court may deny a motion to vacate a judgment and it adds a new subsection (d) that says that the court may deny a motion to vacate when a defendant fails to show that any right was prejudiced by his or her absence from a pretrial hearing to determine the admissibility of a prior conviction.

What this in plain language does is, in the case of a Sandival hearing, which is a pretrial hearing to determine the admissibility of prior bad acts, under most recent Court of Appeals decisions, the defendant can raise that is an objection and have the trial verdict thrown out even when there were no prior convictions at all in his or her presence at that hearing, would have had no impact on the fairness of the trial. So what this says is

that a defendant would have to show that the right was prejudiced by being absent at that hearing.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR PATAKI: Yes, certainly, Senator Gold.

ACTING PRESIDENT KUHL: Senator Pataki yields, Senator Gold.

SENATOR GOLD: Senator, this is essentially the explanation we got from counsel in the Rules Committee, but I'll tell you the part that I don't understand.

In my understanding, a so-called Sandival motion -- it's called Sandival for those non-lawyers because it refers to a case, People against Sandival -- is a situation where there is either a prior conviction or something in someone's background which is of negative impact, and in the normal course would be admissible against that person or used against that person in a criminal trial, but because of fairness and relevance, et cetera, you asked the

court not to allow it to be used at the trial, am I right so far, Senator?

SENATOR PATAKI: I believe so, Senator.

SENATOR GOLD: Okay. What I don't understand, Senator, is if there is something that you're worried about, somebody makes the motion. If there is nothing, if there are no prior convictions, there's nothing to suppress, I don't understand how we wind up with a hearing, and what I'm being told by you and the counsel said the same thing, is that if a defendant is not at the hearing which he should be, but there's nothing at the hearing anyway, there's no prejudice. I don't understand how there's a hearing on nothing. That's the part I'm -

SENATOR PATAKI: Let me give you two examples of where there would be no prejudice. As in the favor case that determined this rule of law, the court said we're not going to allow that prior conviction or that prior charge to be allowed in evidence, so there was

clearly no prejudice, and the attorney for defendant was present at the Sandival hearing, but because of the fact that the defendant was not personally present, even though there was no prejudice and nothing was admitted during the course of the trial, the conviction was overturned on appeal, so that's a perfectly good example of why we need this bill.

SENATOR GOLD: May I interrupt, Senator? That's an excellent example and it's different from what I heard people saying. In other words, that's a situation where there was a conviction, the judge said, we won't allow to you use it. It's not a situation where there was no conviction and you held a hearing, so at least we've cleared that up. You can't have a hearing if there's nothing. The only other question I have, Senator, is I understand the predicament.

SENATOR PATAKI: Senator Gold, if I may interrupt. There are other cases where there were hearings, where at the hearing, it turned out that there was no need for the motion

because there were no prior convictions and yet it still was held at courts to constitute a Sandival hearing and allowed a defendant to move to vacate because of their absence at that hearing. Whether or not the hearing was required, it was held.

SENATOR GOLD: Good. Senator, again, I appreciate it and so far, I'm fine.

If you would yield to a question, Senator. What I'm concerned about is the following: In the two situations you just described, I don't see any problem at all with the court saying there's no prejudice, but what about a situation, Senator, where there is, in fact, a conviction and a judge rules that it is admissible, and to some extent, there's large discretion, and then you get to a point on appeal. Under your law, I believe, you would be opening the door for an appellate court to excuse the absence of the defendant even though at this point they ruled against the defendant and they're using the conviction by a court merely saying, we don't think there's prejudice,

and in that situation, we can't possibly know it. It may be that if the defendant was at the hearing, he could have contributed and maybe the judge would have ruled the other way, but it seems to me that there are two separate situations, and I think your bill is dealing with both and maybe it should only deal with one.

If there is no ruling at the hearing that the defendant -- you can use anything against the defendant, obviously there's no prejudice, but I would think that if there's a ruling against the defendant, and he was not present, I think that that is a complete and different situation.

SENATOR PATAKI: Well, in that case, there are two different options. The defendant can raise the point that they were prejudiced by not being present, and the court can determine that that was, in fact, the case, or a court, as the Appeals Courts do all time, can find there was harmless error and there was no real prejudice and allow the verdict to

stand, so I think that that procedural safeguard still continues to exist if this bill is adopted.

SENATOR GOLD: Okay. Thank you.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: Mr. President, I think -- I mean, this is a technical area and the Court of Appeals in its wisdom made a decision and we are being asked to overrule the justices, and I'll tell you what I see as the problem, and obviously, the membership can deal with it the way you want.

The law says that a defendant is entitled to be present at proceedings. Now, we're talking about defendants. We're not talking about convicted criminals. We're talking about defendants. They're entitled to be present at proceedings. If they're not present as this case said, there could be a reversal.

Now, getting a defendant present

at the trial or the hearing should be the easiest part. Someone is convicted of a crime, you get him to a hearing. I mean, we have this -- what I think is oppressed debacle going on in California and certainly with the television cameras there and you got the money that O.J. Simpson has, you can have O.J. Simpson being present, but there are a lot of poor people and a lot of Legal Aid lawyers and a lot of stuff going on where maybe somebody decides that for one reason or another, they're going to go ahead and it will generally be a poor defendant, does not have to be present.

Well, in the situation that Senator Pataki first talked about, I don't have a problem with that. If you have a hearing and basically the result of the hearing is that there is nothing that's going to be used adversely against the defendant, that's fine. It can almost be done by consent, but if you actually have a hearing, and the issue is whether or not things can be used against the defendant, the concept of not having the

defendant there to work with his or her lawyer is a terrible concept. So Senator Pataki can undo the court decision he's concerned about without opening this whole door.

Now, Senator Pataki says, rightfully, that, well, if they -- if they rule against the defendant, he can always raise the issue on appeal that he was prejudiced, but the problem with that is the real world, and in real world, if you now have somebody who was convicted and the person who was convicted is before the Appellate Court, under the rule that Senator Pataki would throw in, a judge could say or the judges in the Appellate Court could say, "Well, yeah, it was an error and there was some prejudice but, on the other hand, we think there's evidence of overwhelming guilt. We think this, that and the other thing", and the bottom line is that they can void the fact that the defendant's right to be there and participate was violated.

So, Senator Pataki, again, only speaking for myself. I'm going to vote no on

the bill. I would support the bill, by the way, if you limited it to situations where there basically there was no ruling against the defendant. I mean, you can't do any better than winning the motion whether you're there or not, and I would certainly support you there, but to open the door to a situation where you can void the presence of a defendant in a criminal situation, I think is a very dangerous thing.

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.)

ACTING PRESIDENT KUHL: Announce the results untabulated.

THE SECRETARY: Ayes 55, nays 5, Senators Connor, Gold, Leichter, Smith and Waldon recorded in the negative.

SENATOR GOLD: Mr. President, I think Senator Waldon wants to be recognized, but

before we recognize him, Senator Pataki, I want the record to indicate that if Emily wasn't here, it would have been a longer debate.

(Laughter.)

ACTING PRESIDENT KUHL: The bill is passed.

Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

For the written record, I request respectfully unanimous consent to be recorded in the negative on Calendar 1574.

ACTING PRESIDENT KUHL: Without objection, Senator Waldon will be recorded in the negative on Calendar Number 1574.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will continue to call the roll.

THE SECRETARY: Calendar Number 1473, by Senator Levy, Senate Bill Number 1304, an act to restore funds to school districts.

SENATOR GOLD: Explanation.

SENATOR LEVY: Senator Gold, as you know, this bill has been before this body in other years, and the genesis of the bill was, the steps that we had to take beginning in fiscal year '90-91 as it related to the state aid to education formula, and over a period of years, formula state aid to education was cut by almost $935 million.

It was then the position of the Majority and some of the members on your side of the aisle that when the economic health of New York State began to turn the corner, that we should make a restoration of the state aid to education that was cut over seven fiscal years.

We began that process under this bill this year, Senator Gold. We increased state aid to education on a formula basis by $435 million plus $34 million in growth aid.

What the bill calls for -- and I was very interested by your comments in conversation yesterday with Senator Stafford because you -- because this year's state -- this year's increase in state aid to education that

meets the mandate of the bill was a part of the appropriations in the budget, so we have restored the 14.25 or $266,000,930 as a part of our increase in state aid to education, and I would hope -

SENATOR GOLD: No, that's all right, Senator. Go ahead. I didn't mean to interrupt.

SENATOR LEVY: I would hope, Senator, that all of the members of this chamber would join with me and my colleagues on this side of the aisle, and Senator Cook is a principal sponsor of this bill with me, the Chair of Education, to make a commitment that over the period of years set forth in this bill at the latest, if not sooner, we would get back to where we were with the level of formula driven state aid to education to our school districts at the time that we began the cuts.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR LEVY: Yes, certainly.

SENATOR GOLD: Mr. President,

will the Senator yield to a question?

SENATOR LEVY: Yes, absolutely, Senator Gold.

SENATOR GOLD: Senator Levy, if I am not mistaken, you and other members of this body voted for a budget 60 or 69 days late, and that budget had enpenditures, it had taxes, it had all kinds of things. I am told that this bill will cost for the school year commencing July 1, 1994, about $103 million. Is that in our budget? Is that part of the budget we passed?

SENATOR LEVY: I know you were on the telephone, Senator Gold, but I indicated to you that we increase state aid to education by $435 million in formula A. Having done that, we meet the mandate of this bill as it relates to the first year of the restoration of the cuts in state aid to education. We have not only -- we have not only restored $266,000,930 that we cut, but we've gone over that with $435 million of restored and increased state aid to education plus $34 million in growth aid. We've met the

mandate of the bill.

SENATOR GOLD: Wonderful. Will the Senator yield to a question?

SENATOR LEVY: Yeah, and incidentally, it was a budget with tax cuts, not taxes.

SENATOR GOLD: Right. Will the Senator yield to a question, please?

SENATOR LEVY: Yes.

SENATOR GOLD: Senator Levy, are you telling me that this bill merely reflects what the budget has already done for this fiscal year and then carries a formula for other fiscal years?

SENATOR LEVY: What this bill does is to -- starting this year, to restore the dollars that had been cut and, yes, it meets the mandate of this bill for fiscal year '94-95.

SENATOR GOLD: Will you yield to one more question?

SENATOR LEVY: Yes.

SENATOR GOLD: Are you telling me that the way the budget is now, if we don't pass

this legislation, we don't know where to put the money that we've already appropriated for education?

SENATOR LEVY: Senator, what this bill does is over a period of seven years, restore the cuts in state aid to education and we put the money into the budget to do the first year of the restoration, and what this bill does is -

SENATOR GOLD: Senator, you're not answering my question. I understand what you're saying, Senator. You're very articulate. I would just like you to answer the question I'm asking.

If we do not pass this bill, are you telling me that there's a problem with the education budget as we have already passed it for this fiscal year?

SENATOR LEVY: There is no problem with it, but it will not pick up what this bill intends to do for the next six years to get at fully restoring all of the cuts in formula A.

SENATOR GOLD: All right. Senator Stavisky.

SENATOR STAVISKY: Mr. President, may I be recognized.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Senator Levy, will you yield to a question?

SENATOR LEVY: Certainly.

SENATOR STAVISKY: Your bill was reported -- this bill was reported from the Senate Finance Committee, is that correct?

SENATOR LEVY: I tell you, Senator, I would have really have to look in the index.

SENATOR STAVISKY: Did it bypass the Senate Finance Committee?

SENATOR LEVY: Pardon me? Senator, I don't know.

SENATOR STAVISKY: You don't know?

SENATOR LEVY: I don't know, but if it -- I certainly -- we certainly could find that information out.

SENATOR STAVISKY: May I ask the chairman of the Senate Finance Committee if he would clarify that question?

Senator Stafford, was this bill reported from the Senate Finance Committee?

SENATOR STAFFORD: We find usually that at this time of the session that whenever there is an excellent bill like this, that Senator Levy has this at this time, the staff of the Finance Committee worked with Senator Levy and I'm sure that we were involved, and I have a memo in support of the bill from the Senate Finance staff, so that points out that it was worked on.

SENATOR STAVISKY: But you're telling us it did not go to the Senate Finance Committee for a vote.

SENATOR STAFFORD: It was committed to Finance.

SENATOR STAVISKY: It was not considered. Do I have a group of bills for you to bypass your committee, we could keep going indefinitely. Senator Stafford, you and Senator

Levy are two of my favorite Senators, and I feel embarrassed to ask this kind of question, because of my respect for you.

SENATOR STAFFORD: It indicates that it was printed to be committed to the Committee on Finance.

SENATOR STAVISKY: It still has to go back to Finance?

SENATOR STAFFORD: No, it was in Finance.

SENATOR STAVISKY: It was in finance, and there was a vote from the Senate Finance Committee to report this bill?

SENATOR STAFFORD: Well, there was -- as I mentioned to you, the Finance Committee has been very involved in this and have a memo in support of this.

SENATOR STAVISKY: The staff of the Finance Committee but not the members of the committee, is that correct?

SENATOR STAFFORD: Well, we can get the details exactly the way -

SENATOR STAVISKY: I think that's

what you're saying, Senator Stafford. Perhaps, your aide could clarify that point for you and then clarify it for me.

SENATOR STAFFORD: I certainly will look forward to doing that.

SENATOR STAVISKY: Thank you very much.

What I'm saying, in effect, Senator Levy and Senator Stafford, with profound respect for both of you, is that this looks like there are two fiscal committees in the New York State Senate. One fiscal committee that considers the ramifications of measures of far less cost and far less import when the Finance Committee does operate, and then this little bill, only $1 billion for the rest of the decade and a quarter of $1 billion perhaps right now. This little bill doesn't require the support or the consideration by the Senate Finance Committee.

Gentlemen, I ask you -- ladies and gentlemen, I ask you, please let us not make a mockery of our procedures in this house with

regard to legislation that goes and is voted upon by the Senate Finance Committee and let us not make a mockery of the annual fiscal budgetary procedure.

This is the kind of bill that deserves consideration, Senator Levy, but not in this manner. This is the kind of bill that deserved consideration at the annual budget negotiations but not in this ex post facto manner. It's as though this bill were considered unrelated to the budgetary process with no fiscal implications whatsoever, and I know if I were to talk -- if I were to speak with you privately, both of you gentlemen would acknowledge that there are serious fiscal implications here that should not have bypassed the Senate Finance Committee on which I don't even serve, so I'm not asking for any recognition for a committee on which I serve. I'm asking for recognition for your rules of procedure and your concern about fiscal costs.

Yesterday, in an attempt to crack down on spending, in an attempt to pursue tax

and expenditure limitations, the Senate -- this Senate pursued an entirely different direction, and now there appears to be no consideration for that direction, and I believe that this is a sham, and a shame that does not reflect well on the consistency, let alone the policy-making procedure of this New York State Senate.

I also believe that there are serious flaws in what you're doing. Senator Levy, I understand when you want to help your school districts, I understand that, but it is my understanding that some of the aid being, quote "restored", end of quote, to the school districts involved here, may involve some of the school districts that are among the wealthiest in the state, among the higher wealth districts in the state, certainly not going to the poorer districts. There are many poor districts elsewhere that will not be receiving this kind of aid.

I don't think that it follows a formula. I think it's going to districts, Senator Levy, if I may pursue that point which

have been receiving state aid on safe harmless and that is hardly an equalizing procedure.

You want me to yield?

SENATOR LEVY: No, I'm just waiting for you to finish.

SENATOR STAVISKY: What I have here is a note. "Deficit reduction assessments were based on relative wealth or poverty of a school district", and that's the way the deficit reduction assessments were made in the first place, that wealthier districts were assessed more proportionately than the poorer districts, and what you're saying here with your legislation is that now more money will be returned proportionately to the wealthier district than to the poorer districts, and I think that unless there is fiscal equity and educational equity in the manner of restoring aid based upon fairness, that this legislation is faulty. Instead, the money is being restored based on real property taxation rather than fairness or equity in the formula, and I believe that if we were to take a look at the wealth

behind each pupil, for some of the districts that are getting aid under this -- and if you want, I'll ask for those printouts, if you want to lay this bill aside -- I don't think you would be happy if I read off the wealth behind each pupil of some of the districts that will be entitled to restoration of funds based upon this piece of legislation.

You will find that wealth - relatively wealthy districts are going to be receiving aid based upon this piece of legislation, based upon the tax, based upon the amount that was deducted rather than the equity involved, and those are considerations that the Fiscal Committee could have considered. Those are considerations that the Education Committee could have considered. I am not the ranking Democrat on either committee, but I believe that the Fiscal Committee, the Senate Finance Committee and the Senate Education Committee could have had a look at this, and certainly a much earlier look than after the adoption of the budget in the waning hours of this legislative

session.

I respect what you do, Senator Levy. This is not one of the finest hours with this piece of late afternoon legislation.

SENATOR LEVY: Mr. President.

THE PRESIDENT: Senator Levy.

SENATOR LEVY: Senator, I noticed that you were reading as from a piece of paper as opposed to the bill.

Senator, nothing that you've said relates to this bill, because if you read the bill, the -- this bill does not require that state aid is returned to school districts the way that it was taken. This bill requires that each year the Legislature and Governor do a chapter as a part of the budget, and this year we did it with the formula, to determine how the monies that are going to be restored are going to be restored to each school district. This bill does not, Senator Stavisky, require the money to be returned as it was cut.

Last section.

THE PRESIDENT: Last section.

Senator Galiber.

SENATOR GALIBER: Excuse me, Senator. I apologize. I was out of the room working on some other -- well, I was out of the room.

Perhaps this has been answered, but how much money is involved here over the period of seven years?

SENATOR LEVY: Senator, Let me go through it again, because while you were out of the room, I explained what the bill did.

Senator Galiber, what the bill does is to require that the almost $935 million that was cut in state aid to education be restored over a seven-year period of time. It is to be restored pursuant to legislative action each year to determine how that money is to be apportioned between the state school districts.

This year we met the mandate of the bill when, in determining how much money would flow to our school districts, we increased state aid to education by $435 million in formula aid and $34 million in growth aid, so we

have met the mandate of this bill for the first year.

SENATOR GALIBER: Senator, would you yield?

SENATOR LEVY: Yes, certainly.

SENATOR GALIBER: I am told - you certainly can give me the answer. How much is this return each year? Is it 135 million?

SENATOR LEVY: The bill requires that over a set -- over seven years we restore the amount of money that is cut. Therefore, the first year we would and we have returned $266,000,930 as a part of the 400- -- the $435 million increase in state aid to education plus the growth aid of $34 million.

SENATOR GALIBER: I guess what troubles me, if we've already returned this first year's money, why do we need this bill?

SENATOR LEVY: To make sure that we return the rest of the money in other budget years.

THE PRESIDENT: Senator Jones.

SENATOR JONES: Would the sponsor

yield to a question, please?

SENATOR LEVY: Certainly, yes.

SENATOR JONES: I'm trying very hard to follow this but I will admit to being totally lost at this point. I understand the state aid formula is very complex, but your bill I'm reading says that this is in addition to whatever we appropriate.

Now, am I understanding you to say that this was already in here this year, the money we appropriated, your money was in here -

SENATOR LEVY: Yes.

SENATOR JONES: -- hoping we would pass this bill?

SENATOR LEVY: No, no. What I'm saying is that this bill sets out a schedule.

SENATOR JONES: Okay.

SENATOR LEVY: And we met the schedule when we did the budget, appropriated money to state aid to education and appropriated $435 million in new formula-driven state aid to education plus $34 million in growth aid. We met the mandate of the first year of this bill.

SENATOR JONES: Would the sponsor yield to another question?

SENATOR LEVY: Yes, Senator.

SENATOR JONES: I'm still not sure I'm totally following this. Somebody got together, looked at the budget for the state ed' and we decided on an amount of money that we're going to appropriate to education, is that -

SENATOR LEVY: Yes.

SENATOR JONES: Okay. But you're telling me within that amount, there was this extra amount some place?

SENATOR LEVY: No, it was included in the 435- and the 34-.

SENATOR JONES: Okay. Would you yield to one more question? I still don't think I'm clear here. This bill was 1992, I believe on here we passed it, so have we been basically working with this all this time, putting this money back?

SENATOR LEVY: Senator, we haven't been working with it because the Assembly hasn't passed the bill, but if this

bill were to become law, we have met the first year requirement under this bill when we increased -- and again, it's like beauty. It's in the eyes of the beholder. Some people in this chamber or in the other chamber or in the Gov... board or the Governor will say, what we did this year was an increase in state aid to education. Others will say it is a restoration of state aid that has been cut.

SENATOR JONES: Would the sponsor yield to one more question?

SENATOR LEVY: Yes.

SENATOR JONES: All right. Would we not have had to tell somebody, though, that we've done this? I mean, would not anyone looking at the budget assume that this is what we appropriated, and then your mandate here says now we have to have this addition. Wouldn't have have to be delineated some place so someone would know that our appropriation included this? How would I know this?

SENATOR LEVY: First of all, the bill didn't become law because the Assembly

didn't pass it. There's no requirement that it be done until the Assembly passes it and Governor Cuomo or Governor Lundine signs it.

SENATOR JONES: Senator, let's say they do that again. How do we go backwards and say that wasn't really our appropriation, our appropriation was minus this amount but now that amount is there?

SENATOR LEVY: What we will be saying is that we have met the provisions of Senate Bill 1304 when we increased state aid to education by 435- -- by almost $470 million.

SENATOR JONES: Thank you, Senator.

On the bill. I have been willing to go along with almost everything I've heard here that will help education, but this one I have to -- have hold of the line here. I really am totally confused and it makes no sense to me. Again, it says to me we're spending money that we don't have. I agree we shouldn't have cut education. I was part of the system in those days when everybody was worrying about how

programs could continue and what we were going to do for money, so I agree with you, you shouldn't have cut education, but then you shouldn't have cut revenue sharing and lots of things, and it's not possible to give it all back. I mean, I certainly agree that next year if we have money and it's available, then we should look at giving more to education, but it really doesn't make -- to me, this like we're trying to rewrite history and that's really hard to do. I just can't go along with this, so I certainly will support any increase in aid to education, this year, next year, whenever the money is there, but I can't support something that spends money, first of all, we don't have and it's attempting to go back and fix something that I would have to assume your judgment told you at the time was the only thing we could do, so I'm going to have to vote no on this one.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Thank you, Mr. President.

Would the Senator yield to a

question?

SENATOR LEVY: Certainly, Senator.

SENATOR ONORATO: I guess with all of this, I'm probably just as confused as everyone else is. You're stating that there's an appropriation -- the budget has already been pass and let just throw out a figure that we've appropriated $1 billion for aid to education. You're now saying that there is an additional $400 million in that budget, that if we pass or don't pass it, that you're going to use this money to expend -- further give some more aid back to the districts. If we don't pass it, we'll have an excess of $400 billion in the budget. If we do pass it, then we can distribute that $400 million. Is that what you're telling us?

SENATOR LEVY: No, Senator, I'm not telling you that.

This bill for this fiscal year does not require one additional penny to be appropriated in state aid to education. This

bill says that we have met the mandate under this bill if it were to become law when we passed the budget and we appropriated $435 million in state aid to education and $34 million in growth aid.

SENATOR STAVISKY: Mr. President.

THE PRESIDENT: Senator Dollinger asked for recognition next.

SENATOR DOLLINGER: Mr. President, let me see if I can clear up the confusion, Senator Levy, if you would just respond to a couple of questions.

As I understand this bill, what happened in the past was that in the period of financial distress in this state, this Legislature took, it said $900 million or so from the state's school districts by reduction in the state aid to those districts. That was the December cuts, as I recall in '91 or '92, is that correct?

SENATOR LEVY: Yes. It was cut over three years, Senator Dollinger.

SENATOR DOLLINGER: Okay. What

the intent of this bill is to commit that we will restore those funds.

SENATOR LEVY: Over -- the intent of this bill is that over a seven-year period of time, we will restore $934 million, almost $935 million it was cut.

SENATOR DOLLINGER: Let me ask what I think was the question that Senator Stavisky -- or the comment that Senator Stavisky made and you were shaking your head as though it wasn't quite accurate.

My understanding is that the $935 million worth of cuts were largely a apportioned to be more -- to impact more on wealthier district and less on the poor.

SENATOR LEVY: This bill has nothing do with that, Senator, because this bill does not say that the money that was cut when we restore it will go back to the districts in the same amounts that it was cut.

SENATOR DOLLINGER: Okay.

SENATOR LEVY: What this bill does is say that each year when we restore -

restore part of the $935 million that was cut, you and I and all the members in the Assembly and the Governor will determine how that money is going to be apportioned among the school districts.

SENATOR DOLLINGER: Okay. That's -- let me just make sure I understand that, Senator. On page 2 of the bill, what you're saying is that section that says "shall be appropriated for supplement support for public schools from appropriations authorized by the Legislature for such purposes to be apportioned to each school district in accordance with the provisions to be adopted annually." What you're saying is, so I understand it clearly, is that what this bill says is, we're committed to restore those cuts, but we'll do it depending on what we've got in the bank each year -

SENATOR LEVY: What I'm saying is -

SENATOR DOLLINGER: -- and depending on how we decide to -

SENATOR LEVY: I'm saying, each

year we will determine whether we're going to do it, how much it's going to be, and how we're going to apportion it among the school districts.

SENATOR DOLLINGER: So -- again, so I'm perfectly -- this is a bill which you see as a commitment to the state's public school districts that we will make every effort to restore the money, and we may not be able to do it because, as you know, the financial circumstances of this state could change. This bill really is a commitment not -- I won't say an unfunded commitment but a commitment to give them the sense that that's going to be one of our priorities in dealing with it.

SENATOR LEVY: And we're going to do it but we have to appropriate the money each year to do it -

SENATOR DOLLINGER: Correct.

SENATOR LEVY: -- as a part of the budget process and we're going to do it globally. We are not committing ourselves - we're doing it globally, that we are going to do

for all of the state school districts and then we're going to decide each year how to apportion the money among the districts.

SENATOR DOLLINGER: Mr. President, on the bill.

I appreciate Senator Levy's Comments. I think you clarified for me at least what this bill does. My concern was the concern that Senator Stavisky had expressed was that I represent an urban school district and suburban school districts as well. If you had said that what you're going to do is reapportion money to the school districts from whom it was taken in the first place, it would then be in a situation where we would be using our scarce additional educational resources to distribute money to school districts that were wealthier at the expense of the scarce resources being distributed to poorer districts.

What I here you saying is we will simply look to restore what we took back because of our financial circumstances in the early 90s, and we will do it as we see fit taking into

account the formula discussions that we had earlier this year at the time of the budget and last year at the time of the budget with respect to the distribution to districts that need it, may have greater needs and those that may have greater resources, so you clarified it for me. I'll decide how I'm going to vote in a second but at least I fully understand it and I appreciate it.

SENATOR LEVY: Last section.

SENATOR GOLD: Mr. President - I'm sorry.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Mr. President, for as many years as I have been here, I have noted the absence of a permanent school aid formula, and instead each year there is the annual ritual almost like the mating dance of some exotic birds in which the Assembly and the Senate and then the Governor are involved.

Why I have asked reasonable people, doesn't the state of New York have a permanent school aid formula? That's a

reasonable question. There are many other entitlement programs and apportionment programs which are not renegotiated from year to year, and the reason that comes back is two fold: One, there are some legislators who want to make their constituents in the educational field continually obligated to that, so they get the respect and the appreciation and maybe the votes for doing certain things for those school districts, and that, I can understand, but a second less political, more fundamental reason is that we cannot project the economic indicators for the United States or for the state of New York in advance.

Will our revenue receipts be identical? Will they be higher or will they be lower? Will the economy be in distress or sailing away to higher and higher heights, and for this less political reason, not knowing what the conditions will be from year to year, the Legislature collectively, Assembly and Senate have decided that it's necessary to have the issue visited anew each year, and that's what's

wrong with Senator Levy's bill.

He says, "Don't bother me with what the condition -- the economic condition is next year or the year after or the year after that. I've got a long-range magnifying glass, telescope that will tell me that for the next decade, we're going to have enough money to do this."

Senator Levy, you can't tell us that we will have enough money to put into place what you want. There may be another period of downturn in the economy of New York State. Our receipts may not be the same, and you cannot lock into place a commitment, a hard or soft commitment that we will be doing this for years to come.

I would urge to you patience. You're patient man, Senator Levy. I know that you have a remarkable memory for what you seek to accomplish. I'm praising you. Patient, you don't think?

SENATOR GOLD: No.

SENATOR STAVISKY: I think he's a

patient man and he's a reasonable man, and I would think that Senator Levy would have the ability in the next year to say to all of us, "Look, ladies and gentlemen. If we have the money, I would like you to put into place what I propose in this bill, and if you think it's fair, you should do it", and, you know, if you said it to us that way, next year when we knew what we had coming in or not coming in, I think you would be doing a much better job and you would be recognizing what the Legislature has, in fact, recognized for decades that you do not put into place a permanent feature in the school aid formula until you know the conditions from year to year, and you are too experienced in the legislative process to have forgotten fundamental condition under which we operate.

Do not lock in one commitment so far in advance when we do not know the other committments. There are districts that lose pupils, and you know what declining enrollment can do to your district and to and others. There are districts that gain pupils. There are

districts that gain wealth. There are districts that lose wealth. There are districts that have special educational needs, that are altered from year to year, and all of these considerations are important, but most importantly of all, we do not lock in any part of the formula. We visited anew each year. If we didn't do it that way, Senator, I have very good recommendations, I would like to bypass the Senate Finance Committee, you and I would sit down and develop a rational permanent state aid formula, together with Senator Galiber and we would then -

(Comment from the floor.)

-- well, we have more confidence in you, perhaps than your predecessor. At any rate, what we would then do is have a permanent formula that didn't have to be changed from year to year, and I think that's what is missing here. We don't have all the answers at this point, and you shouldn't try to guess our ability to do what you're proposing here for so many years in advance.

That telescope is not the Hubble telescope, and even that telescope had difficulty. There were glitches in the Hubble telescope, and I don't know if you were using that to view the future, but we have no clear indicators of what next year and the year after will bring, so I urge patience, hold your bill, hole your horses, stop this projection into the future. That's only for a certain Hollywood motion picture of firms that specialize in futuristic films, but you don't want to do that here in the Senate chamber. The Senate is geared to today and next year to tomorrow. I hope you'll hold the bill.

SENATOR GOLD: Senator Galiber.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: Senator, just maybe -- I'm not quite sure. Would you explain line 16 in your bill? It's Section 2. You know, there seems to be some ambiguity there as to what's happening here. What happens to the money? It says, "notwithstanding any other provision of law to the contrary for seven

consecutive years commencing with the 1994-95 state fiscal year for aid payable to each of the seven consecutive school years commencing '94-95 school year in an amount equal to the sum of one-seventh of the aggregate amount of calculated or specified state aid deficit reductions, S.S., pursuant to paragraph -- I don't know what that says.

SENATOR LEVY: Senator, each year as we do the budget, if we are unable to deal with the mandate in that section of the bill as a part of dealing with the budget, we will deal with that section because, number one, the money to fund the mandate of this bill has to be appropriated as a part of the budget.

SENATOR GALIBER: It doesn't say what happens to it.

SENATOR LEVY: Senator, we cannot bind with this bill. We cannot bind other Legislatures as it relates to the appropriation process.

SENATOR GALIBER: In other words, my grandma used to have an expression, "Are we

buying a pig in the poke here?" If you can't tell us what's going to happen, and you say, on the one hand, maybe it will go back to the richer school districts, it may not go back. You haven't told us where it's going to go except that, perhaps -- I'm not being facetious, that I keep saying over and over again because I put out news letters also, but if we put a news press out in your area that says that you're responsible for bringing $435 million back to your particular district as a result of this piece of legislation, but this paragraph said absolutely nothing. It does nothing. It doesn't tell us where the money is going to go, how it's going to be used. There's no word -- I just don't know what it does if you don't know what it does.

SENATOR LEVY: Senator, this bill requires us -- and again, I state to you, Senator, in having drafted this bill, this bill does not require the funds that are restored to school districts to go back the way they are taken.

As I said to Senator Dollinger, each year, you and I, the Assembly and the Governor will make that determination through the budget process.

SENATOR GALIBER: But they could go back.

SENATOR LEVY: No, they couldn't.

SENATOR GALIBER: It could not?

SENATOR LEVY: Each year when we do the state aid formula or a chapter, we will have to determine how the money is distributed under this bill.

SENATOR GALIBER: And that means that you do not know where it's going back and it could go back to the same rich school districts because you're not specifying how the money goes.

SENATOR LEVY: Senator Galiber - Senator Galiber, we cannot make a determination as to how the money is going to be appropriated next year because you and I have to make that determination and the Governor and the Assembly.

SENATOR GALIBER: I'm merely saying to you, based on that statement, it could go back to those same richer school districts.

SENATOR LEVY: Only if you and I and the Assembly and the Governor signed the bill.

SENATOR GALIBER: You've answered the question.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1473 are Senators Connor, Gold, Gonzalez, Jones, Kruger, Markowitz, Mendez, Ohrenstein, Onorato, Stavisky and Waldon. Ayes 49, nays 11.

THE PRESIDENT: The bill is passed.

SENATOR STAVISKY: Mr. President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Without

objection, may the record reflect my desire to be recorded in the negative on Calendar 1246 and 1574?

THE PRESIDENT: Without objection.

SENATOR STAVISKY: Thank you.

THE SECRETARY: Calendar Number 1546, by Senator Present, Senate Bill Number 7014, an act to amend the General Municipal Law.

SENATOR GOLD: Hold on a second.

Senator Galiber would like an explanation.

SEANTOR PRESENT: Mr. President, this bill would provide a procedure for establishing what would be known as rural economic development zones.

When we established economic EDZ zones, I found that in rural areas they found it difficult to make the application to meet all of the necessary requirements to become established and even be in the running to be chosen as an EDZ zone.

SENATOR GALIBER: Would the

Senator yield for a question?

SENATOR PRESENT: Sure.

SENATOR GALIBER: Senator, you know when we originally proposed this piece of legislation, they took into consideration various geographical areas; in other words, they have a certain number downstate, a certain number upstate. I did listen carefully to your explanation now and also in the Rules Committee. You're indicating that you're changing the criteria of lowering perhaps a census tract as far as the poverty criteria is concerned so that you would fit into a particular municipality, obviously that you're interested in.

SENATOR PRESENT: Not a particular one, any one across the state.

SENATOR GALIBER: Okay. You know how many municipalities will be impacted as a result of this legislation if it passes?

SENATOR PRESENT: No, I can't tell you because it's an optional application. It would be limited to communities who have less

than 10,000 population. They would set aside no more than two square miles of land. They wold have to meet the income qualification which is two-thirds of the average and have an economic base lower than the average.

SENATOR GALIBER: Okay. Do you have any idea, one, what the cost factor will be and, secondly, the notion of the economic development zone was to lure those big businesses into the areas so that the community in general will be the beneficiary of the bracketed, hopefully, whatever, economic growth in that community, and are you also -- are you aware that businesses have been reluctant to go into these areas even with the present criteria because it is not profitable for them? What will this cost? Do you have any idea?

SENATOR PRESENT: Cost to who? Number one, I cannot agree with the premise you've just set forth. Some of the economic development zones that I'm aware that have been established have been very successful in attracting business, created employment and

overall economic benefits to their area. Now, when you say to -- "cost", cost to who?

SENATOR GALIBER: Well, as a result of folks going into these zones, there are tax benefits and a number of other benefits to that particular business that goes in.

SENATOR PRESENT: Some.

SENATOR GALIBER: Some of them.

SENATOR PRESENT: For example, if a new business comes in, it's going to be a new business established within the zone. The local government is not collecting any real property taxes from it now. It's going to be new construction, chances are, a new purchase, an enhancement of value of that property and then over a five-year period, they get a tax exempt benefit from real property taxes, so that may be, you could say a cost or maybe an earning to the local community.

SENATOR GALIBER: When we use the term "cost," you know tax credits we went through yesterday with caps and whatnot, tax exemption expenditures, whether we should

combine them in a formula of some sort. So, in other words, every time we give a tax credit, there is a cost factor to it, and we've created these zones, we've specified an exact number for a particular reason.

On the bill, Mr. President.

Thank you, Senator.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: Mr. President, none of us are opposed to any instrumentality or vehicle through which we're going to improve the quality of life in our state, increase the possibility of economic development.

What we have here is a situation where the sponsor of the bill -- and by the way, there's no movement in the Assembly on this particular piece of legislation. It's a one house bill and we do it quite often. I wish I could get a bill out just to have it go one house like you have or to star it, very frankly, but the fact of the matter is that we can find a good thing and we can then dilute it to the point where it loses its effectiveness.

What the Senator is suggesting here is that there are a number of municipalities throughout the state, he does not know the number of them, but if this piece of legislation is passed, I can't even throw out a guesstimate how many municipalities would be affected.

What we're doing really is lowering the criteria and we're vitiating, if you will, or not paying attention to what the intent of the original legislation was. The intent of the original legislation is to go into the poorer communities throughout our state and to stimulate the economic development in those particular areas, not to hand out gifts to communities which may not need it as badly as some of those in the larger urgan centers or contiguous or bordering on. I dare say by reducing, which the bill suggests, the population to 10,000 and making an economic development -- not economic, but the poverty line a little different, that we really might find ourselves in a position where we are

diluting from the other zones and encouraging areas which really don't need the kind of help, the help to the extent that this piece of legislation would go, so I think this is a well meaning piece of legislation, and I would like to see it apply to the municipalities that the Senator has alluded to in his piece of legislation, but I fear that it's going to have a serious impact on the original intent of the legislation and do damage to those areas where this kind of help is sorely needed and notwithstanding what the sponsor is saying that this has no impact on businesses coming in, zones as they are presently set up have been having difficulty at least in my community for businesses coming in because it's not enough reward for them in terms of the tax credits to come into these particular areas, has nothing to do with the safety factors or others, it just is not profitable for them to do so.

Mr. President, this bill is not going to go any further than this house. I made for the record some of my concerns. This does

not -- should not be interpreted as my opposition to economic growth in the municipalities that the Senator is now responsible for, is concerned about, but I think this would almost destroy a very fine program which is relatively new and we have not had an opportunity to really analyze how beneficial this program is.

I vote no.

THE PRESIDENT: Last section.

THE SECRETARY: Section 2. This act shall take effect immediate.ly.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays 1, Senator Galiber recorded in the negative.

THE PRESIDENT: The bill is passed.

SENATOR GALIBER: Mr. President.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: May I have unanimous consent, Mr. President, to be recorded in the negative on 1428?

THE PRESIDENT: Without objection, so ordered.

Senator Pataki.

SENATOR PATAKI: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar Number 1579.

THE PRESIDENT: Without objection, it's so ordered.

Senator Kuhl.

SENATOR KUHL: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar Number 1579 and Calendar 537.

THE PRESIDENT: Without objection, so ordered.

SENATOR KUHL: Thank you.

THE SECRETARY: Calendar Number 1549, by the Senate Committee on -- by the Assembly Committee on Rules, Assembly Bill Number 8886-A, an act to amend the Public Health Law.

SENATOR GOLD: Explanation.

THE PRESIDENT Senator

DeFrancisco.

SENATOR DeFRANCISCO: This bill was already passed by the Assembly, and basically what it does is that there are certain health -- there are certain regulations by the Department of Health which require lifeguards to be at various pools in motels and hotels and the like, and provides for a grandfathering of those smaller facilities, smaller motels, and allows them to post signs, danger warnings and the like, to avoid having to pay the expense of a lifeguard under those circumstances when maybe it's not very cost-effective to do so.

There was approximately 800 variances granted since these regulations came into effect in 1972 -- 1992, and what the bill would do is to say that those variances run with the facilities so that if the owner chose to sell the facility, there would be no need for a request for a variance as long as the conditions of the variance were being followed by the new owner. The variance would continue and follow the sale.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1551, by Senator Pataki, Senate Bill Number 7988, an act to amend the Crimianl Procedure Law.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: I believe the distinguished ranking member of the Finance Committee had a question and we are -- if we could hold it for about a few seconds, we are trying to get him from a very important meeting.

In the meantime, if Emily would yield to a question. I understand he's on the way in. Explanation, please.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: Thanks for your patience. I asked for the explanation.

SENATOR PATAKI: Thank you, Senator.

What this bill does is changes the provisions under which certain eligible youths can qualify for youthful offender status.

Right now those provisions include when they are charged a conviction with an A-1 or A-2 felony, an armed felony, and rape in the first degree, sodomy in the first degree or aggravated sexual abuse, we would continue the provision for the A-1 or A-2 felony, but expand the categories for which youthful offender status could be denied to include any violent felony offense definded in Section 70.02 of the Penal Law or any felony offense involving the criminal possession of a firearm, rifle or shotgun under a certain provision of the Penal Law.

We would also amend the bill to provide that the provisions where a judge can, in the case of mitigating circumstances, still find youthful offender status, it's a parallel

that changes in the law.

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

SENATOR PATAKI: Sure.

SENATOR GALIBER: I go back quite a way with this youthful offender business. What you read off, what the present law is, I had forgotten about that, but initially, they needed an order -- for a youthful offender treatment to be granted, you needed the approval of the district attorney and the judge or mainly the district attorney.

Are you suggesting in your piece of legislation, which is a minor point because I want to get back to the philosophy behind it, that the judge after finding mitigating circumstances on his own or her own would be able to grant youthful offender treatment over the objection?

SENATOR PATAKI: We're not changing the provisions under which it can be found, the mitigating circumstances can be found, except to include the broader category of

people who could be denied youthful offender status.

SENATOR GALIBER: I didn't make myself clelar. That part of it I haven't gotten to yet.

In the area when you read off where you ascertained or the judge finds there are, in fact, mitigating circumstances, is it your intent or does the legislation say in that instance where he or she sitting as a judge finds mitigating circumstances, that that judge could then grant youthful offender treatment in the categories that you have left?

SENATOR PATAKI: It doesn't change present law.

SENATOR GALIBER: It does not?

SENATOR PATAKI: It does not change present law.

SENATOR GALIBER: Well, would you give me that mitigating circumstances section again? Are you saying -

SENATOR PATAKI: Sure.

SENATOR GALIBER: I'll ask

again. -- that if the judge finds mitigating circumstances, can't go to the judge unless the district attorney has consented to youthful offender treatment, if he has not consented, how can he go to the judge to determine mitigating circumstances without the judge having unilateral power to grant youthful offender treatment?

SENATOR PATAKI: Senator, the present law is not changed, except to the extent that people under the present law, you have to be an armed felony offense or rape, sodomy or aggravated sexual abuse, we broaden that to any violent felony offense, but the same provisions whether the district attorney has to certify or the judge can waive, that is mentioned.

SENATOR GALIBER: Let me go back to what I think is -- Senator, on the legislation -- because that's a matter, if you find it, it's okay, if you don't, it's okay, because we'll change it accordingly. Let me go back to the bill itself and the categories that you've changed.

Perhaps on the bill, Mr. President.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: Thank you, Mr. President.

Some years ago, and I don't know how long -- I've been here 27 years and I'm sure that the Youthful Offender Law was in the -- on the books then. I know that because I was in the district attorney's office in a social worker capacity, adjunct, in the DA's office, and we handled the youthful offender cases up to a particular point and probation took over, if they granted youthful offender.

The original bill, the original piece of legislation started out excluding one category, and one category alone, and that was the homicide category. That was the only category where you were not eligible for youthful offender.

Youthful offender was probably the forerunner of a deferred or possibly deferred prosecution. What it did was to give

to -- an opportunity to someone who had been arrested for the first time, whatever the other categories were, an opportunity by operation of law to ask, when asked a question in the future, Have you ever been convicted of a crime, notwithstanding that he was granted, he or she was granted youthful offender treatment, they can say no, we have not been convicted by operation of law or save the stigma of a conviction, and that was one of the big thrusts. First offense, save the conviction.

If, in the course of granting youthful offender in the other categories that you mentioned, and when they were not mentioned there's a criteria for keeping someone out of that category, judges were sending for the very same time, youngsters in that category first offense to Elmira Reception Center -- Elmira Reception Center where they had to spend some four years, I believe, or at least that was the cap on the amount of time, so the Youthful Offender Law in its original -- its original intent takes care of the situation that you made

reference to, and you're not the first one to expand it because, as I mentioned before, Senator, it was just that one category and maybe about ten years ago, whatever the year -- I was here when they did that -- it was expanded and we're going to expand it again, and the idea of expanding it is certainly a knee-jerk reaction to what's happening in our communities.

The fact of the matter is that this piece of legislation gives an opportunity to youngsters wherever they may be, up in Putnam Valley where my granddaughter is, an opportunity to, if they make a mistake, not a serious one, and we are not quite sure what aggravated assault and who shoved, who gets pushed, it's a misdemeanor, if you argue with a police officer and you do it to a police officer it's a felony, it's aggravated, in those categories, but the thrust of it is to save the stigma of a conviction and yet give the court an opportunity in its wisdom to send someone to one of our institutions if they find -- and some of the ones you mentioned -- sending him up to Elmira

or in the alternative spending five years on probation.

So, Senator, I think -- and all of us are sensitized to what's happening in our streets, but we're really -- this piece of legislation is slowly but surely destroying what the youthful offender legislation was all about. It wasn't an assault on crime that merely sent some youngster through a learning process. We all know that you learn by reading and listening and making mistakes, and as parents, we hope the mistakes are minor ones, but what this law really said was, notwithstanding a mistake, it's a learning process and were not going to penalize you with a stigma of a conviction which is going to hit you and hurt you for the rest of your life.

The way that this piece of legislation is worded and ultimately what's going to happen is we're going to take this, the real intent of the legislation and preclude some of those persons who, unfortunately, learn through a very horrible experience and that is

making a mistake.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

THE PRESIDENT: Senator Pataki.

SENATOR PATAKI: Mr. President, just briefly, to explain my vote.

I appreciate Senator Galiber's comments in opposition to the bill, but I would have to say that I disagree with him. I don't think a violent felony should properly be called a mistake when it's committed by a 16-, 17- or 18-year-old. I think it's a crime, and I think it should be a crime punishable as such and that person should have a conviction on his or her record, and that's why I believe this legislation is necessary.

Thank you.

THE PRESIDENT: Senator Pataki votes aye.

THE SECRETARY: Ayes 59, nays 1, Senator Galiber -- ayes 58, nays 2, Senators Connor and Galiber recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar number 1564, by Senator Volker, Senate Bill Number 8821, an act to to amend the Education Law.

SENATOR GOLD: Explantion.

THE PRESIDENT: Explantion is requested.

SENATOAR KUHL: Lay this aside temporarily.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1565, by the Senate Committee on Rules, Senate Bill Number 8822, State Finance Law, in relation to the content of appropriation bills.

SENATOR GOLD: Explanation.

THE PRESIDENT: Explanation has been requested.

SENATOR KUHL: Mr. President.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Could you lay this aside temporarily?

THE PRESIDENT: The bill is laid aside.

SENATOR KUHL: And could we go back to 1564 and call that up, please?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1546, by Senator Volker, Senate Bill Number 8821, an act to amend the Education Law.

SENATOR GOLD: Explantion.

THE PRESIDENT: Senator LaValle.

SENATOR LAVALLE: Mr. President, I explain this bill on behalf of Senator Volker.

This bill defines and expands the scope of practice -- practice of optometry. It has been a subject of much discussion, great debate between those that practice optometry and those physicians in the practice of ophthalmology for some considerable time, in the halls of this Capitol.

This year, Senator Volker brought before our committee, the Higher Education Committee, a piece of legislation, and at that time he indicated that there would be -- that the legislation would be the basis of negotiations. The members of the committee - and I must say, and I can't say it enough as a chairperson, how very proud I am of the people who serve on that committee and the manner that they participate because they laid out very carefully the concerns that they had about that legislation, about the standards of care that they wanted for the consumers, their constituents in their respective districts, the kinds of clinical training that optometrists would receive and, indeed, the kinds of drugs that would be used, and I believe we have done that. Senator Volker has done that in this legislation, and I might add, after many, many weeks and close to about 100 hours, there is agreement on the part of the optometrists and the ophthalmologists on this bill.

We defined continuation of the

diagnositic drugs that under law optometrists have been allowed to use and we expand in two categories the use of topical -- topical drugs in two separate categories. In legislation, we talk about phase one and the therapeutic pharmaceutical agents that can be used and the concomitant training that is necessary for a person to use phase one drugs, that being 300 clinical hours of training and passage of a national exam, and in phase two, those therapeutic drugs that are used in the treatment of glaucoma, an additional 100 hours, management of 75 patients that must be managed over a three-year period of time, must be done for 75 patients and the care of that optometrist must be done within the three-year period of time and also passing another portion of a national examination.

There are other portions here that tie together the optometrist with consultation agreements, written consultation agreements when we're dealing with patients, glaucoma patients, and also signs in the office

that indicate to a consumer the kinds of things and the conditions the optometrist will be working under.

Lastly, this Legislature has taken on a greater sensitiviity and a greater role most of the time at the urgent -- urging of various professions to have continuing education. This bill has such a provision that allows -- that indicates that 12 hours each year or 36 hours over the three-year period in which they hold their certification, that they would have -- that they must do continuing education, and so I think we have -- Senator Volker has achieved and carved out a very critical balance in expanding the scope, recognizing the work that has been done by ophthalmologists heretofore, brought together consultation agreements, additional training, continuing education, and ensured that the consumers, our consitutuents of this state, are indeed protected, when they have a problem that they will receive the highest standard of care and we have provided that in this legislation.

SENATOR GOLD: Would the Senator yeild to a question?

SENATOR LAVALLE: Yes.

SENATOR GOLD: Senator, I have in my hand a memorandum from the Medical Society of the state of New York in opposition.

SENATOR LAVALLE: Yes.

SENATOR GOLD: Now, you said that there has been some consultation between various people in these professions?

SENATOR LAVALLE: Yes.

SENATOR GOLD: Has this memo been withdrawn?

SENATOR LAVALLE: I don't have a copy of it, although I did hear -- did have some discussions with the Medical Society, those people represeneting the Meidical Society. They had some concerns, and this, by the way, goes outside the concerns with the group that I had indicated, those specialists, the ophthalmologists, and I think that probably that memorandum that I have not seen, Senator Gold, deals with a play on some words. I have very

carefullly indicated in here that there has to be a written consultation. I think the Medical Society would have preferred some other language that really means the same thing.

I think the term that they would have rather us use would be a "collaborative agreement" rather than "written consultation agreement" between the two parties being the optometrist and the ophthalmologist.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: I have a memorandum in opposition by the Medical Society. I'm told by my counsel that the representatives of the two groups involved have signed off.

SENATOR LAVALLE: That -

SENATOR GOLD: Why that doesn't translate through to this document, I don't know, but I'm told that there was, in fact, a sign-off. Last section.

THE PRESIDENT: Senator Markowitz.

SENATOR MARKOWITZ: Senator LaValle, would you yield to a question?

SENATOR LAVALLE: Yes.

SENATOR MARKOWITZ: I'm interested in knowing, why do you perceive or Senator Volker perceive that we need a change from the current system, and the reason why I say that is that I recognize the valuable role of optometrists and certainly ophthalmologists, and I'm interested in hearing from you why a change is being considered at this time?

SENATOR LAVALLE: Senator, I think what has happened -- and it's one of the reasons, by the way, that legislation dealing with the professions is in the Higher Education Committee -- we have as part of our SUNY system, a college of optometry, a school of optometry. Over the years, the technologies have changed and the kind of education that optometrists have received has expanded over the years. Some of these optometrists have gone on and practiced in a military setting which brings them outside of the scope of our laws and has allowed them to do

many of the things that they learned in their school of optometry, thereby providing for many of the newer optometrists a level of frustration, because they had a level of training that said you could do one thing, yet our laws did not fully recognize that practice.

Lastly, we as a Legislature have been receiving greater input from our constituents about having more individuals in the primary care network to do the most basic kinds of things without having to call upon someone with far greater training, and so as things are pushed, we are drawn into that debate in our communities and we have -- and that's why this legislation is before us, and I believe Senator Volker has done a job that establishes a model because it very carefully walks the tight rope and creates a balance that we desire.

SENATOR MARKOWITZ: Senator LaValle, I guess my concern is, I don't want to set up a two-tier system. And what I mean by that is, those of us that have more knowledge, have greater access because of better health

insurance -- I have a hunch, that if I went around the chamber and I'm looking at all of us that wear glasses on a regular basis or an infrequent basis, and regularly visit an eye doctor, I assume that the great majority of us seek out the services of an ophthalmologist as opposed to an optometrist, and I'm concerned in speaking to a number of men and women in the field that our ophthalmologists feel that for those that are of more moderate income, and who have to choose, for a variety of reasons, the services of an optometrist, that that professional might not be as well versed and educated in terms of being alerted to the potential diseases or eye problems that a trained medical specialist would be able to determine early on to prevent the deterioration of sight.

So what I'm concerned about, Senator LaValle -- that's my only reason why I'm asking these questions. I'm concerned that there are poeple that are of more moderate income with less knowledge about this will be

going to the optometrist, and those of us including the members of this chamber will naturally go to an ophthalmologist.

SENAOTR LAVALLE: Senator, while we certainly recognize -- and the marketplace has really driven us to allow a greater freedom of choice for our constituents. However -- and I was very specific and exacting about this. The committee's charge, the Higher Education Committee's charge to the sponsor and to the chairman was that standards of care should not be sacrificed, and we were very, very careful about the kinds of drugs that we allowed people to use. We increased their training in using those drugs, and in those situations where there was a potential for problems, we ensured that there could be collaborative agreements or -

SENATOR MARKOWITZ: But you don't have that.

SENATOR LAVALLE: Excuse me? Pardon me?

SENATOR MARKOWITZ: You don't have collaborative agreements.

SENATOR LAVALLE: No, I misspoke and I was -

SENATOR MARKOWITZ: Okay.

SENATOR LAVALLE: -- where we have a written consultation agreement so that those individuals with the highest degree of training would be dealing with those problems that needed that kind of training and that's when I talk about the balance here, we fully recognize what ophthalmologists do in their training and that they should continue to do that.

SENATOR MARKOWITZ: Senator, another question. Who would determine -- would the optometrist be the determinant to say that "I'm not qualified to do that but it has to go to an ophthalmologist"? I'm just really concerned, Senator LaValle, just understand what I'm getting at. You want to expand the marketplace or the bill does it. I'm concerned that perhaps we're setting up a different level of -- a different level of health quality here. That's what I'm concerned about. I'm just concerned that those that are trained and have

gone to school and gotten the necessary medical education can prevent eye disease and can early on diagnose potential problems to folks, and that's what I'm concerned about.

SENATOR LAVALLE: Well, Senator, as -- early on, if you look at the legislation, it continues what optometrists have been doing in the use of certain drugs, which I'm sure you were here, you may have even voted for that, to allow optometrists to use diagnostic drugs. We're now expanding that and we're saying for therapeutic topical purposes.

In the definition, the practice of optometry, we are very, very specific here in cutting out in the definition what I think you might feel is a safe harbor for all people in recieving the highest level of care so that we are not bifurcating our health care system, but for those very basic kinds of problems, we are providing for individuals a greater choice.

SENATOR MARKOWITZ: One last question. You're answering the questions Senator LaValle, and I appreciate it very, very

much.

Did the committee consider the possibility of establishing a pilot program rather than enacting legislation that will impact all optometrists? Has there been a way to look at it on a pilot project to see whether or not before we jump in the water totally, that it's been reviewed and properly authenticated and that unless to eliminate or to lessen the possibilities of less than excellent care being provided?

SENATOR LAVALLE: I appreciate that question, and it'is a very, very good question.

In moving from phase one, what we're actually doing is we're going from the diagnostic drugs that are presently used under law to phase one, then in a period, I think it's 18 months -- about 14 months, we will move to phase two. There are -- there is a reporting system on the drugs that are being used. There is a review committee here that will be reviewing how this is working, so we have, as

you are suggtesting here, monitoring the system, who is using the drug, how often, and we have a committee that will be reviewing what is taking place in the marketplace.

SENATOR MARKOWITZ: All right, Senator LaValle. I appreciate it very much.

I'm sort of very conflicted about this because I never want to apply to others what I wouldn't apply to myself and vice versa, and that means that I know that if I needed what we're about to do, I would seek out services, in my opinion, of an ophthalmologist, and I still believe that almost everybody in this chamber would as well, but nonetheless, if the committee and through the people that you work with, feel that this will not put patients in jeopardy and, in fact, it enlarges their options, and I guess "options" means greater availability of optometrists, and I also assume it also means that their fees are more moderate as well and since it is a window of 14 months or so you're saying, where it will be monitored, is that what you're indicating -- no -- sorry, she -

SENATOR LAVALLE: I indicated that in the first 14 months we would be in phase one. Beyond the 14-month period, then people would be moving into phase two, but there is a monitoring of that process during phase one.

SENATOR MARKOWITZ: All right. Then I would hope, Senator LaValle, that perhaps your committee and those that have some oversight, I know I would be extremely interested to hear as the days move ahead whether or not our legislation that we're about to pass will, in fact, guarn... will, in fact, ensure the best -- the best of a health care system that's so vital for all of us, and that's the gift of sight.

Thank you, Senator.

SENATOR STAVISKY: Mr. President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Mr. President, I want to assure our colleague, Senator Markowitz, that Senator LaValle is meticulous in the manner in which he attempts to deal with turf wars involving the professions.

He calls together all of the active groups representing the professions that seek to prevent another group of professionals from treading on its turf or seeks to extend its area of jurisdiction to a neighboring category.

I've often said to him that I admire his tenacity in being willing to undertake this kind of delicate negotiation. There is in this legislation the assurance that optometrists will have to have clinical training and will have to pass examinations in order to be able to use the therapeutic drugs for treatment. There is also the assurance that it will be monitored.

I have only one quesiton for the sponsor -- I'm sorry, for Senator LaValle, who is here as a surrogate for the sponsor. Senator LaValle, I understand that there will be an agreement in this legislation that people who have completed their optometric training subsequent to 1993 may be exempted from some of the addtional requirements, is that correct?

SENATOR LAVALLE: The answer is

yes, with exceptions.

SENATOR STAVISKY: Now, that's the exception I want to ask you about. What about out-of-state optometric schools which are normally, first of all, not under the jurisdiction of the state Education Commissioner and where inspection and review of their practices may not be on-site? What happens there?

SENATOR LAVALLE: This has to go before a review committee to ensure that the other states' clinical training and education meets comparable standards to New York's.

SENATOR STAVISKY: Will the review -- if the -

SENATOR LAVALLE: Yes.

SENATOR STAVISKY: -- Senator would yield. Will the review commission or the review body make on-site inspection of the clinical training that the out-of-state school of optometry provides, because short of that, there is a gap still in the legislation, and you cannot accept a paper trail from a post office

as commensurate with an on-site professional inspection of the clinical training.

SENATOR LAVALLE: Senator, as you know, there is no proscription for that. You raise a very good point here that the review commission, I believe, has to take as part of their deliberations in actually doing reviews of other facilities.

SENATOR STAVISKY: I have found, Senator LaValle, that sometimes even regional accrediting boards are lax with regard to the on-site inspection and surely, in our state to rely upon a paper assurance without visitation to that other out-of-state school of optometry may leave a gap still in the state legislation.

SENATOR LAVALLE: There are - what you should know, Senator, is that we're talking about seven other facilities, and we're talking about, I think, people that talk to one another. What has happened with many of the provisions, not with all, but with some of these provisions, is that New York is moving closer to many of the states. Probably a number of 41

other states that do much of what we are recommending in this -- in this legislation, so I think that in a national way, I think the schools talk to one another, and I think the mere fact that you have brought this up today and made it part of the record is something that I believe people will take very strongly in their evaluations of people who are coming in from otoher states and other institutions.

SENATOR STAVISKY: Senator, I intend to vote for this legislation because I believe you acheived a remarkable consensus already in your deliberations with the ophthalmologists and the optometrists, but I would urge you to continue to vote on this one issue so that there's no possibility that a school of quackery rather than a school of optometry in another state will perhaps not provide the kind of clinical training that you or I would wish to see occurring.

THE PRESIDENT: Last Section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays 4, Senators Farley, Kruger, Skelos and Stafford recorded in the negative.

THE PRESIDENT: Senator Connor. The bill is passed.

Senator Connor.

SENATOR CONNOR: Thank you Mr. President.

May I have unanimous consent to be recorced in the affirmative on Calendar Number 1551? Yeah, I was scratching my head, and I think I got recorded in the negative.

SENATOR COOK: Mr. President.

THE PRESIDENT: Senator Cook.

SENATOR COOK: Mr. President, could I be recorded in the negative on 1564, please?

THE PRESIDENT: Without objection, so ordered.

SENATOR COOK: 1564.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, may I have unanimous consent to be recorded in the negative on 1564?

THE PRESIDENT: Without objection, so ordered.

Senator Holland.

SENATOR HOLLAND: Mr. President, could I have unanimous consent to be recorded in the negative on 1579?

THE PRESIDENT: Without objection, so ordered.

Senator Leichter.

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative on Calendar Number 1473, please?

THE PRESIDENT: Without objection, so ordered.

SENATOR NANULA: I would like to request unanimous consent to be recorded in the negative on Calendar Number 1473.

THE PRESIDENT: Without objection, so ordered.

SENATOR VELELLA: Mr. President.

THE PRESIDENT: Senator Velella.

SENATOR VELELLA: 1564. I ask unanimous consent to be recorded in the negative on 1564, the Volker bill.

THE PRESIDENT: Without objection, it's so ordered.

SENATOR VELELLA: Thank you.

THE SECRETARY: Calendar Number 1565, by the Senate Committee on Rules, Senate Bill Number 8822 -

SENATOR GOLD: Explanation.

THE SECRETARY: -- an act to amend the State Finance Law.

SENATOR GOLD: Explanation.

THE PRESIDENT: An explanation is requested.

SENATOR STAFFORD: Lay it aside temporarily, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1566, by the Assembly Committee on Rules, Assembly Bill Number 12181, an act to amend the

Education Law.

SENATOR GOLD: Hold on a second.

SENATOR STAVISKY: Mr. President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: I have read the provisions of the bill -

SENATOR PADAVAN: Senator Gold asked you to wait a minute.

SENATOR STAVISKY: Okay.

SENATOR GOLD: Mr. President, why don't we just begin this. I know there are some other people interested in this and we're trying to round them up.

Leonard, you want to start?

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Mr. President, I have read the provisions of the legislation. I underswtand the value of this legislation to certain school districts in terms of their inability to maintain a register of 15,000 pupils and their desire to remain approximately within their existing boundaries. I certainly appreciate that and they include some of the

finest community school districts in the city of New York, where there has been excellence in achievement in many areas in so doing in an effort to stabilize those districts to prevent the redrawing of their district boundaries which is commendable for those districts, and you and I have represented such districts for many years. Nevertheless, I see certain omissions in this legislation.

There is a requirement authorizing the City Board to begin the process of redrawing district boundaries. Every year for decades, the City Board of Education has had that power, and every year has been unable to fulfill the responsibility.

Senator Padavan, would you yield for a question?

SENATOR PADAVAN: Yes.

SENATOR STAVISKY: Do you have any assurance that the City Board at this time would be able to fulfill the mandate of redrawing the district boundary as required by this piece of legislation?

SENATOR PADAVAN: The assurances that I can only give you, Senator, I think they are in the statute. If we adopt it, it becomes law. It says the board shall adopt boundaries no later than February 1st, 1995 which is not too far in the distant future, so we are mandating by virtue of this enactment, that such take place. We also provide a number of other mechanisms as well as authorizations to facilitate that.

For instance, this bill now allows the addition of four more school districts, actually five beyond the current level, 32 which we have we now have. We can now go to 37. If we eliminate the 15,000 which as I'm sure you'll agree, all educators and including the chancellor and others have said has no value whatsoever, so what we have done here is not only given them a fixed time frame within which to operate, but we've also given them the tools to do it with greater facility. On that basis, I feel it should be done.

SENATOR STAVISKY: Notwith

standing our legislation, we have enacted legislation in the past, and each time we have found that the Board of Education has not been prepared to fulfill the mandate of the statute but, in fact, sought waivers to be exempted from those provisions. I will let that answer stand because, Senator Padavan -- for the Board of Education.

SENATOR PADAVAN: We are now giving a waiver here, Senator, unless you consider January 1st and February 1st a waiver. There's 30 days is all they're getting out of this bill in terms of the waiver.

SENATOR STAVISKY: No, I applied the term "waiver" to the past.

SENATOR PADAVAN: Okay.

SENATOR STAVISKY: When year after year, members of both houses exempted the redrawing of district boundaries under the existing statute. That's something the Board of Education will either have to do or not do and we will see whether they live up to that requirement.

One of the problems we've had with school board operations in the city of New York is that there has been a pitifully small participation by voters and parent voters in the process. Sometimes a tiny minority of the eligible voters has participated in the school board elections. Is there anything in this legislation that addresses that issue?

SENATOR PADAVAN: No, sir.

SENATOR STAVISKY: If Senator Padavan would yield.

SENATOR PADAVAN: I would give you a more complete answer. I would ask you to remember that late last session we passed the Marchi bill which had a number of reforms in it including November elections. I will also say to you that, while I'm not the Chairman of Education or even on that committee, but I do know, as a matter of fact, that there was significant discussions between this house and the other house relevant to accomplishing that goal but such requests were rejected. So the answer to your question is, no, there's nothing

in this bill but, yes, we made an effort to do that.

SENATOR STAVISKY: Notwith standing the Marchi bill which had many other changes in the law, there is still in this house, in this session, a piece of legislation that I have sponsored to move the date of the school board elections to the November time frame during the off year when there are no elections for mayor or governor or president or city council members or state legislators or members of Congress, and to change the term to a four-year term instead of the three-year term so that there will not be that confusion. The last time in 1992, four different elections were to take place in a matter of months. School board elections, presidential primaries, primaries for the Legislature, for Congress and for other offices as well as the general election in November of that year, and that's the worst case scenario, because the school board elections get short shrift in terms of the attention given to those contests, and I again ask the chairman of

the Education Committee, why a bill, a simple bill to provide for school board elections in the off year, in November, has not been presented together with this legislation as part of the possible consideration by the Legislature. It has not been reported by the - by the Senate Education Committee, even though it has none of the controversy that may have impeded the ability of the Marchi bill to become law.

SENATOR PADAVAN: Mr. President, I believe that I was asked to yield as the sponsor of this bill.

SENATOR STAVISKY: I'm not asking you to yield.

SENATOR PADAVAN: Yeah, but now are you asking now, Senator -

SENATOR STAVISKY: I will now ask with the Chair's permission if the chairman of the Education Committee would yield.

SENATOR COOK: Yes, Mr. President.

Mr. President -

THE PRESIDENT: Senator Cook.

SENATOR COOK: As the Senator is aware, whether or not there are offices on the ballot, Election Day is Election Day and, indeed, there are -- is never a time when there are not some elections some place to fill vacancies or to fill other purposes such as voting on constitutional amendments, voting on bond issues, et cetera. As the Senator is well aware, there's a constitutional requirement that an individual, in order to vote in a general election, must be a citizen.

In the city of New York, in the cause of school board elections, citizenship is not a requirement in every case. Therefore, it would be impossible to have the election at the -- concurrently because you, in effect, have two different voters, two different groups of voters with two different requirements for eligibility and, therefore, it's impossible to hold the elections together.

SENATOR STAVISKY: Mr. President, to continue. Technologically, that issue could

be resolved in more sophisticated voting machines which would cut off all non-school board contests from the ability of a parent voter to participate in an election.

Secondly, there is still the ability to use paper ballots in the school board portion even if we used machines in the general. That issue has apparently not been addressed here in order to increase the number of participants in the school board elections.

What about the very cumbersome proportional representation requirement which I note also has not been addressed in this legislation? I wonder if the sponsor of this bill would consider that question?

SENATOR PADAVAN: Senator, I'll answer your question directly, but let me preface it with this comment.

This is not a reform of the governance of the Board of Education of the city of New York. I was candid to explain to you that we attempted during this session to achieve agreement on that type of legislation. We were

not successful, and I also told you that some of the very reforms that you are in support of were those that we sought to achieve. The Assembly does not want to have November elections. There are many other things that they do not want to have.

However, we are dealing with the redistricting bill, and if you wanted to spend the time here to talk about everything else related to the Board of Education and governance issues, well, we'll be here a long period of time, but I would simply suggest to you that there is such an issue as relevance. I would prefer that we stick with this bill. In answer to your question, no, it's not in this bill.

SENATOR STAVISKY: Thank you.

So this is a status quo bill except for the maintenance of the fewer than 15,000 population in order to protect those districts, and then it should be understood that this is a status quo bill except for the reduction of the 15,000 pupil population and not -

SENATOR PADAVAN: Senator, is that a question?

SENATOR STAVISKY: No, I have not asked you to yield.

SENATOR PADAVAN: Okay.

SENATOR STAVISKY: And not to be confused with a more comprehensive review of the problems associated with school board elections. You want people to vote if there's an election. You want people to vote in an intelligent manner. I dare say the most sophisticated members of this legislative body and maybe the most sophisticated members of the central Board of Education would have great difficulty explaining to a lay audience how the proportional representation system operates, how the ballots are counted and how the election can be skewed if you start continuing from some ballots in some election districts rather than starting from others, because when you reach that threshold, with counting from one end, you may get a different result than if you count from the other end of the eligible voting

districts, and you may get different candidates selected.

It takes weeks and it is costly to pursue this policy, and I say that not with regard to criticism of this legislation. I say it in order to explain that this is a status quo bill which will not increase the number of participants in the election, the number of voters. It will not simplify the electoral process, and it achieves only one thing. It prevents certain very good districts from having to redraw their boundaries, and if we understand, that's all we're doing and we're accomplishing nothing else's, I'm willing to vote for the legislation in order that we don't have to go through the routine of giving annual waivers to the central Board of Education which has consistently failed to redraw district boundaries, and on that limited basis, let's vote for this bill and hope for the best with the rest.

SENATOR KUHL: Last section.

THE PRESIDENT: Senator

Montgomery.

SENATOR MONTGOMERY: Yes. Thank you, Mr. President.

Would the sponsor yield for a question?

SENATOR PADAVAN: Yes.

SENATOR MONTGOMERY: Thank you.

SENATOR PADAVAN: On this bill?

SENATOR MONTGOMERY: Yes.

SENATOR PADAVAN: Okay.

SENATOR MONTGOMERY: Senator, could you explain to me what is the -- what is District 31? It says "District 31 shall remain currently -- as currently configured."

SENATOR PADAVAN: That's the chancellor's district.

SENATOR MONTGOMERY: Okay. So we don't bother him. All right.

SENATOR PADAVAN: Excuse me.

SENATOR MONTGOMERY: Yeah.

SENATOR PADAVAN: You said 31?

SENATOR MONTGOMERY: 31.

SENATOR PADAVAN: That is Staten

Island.

SENATOR MONTGOMERY: Oh, all right. So under no circumstances will that one change?

SENATOR PADAVAN: Pardon me?

SENATOR MONTGOMERY: Under no circumstances?

SENATOR PADAVAN: No.

SENATOR MONTGOMERY: Even if they become too large, they won't have a chance to maybe split into two?

SENATOR PADAVAN: No, not without some further action.

SENATOR MONTGOMERY: I see. All right. Mr. President, if the sponsor would yield.

Was there -- we did not set a minimum at all; the bill doesn't set any minimum?

SENATOR PADAVAN: Just a little history. At one time the minimum was, I think 20,000, the minimum was reduced to 15,000, and the Board of Education commissioned some studies

and there were some other studies done as well, which came to the firm conclusion that the size of the district had no relevance to quality. The relevance to quality related to the school, and what was in it or perhaps what was not in it, so that being the case, it makes no sense to continue this arbitrary number. It had no pedagogical significance, so we limited it.

SENATOR MONTGOMERY: Senator Padavan, with regard to the size of a district, I know I hear you saying that it has no pedagogical relevance. However, do we have any sense that there is some relationship between the number of children in a district and, in addition, the concept of new developments?

SENATOR PADAVAN: Yes.

SENATOR MONTGOMERY: In some areas of the city, there is there is a lot of new development going on.

SENATOR PADAVAN: Absolutely.

SENATOR MONTGOMERY: New families coming in.

SENATOR PADAVAN: We do have that

recognition, Senator, and that's why in this bill, we authorize five additional school districts, go to 37. Currently the maximum - well, there's 32. The actual law says 33, but they've never gone beyond 32 previously, but we now allow them to go to 37, for just the reason you stated and, however, that determination would be made by the central board with input from the education community and, of course, the counties and the school districts.

SENATOR MONTGOMERY: All right. Thank you.

Now, one more question. Senator, I know that Senator Marchi's commission which we fought very hard for, I guess even before I came, Senator Marchi must have been working to get that legislation done, and it was finally done and then the commission was set up, and then some years later we came out finally with a report, and Senator Marchi's commission had hearings around the city and parents participated, and then we had a final report.

Now, it seems to me that with all

of that investment in time and work and planning that the commission put forth, this is all that we come up with. Is there a reason why we don't have more along the lines of what the commission has recommended in its report, specifically and particularly as it relates to the election process, so that we can have a better representation on the boards of the communities and the children that are in the schools, and so on, and so on?

SENATOR PADAVAN: Senator, let me repeat. You may not have been here. My comments in regard to the previous speaker, the previous member's questions, there was a significant and very serious effort -

SENATOR MONTGOMERY: M-m h-m-m.

SENATOR PADAVAN: -- to develop certain reforms, including the two that you just mentioned, in the November election, changing the methodology which we use to determine who is the winner, so-called proportional, and some other issues. Agreement could not be reached on that -- on that proposal.

The Assembly, for whatever reasons, they can perhaps explain themselves, do not want to have a November election. It may have something to do with the voter qualifications and things of that sort, but that is a fact. Now, I'm not going to speak for Senator Marchi. His ability to speak to himself far exceeds mine, but the fact remains, I did want you to know that effort was undertaken, but that notwithstanding, the redistricting issue stood on its own by virtue of a mandate of January 1st of 1995 which was already in the law, that was becoming impossible to meet for many reasons with regard to redistricting.

Lack of flexibility in the law, didn't have the opportunity to make more districts as you asked, were constrained by this 15,000 number which in some cases didn't make any sense, things of that sort. So that puts us in a position of having to do something in that category, bracketing in that issue this session, and that's why we have this bill.

SENATOR MONTGOMERY: Thank you,

Senator Padavan.

On the bill, Mr. President, briefly.

I just wanted to say again, as I said in the past, and will continue to raise in this context, that we did have the commission. I was very excited about it. I wrote about it in my newsletters. I spoke about it at meetings, PTA meetings and groups around the city, with every hope and expectation that we would -- that that commission would yield something as it relates to that education system in the city, and now here we are almost ten years later, just still tinkering around with a mandated approach to addressing the most critical institution in our city, and that is the Board of Education, and while I applaud Senator Padavan's attempt to push it along at least to address the immediate crisis, that is, unfortunately, all that we've ever been able to muster up enough political guts to do, is just address one little crisis at a time, and it's very disappointing because we have almost a

million children whose lives totally depend on and whose futures and the future of our city, totally depend upon a system of education that works for the citizens, especially the children of New York City, and so, and unlike any other area in state, most other areas in the state the schools work for the children, but in New York City, it does not seem to happen, and part of the reason that it doesn't happen is because of how we're doing this today.

So, Senator Padavan, I don't want to single you out. It's not your fault but collectively, it is our fault, and I hope that we will be able to come forth with some of the meaningful recommendations. We did not agree with every single one. There is not consensus of all of them. However, we all agree, I think, that the Marchi commission recommendation was at least an attempt to look at the system as a system and begin to make the kinds of shifts and changes that would be necessary for that system to work better.

So I hope that we will be able to

look forward to the Marchi commission recommendations in a more full and complete sense as it relates to education reform.

Thank you, Mr. President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. I think we need to pass this bill because there is a great deal of anxiety within New York City among parents, among people in the education field about effective reapportionment that are now proceeding under the current law, and I think that Senator Padavan's bill gives us a reasonable way in which to come up with a reapportionment without causing the great dislocation that would happen if we had to proceed under the current law.

But having said that, I think all of us must feel a great sense of failure that we've been unable to deal with the restructuring of the New York City educational system. I think there isn't a person here or in the City of New York that doesn't agree that we need to do something about it.

Senator Marchi, I voted against the establishment of your commission because, frankly, I didn't feel that it was going to result in anything, not that I doubted your competence and your sincerity and your motivation, but it just seemed to me that we were just putting off the decision making, and that was really going to have to be done by this body and, of course, in the Assembly. I thought that we should be able to address that through our Education Committee, but I think that while your commission unfortunately was not able to pull together a consensus, I think it couldn't have come through the Education Committees, either.

I don't know how we ring out the partisan politics and the petty politics out of the restructuring of the City school system. I was here as you were, Senator Marchi, and, Senator Galiber, and there were many of us who were here when we did the New York City restructuring in 1969.

At that time, it was called

decentralization. And I remember we were here for ten days. There was only one bill on the calendar. Every day we would come there would be that one bill. And it was laid aside because there wasn't agreement on it. Finally, we came up with this compromise that I voted against because I felt that this was not going to really be workable.

Maybe there are some things we could do that there is agreement on such as taking away from the members of the school board the power to appoint principals, getting rid of the reapportionment. I am sorry that the Assembly seems to be unwilling to go along with changing the election date to November, which I think makes sense.

But I've got another idea, maybe we can proceed in that way. Just as Congress found it impossible to deal with the matter of base closings because it was so extremely political and obviously involved such extremely important local interests that you could never reach a consensus, maybe we ought to set up a

commission independent of the Legislature without legislators on it, with experts to do the restructuring and provide that unless overridden by the vote of let's say two-thirds of both the Senate and the Assembly that that will become the governing system of the City of New York educational structure.

It may be the only way we're going to do it, and I realize people would be loath to give up the power and to say, "Well, that's really not a good way and why should unelected people have the right to do this." But that wouldn't be the case. We would have a role in it. First of all, it would be done pursuant to our legislation. Secondly, we would have the right to overrule the recommendation of the commission, although it would have to be by a two-thirds vote.

It may be the only way that we're going to cut through what otherwise is a terrible paralysis which is causing so much harm to the school children of the City of New York. Let's move on this bill, but I hope that we

would all dedicate ourselves to get out of the rut that we have in dealing with the needs of the school children of the City of New York.

THE PRESIDENT: Read the last section.

Senator Galiber. I'm sorry.

SENATOR GALIBER: That's all right. I'm supposed to be up at a jazz concert, anyway, but I wish I was.

Thank you, Mr. President.

Senator, it will be relatively brief because we were kind enough to have an extensive dialogue in committee on this particular piece of legislation, but one or two questions.

Senator, has this piece of legislation been approved by the UFT?

SENATOR PADAVAN: I'm sorry?

SENATOR GALIBER: UFT, union.

SENATOR PADAVAN: Has it been approved by the UFT?

SENATOR GALIBER: Are they in favor of this piece of legislation?

SENATOR PADAVAN: In all candor,

Senator, I have no memos from them specifically on the bill either in approval or in opposition. There may be. I don't have anything.

SENATOR GALIBER: All right. Fine.

SENATOR PADAVAN: I think if they were opposed to it I would probably know by now.

SENATOR GALIBER: The proposed new districts that you make reference to.

SENATOR PADAVAN: Yes.

SENATOR GALIBER: Could you tell us, if not before -- I was out of the chamber. I apologize for that -- how we would go about qualifying for those additional districts?

More specifically, I have a concern where the UFT did such a horrible thing to us which they do from time to time in Bronx County. We have an educational center in Co-op City. That's a new district for me. They tried to move me in the co-op and out into Westchester last year and were successful.

And to my amazement, I found an

education center there which was created with Co-op City, and Co-op City is a large place, and at that particular point it was so large that it was advocated at that time that there would be a separate school district, but the UFT was a bit concerned about their power, as they usually are, and they plugged this district into 11 and created one of the over crowded conditions that we have in Bronx County along with District 10.

I am concerned. I ask this question because I'm concerned as to their power and whether they would have the last word or a word in regard to creating the additional districts.

Senator Leichter was absolutely right. We -- David Paterson -- not David, but his dad, Basil Paterson, myself, after being part of the negotiations voted against the bill in 1969 because it was a horrible piece of legislation, because it was a piece of legislation that influence of the UFT was apparent there and has been a lasting influence.

It did violence to our excellent Marchi Commission. The Governor came out with some excellent recommendations. I had a minority report, but it was irrelevant whether you agreed or not, but there has been some leanings toward breaking up 110 Livingston Street -- five borough concept.

Whether you agree or not, but again UFT came into the picture. And, Senator, perhaps you're absolutely right. You came pretty close to it. Maybe we do need someone other than the legislators to work it as Congress does with salaries. If you don't object, you automatically got the salary.

I had the experience and Senator Marchi did also, with some excellent minds who were not legislators on that commission that did a fantastic job, submitted a great report, and we've not -

(Whereupon, Senator Farley was in the chair.)

ACTING PRESIDENT FARLEY: Senator Galiber, I know that it's difficult to debate

with somebody that's to your rear, but if you could speak into the microphone. The stenographer is having trouble.

SENATOR GALIBER: Will you make an exception, Mr. President, and transfer this over.

ACTING PRESIDENT FARLEY: We've already done it.

SENATOR GALIBER: I thank you.

SENATOR PADAVAN: Senator, I think you asked me a question, and I want to respond to it.

SENATOR GALIBER: Yes, I added a bit more onto it, so perhaps you can elaborate a bit more, also.

SENATOR PADAVAN: I think your question was, will the process mandated by this bill allow the community that you discussed the opportunity of advancing the creation of a school district there.

SENATOR GALIBER: That's correct.

SENATOR PADAVAN: And the answer to your question is decidedly, definitely yes.

There are several things mandated in this bill that will help to accomplish that. Number 1, the board is required to have hearings in the borough, involving not only the community school boards but providing input from civic organizations, community groups, and so on.

Secondly, the advisory task force which they have put in place is now put in statute, so they now have a role to play and will also be required to hold public hearings. We prohibit their hearings by the way, and I say this parenthetically, in July and August so that they will hold the hearings when parents and schools are functioning.

Beyond that, one final thing - but even beyond that, organizations, groups, civic, whatever, have the opportunity to petition directly to the board of education, even outside that rather expansive process.

SENATOR GALIBER: Senator, let me ask you one other question, because all those procedures I have very little faith in them. I don't want to say I don't trust them, but I have

very little faith in them because that long arm of the UFT is still there; and in addition to that long arm, we are asking them to go back to a polluted condition, if you will, at 10 Livingston Street, where they will have a great deal to say as to whether that new district is formed or not. So I don't trust the system.

Let me ask you the question, Senator. Is it possible for us to put in a piece of legislation, a piece of legislation, which would designate one of those three vacancies in a particular area, whether it be yours, mine, or someone else's in the five boroughs of the City of New York? Can we do it legislatively?

SENATOR PADAVAN: Actually, this bill provides for 37, which would be five more than we currently have. Yes, I understand your question.

I presume a bill could be introduced, but I certainly can't speak to its fate. That, of course, would be legislative mandate outside a process that we provide for.

But could a bill be introduced? Yes.

SENATOR GALIBER: Yes. Let me ask you a more pointed question, because your answer sort of leads me into other question. Would you be opposed to or would you amend the bill or would you suggest whatever means we have at our disposal to indicate, clearly, that a piece of legislation could be introduced? And I know we can introduce all kinds of legislation asking for a number of things, but to say "you could be," "depending on," and I guess anybody can introduce a piece of legislation. We need only go through the list of bills that have been introduced, and we can find that anybody can introduce a piece of legislation on any subject matter.

I want to know whether the intent of this legislation, if you can tell me, precludes -- let me put it that way - precludes -

SENATOR PADAVAN: Senator, this -

SENATOR GALIBER: Let me finish

the question, Senator.

SENATOR PADAVAN: Okay.

SENATOR GALIBER: -- precludes the opportunity of a piece of legislation being introduced to designate one of the five or six, whatever the numbers are, vacancies that are incurred under this piece of legislation?

SENATOR PADAVAN: The legislation doesn't preclude it, Senator. But on the other hand I have to be perfectly honest with you -

SENATOR GALIBER: You always are.

SENATOR PADAVAN: -- we've outlined and statutized the process, expanded that process, given wide opportunities for individuals, groups, organizations, education advocates, borough presidents. All these people now have an opportunity of stepping forward and saying we want to have a school district. I think you said Co-op City.

Now, for to us then preempt that process to say we, this body of 61 individuals, can say with certainty that our judgment as to where a new school district shall be created -

just keep in mind there are potential for five more school districts. We then would be in the business of saying, well, we want one here and we want one there and we want one there.

I don't think that intelligently as a body -- you obviously are in the position of making that judgment because you represent these people. You know exactly what the problem is, and you can make that judgment, but I don't know as a body, both houses of the Legislature, whether we would want to find ourselves in a position of, in effect, redrawing school districts in the City of New York.

SENATOR GALIBER: All right. Let me ask you this question. I sense that some of the drive behind this bill is based on population. One of the things that is mentioned in the legislation is that we had a criteria for 15,000 and we reduce the number or increase it, but one of the drives here is saying that we have to add more because some of them are overcrowded.

And if that be the case, why is

it that we can't pick a number. If you feel comfortable with that -- not you personally but if we would collectively feel comfortable and say that areas, school areas which are not represented directly with 25,000 or more, would then be in a position to introduce a piece of legislation by -- based on numbers.

Because, Senator, let me tell you in the real world what is happening. Both of us try to function most of the time in that real world and rarely do we go out and fight those windmills. The reason why -- Senator Montgomery was absolutely right. She alluded to it. The reason why the excellent work of the Marchi Commission -- I say excellent not because I was one of the commissioners -- has gone and is being held in a hiatus stage is because the power of the UFT.

When we voted on this piece of legislation, you might say, Well, Senator, you are a responsible person. How can you be influenced by the UFT? How can you be influenced by some outside forces? We had an

excellent piece of legislation that was suggested as a result of an excellent report. That piece of legislation has not moved, and one of the principal reasons for it not moving is because of the power of the UFT.

And they are destroying our education system. They are not concerned with our youngsters. They are not concerned with educating youngsters, especially in the urban centers where it's sorely needed. Find a way to do it outside the City of New York but not in the City of New York.

If we had an opportunity -- and I don't mean to minimize it. We had this discussion in committee. This seems not very much to be talking about when we find that school-based management and decision making and all those good things, whether it's the Rochester or the Chicago experience, whichever one you want to choose, all of it, we all agree that this would be better for the youngsters in our school system. We can't move it. We can't move it.

You have difficulty -- we stay out of it. I'm sure you do because I don't want to get involved with those school districts or be on the board. You didn't have to write a piece of legislation for me. I didn't want to be on it before the piece of legislation precluded it, but it's another level of politics.

And to suggest that we have to go through that maze -- not the bad things that are happening in some of the counties -- just to go through that procedure in order to see to it or offer an opportunity for a particular district to educate youngsters. This is not the procedure. This is not it.

1969, as I said before, we voted against it because, again, the UFT was there and they didn't want to budge. And when they agreed and signed off on the bill, we knew something was wrong. We knew something was wrong, and that's exactly why we voted against it.

So, Senator, I understand. You and I don't differ. You've done a great deal in

the area of education and are concerned mostly about people in your community. And this piece of legislation -- I can't say I'll vote against it. I will only wish that there was some mechanism with a view toward adding on criteria which would not send us through the same maze with the influence of the UFT and a number of political layers which cause stumbling blocks to the vehicle through which we can educate our youngsters.

So, Mr. President, I thank you for the opportunity.

Senator Padavan, thank you for answering the question and for your candor. But this piece of legislation, I vote no because it doesn't come anywhere close to what we were really all about as far as the Commission is concerned. It's sad that the Marchi Commission legislation we have been -- I think some two or three years we've been hanging around and not doing anything positive about it, and our youngsters have to -- have been the primary persons who have been hurt as a result of our

inability to deal with adequate legislation to educate youngsters in our state.

I vote no.

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.)

Senator Marchi to explain his vote.

SENATOR MARCHI: Mr. President. For -- Senator Galiber said a lot of things that were wise, I think. We did have a good bill. The circumstances surrounding the rainbow curriculum, without going into merits and without resurrecting a lot of debate that went on in the public in the City of New York, resulted in the collapse of the Fernandez' chancellorship.

There is an effort now being made by Mr. Costikyan to track to some extent with

some of the latter day thinking that materialized in a bill that we had last year and approved by the Senate, well, at 7:00 o'clock in the morning as a matter of fact on the conclusion of the session.

And the problem has been trying to establish -- and I made an attempt, repeated attempt, to get a dialogue going with the Assembly but to no avail, probably because we were not in the fullness of time to reach a decision after the argumentation that had gone on after the rainbow curriculum and just the sheer collapse of efforts being made by the chancellor.

I had a bill, of course, on Staten Island, the secession of Staten Island, and there we have something that tracked with some of the things that were said here today, and the election takes place on a November election, and I was intrigued by the concept forwarded -- raised by Lani Guinier, which may surprise a lot of people, and I have it in the plan itself for the school system on Staten

Island, and that provides for a cumulative voting in a school election. That would certainly reassure concerns on the presence of minorities on a school board.

We have always been able to do that even with proportional representation, but this would be done directly by machine. There are no machines now. There is no capability of doing that. At the earliest, we will have one more sophisticated machine about a year from now for one Assembly district. It will take about five years before a new system is available that will be able to accommodate the sophisticated concerns in reference to representation.

I believe that Senator Padavan is trying to answer and meet an immediate problem and that will not foreclose, certainly, some of the considerations that have been raised here today, but we are not obviously prepared to join issue at this point and redraft a brand new structural system for the entire educational system at this point.

But I think that, really, the

initiative undertaken by Senator Padavan should be supported at this point until higher ground can be scrambled to later on and there has been more thinking and interchange between members of this house and also with the elements in the Assembly.

I am voting in the affirmative.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Ayes 59. Nays 1. Senator Galiber recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I have been asked on behalf of the Acting Majority Leader to make essentially an announcement; that is, as we grow closer to the end of our session for the summer and we do have a lot of work to do, a lot of work to do. And we're on a calendar now, and we've had indications before that members who are carrying the bills have not been in the chamber, so the

bills have been laid side temporarily. We're about ready to return to motions and resolutions and have our first Rules report on essentially an additional calendar, the first of many to come; and so it is the request of the Acting Majority Leader that all members who have bills on the calendar be in their chair ready to debate the bills when the bill is reached and put aside whatever it is that they have going on to carry on that debate; because if they are not in their chairs at the time so we can conduct our business in an orderly manner, we may not be returning to this calendar. It is our intent to return in regular order to do the business at hand but not to bounce around.

At this time, I would also like to return to motions and resolutions. It is my understanding that there is a Rules Committee report at the desk that I would like to have read.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Reports of standing committees.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes. I think in view of what Senator Kuhl said, I would like to alert the members on this side of the aisle, with the exception of about six who have been glued to their seat all day, that when these bills come up if the member who is carrying the bill is in the chamber, I have been advised by Senator Kuhl and by Senator Present that my ability to hold the bills may be limited; and in view of the fact that everybody would like to wind down, that seems to be sensible.

So I would encourage the members of the Minority also, if you want to speak on a bill or participate in the actual debate part, you are going to have to be here because as much as I sympathize with you and want to work for you, my hands are strapped if the member who is carrying the bill is in the chamber.

ACTING PRESIDENT FARLEY: We're going to move the stenographer for just a

moment.

Senator Hoffmann, you have the floor.

SENATOR HOFFMANN: Mr. President. I request unanimous consent to be recorded in the negative on Calendar 1564.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR HOFFMANN: Thank you.

ACTING PRESIDENT FARLEY: Secretary is ready with the Rules Report. Please read it.

SENATOR TULLY: Mr. President.

ACTING PRESIDENT FARLEY: Senator Tully.

SENATOR TULLY: My I have unanimous consent to be recorded in the negative on Calendar 1564, please.

ACTING PRESIDENT FARLEY: 1564, Senator Tully will be in the negative.

THE SECRETARY: Senator Marino from the Committee on Rules reports the following bills directly for third reading:

2172A, by Senator Dollinger, an act to amend the Vehicle and Traffic Law.

4628B, by Senator Velella, an act to amend the General Municipal Law.

5222A, by Senator Kuhl, an act to amend the Agriculture and Markets Law.

5747, by Senator Ohrenstein, an act to amend the Public Health Law.

6645B, by Senator Spano, Criminal Procedure Law.

6703A, by Senator LaValle, an act to amend the Tax Law.

6945B, by Senator Farley, Parks, Recreation and Historic Preservation Law.

7307A, by Senator Nanula, validating certain advances of funds by the City of Niagara Falls.

7522, by Senator Nozzolio, Retirement and Social Security Law.

7674, by Senator Saland, Executive Law.

7957A, by Senator Holland, Social Services Law.

8137A, by Senator Daly, Environmental Conservation Law.

8152A, by Senator Stafford, State Finance Law.

8153A, by Senator Cook, Education Law.

8257A, by Senator Trunzo, Retirement and Social Security Law.

8304A, by Senator Daly, allowing the city of Niagara Falls to provide optional 20 year retirement.

8317C, by Senator Padavan, amends Chapter 420 of the Laws of 1991.

8336A, by Senator Daly, Public Service Law.

8402A, by Senator Daly, General Municipal Law.

8419A, by Senator Velella, City of New York to discontinue and transfer certain park land.

8430, by Senator Velella, Insurance Law.

8491, by Senator Saland, Tax Law.

8621A, by Senator Goodman, Real Property Tax Law.

8629, by Senator Velella, an act in relation to the lawful rents for certain plots or parcels.

8644, by Senator DiCarlo, Vehicle and Traffic Law.

8660, by Senator Libous, Vehicle and Traffic Law.

8667A, by Senator Saland, Insurance Law.

8747, by Senator Volker, Vehicle and Traffic Law.

8752, by Senator Kuhl, Transportation Law.

8754, by the Committee on Rules, Local Finance Law.

8762A, by Senator Saland, Highway Law.

8778, by Senator Pataki, amends Chapter 169 of the Laws of 1994.

8798, by the Committee on Rules, Administrative Code of the City of New York.

8800, by the Committee on Rules, Administrative Code of the City of New York.

8806, by Senator Johnson, an act in relation limiting exemption under the Air Pollution Control Act.

8808, by Senator Present, in relation to Chapter 53 of the Laws of 1988.

8811, by Senator Tully, authorize the extension of the statute of limitations.

8818, by Senator Hannon, Criminal Procedure Law.

8824, by the Committee on Rules, Public Authorities Law.

8827, by Senator DeFrancisco, Chapter 53 of the Laws of 1994.

8830, by Senator Spano, Workers' Compensation Law.

8836, by the Committee on Rules, Real Property Tax Law.

8837, by Senator LaValle, Education Law.

8845, by Senator Goodman, Real Property Tax Law.

8846, by Senator Rath, Social Services Law.

8848, by the Committee on Rules, State Finance Law.

8867, by Senator Nozzolio, Election Law.

Assembly Bill Number 12135, by the Assembly Committee on Rules, Petroleum Overcharge Restitution Act.

424C, by Senator Stavisky, authorize a qualified member of the New York State and local employees retirement system.

487A, by Senator Paterson, authorize the City of New York to reconvey certain real property.

4713A, by Senator Montgomery, authorizing the City of New York to reconvey its interest in certain real property.

All bills reported directly for third reading.

ACTING PRESIDENT FARLEY: All bills are reported directly to third reading.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could we go to supplemental Calendar Number 1, which has just been placed on everybody's desk and call up out of order, Calendar Number 1649.

ACTING PRESIDENT FARLEY: Well, could we do just a bit of housekeeping prior to 1649.

SENATOR KUHL: Certainly.

ACTING PRESIDENT FARLEY: Thank you.

SENATOR KUHL: Return to motions and resolutions, certainly.

ACTING PRESIDENT FARLEY: He is going to do some substitutions.

Secretary will read some substitutions.

THE SECRETARY: On page 11, Senator Cook moves to discharge the Committee on Rules from Assembly Bill Number 10299A and substitute it for the identical Third Reading 666.

On page 15, Senator Present moves

to discharge the Committee on Rules from Assembly Bill Number 10267 and substitute it for the identical Third Reading 871.

On page 17, Senator Lack moves to discharge the Committee on Rules from Assembly Bill Number 11420 and substitute it for the identical Third Reading 962.

On page 17, Senator Skelos moves to discharge the Committee on Rules from Assembly Bill Number 9409B and substitute it for the identical Third Reading 967.

ACTING PRESIDENT FARLEY: Substitutions are ordered.

Senator Cook.

SENATOR COOK: Mr. President. I wish to call up my bill, Print Number 6625, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Cook, Senate Bill Number 6625B, certain findings and determinations with respect to a temporary

advance of monies.

SENATOR COOK: Mr. President. I now move to reconsider the vote by which the bill walls passed.

ACTING PRESIDENT FARLEY: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is before the house.

SENATOR COOK: Please restore the bill to its place on the Third Reading Calendar and I now offer the following amendments.

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

SENATOR COOK: I now move to discharge the Committee on Rules from Assembly Print 9488A and substitute it for my identical bill.

ACTING PRESIDENT FARLEY: Substitution is ordered.

SENATOR COOK: The Senate Bill on first passage was voted unanimously. I now move that the substituted Assembly bill have its third reading at this time.

ACTING PRESIDENT FARLEY: Before you read the last section, there is a home rule message at the desk on this bill. So you can now 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: Unanimous.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Kuhl, 1649?

SENATOR KUHL: 1649.

ACTING PRESIDENT FARLEY: We have a message at the desk.

THE SECRETARY: Calendar 1649, by Senator Nozzolio, Senate Bill Number 8867, an act to amend the Election Law and the Tax Law.

ACTING PRESIDENT FARLEY: I need a motion.

SENATOR KUHL: I'm informed there is a message of necessity at the desk.

ACTING PRESIDENT FARLEY: There is, sir.

SENATOR KUHL: I move we accept the message.

ACTING PRESIDENT FARLEY: All in favor of accepting the message, please say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT FARLEY: Withdraw the roll call. There has been an explanation asked for by Senator Connor.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

We have before us today what has been termed "motor voter." This legislation is perhaps the most comprehensive Election Law reform that the state has every seen.

Voter participation and voter turnout have been on a steady decline in New York and across the country over the last two decades, and what this legislation does is attempt to open the gateway of democracy to millions of new voters in New York.

I hasten to add that the legislation before us goes far beyond the mandates of the National Voter Registration Act. This bill will go into effect January 1, 1995, making New York one of the first states in the country and I believe the largest state in the nation to implement the National Voter Registration Act.

The federal bill mandates that the Department of Motor Vehicles, those offices

providing public assistance and those providing services with individuals of disability designate -- be designated as voter registration sites.

Over 10 million people annually visit the Department of Motor Vehicles in this state, Mr. President, and we believe this law will provide them the opportunity to vote. However, every student enrolled in SUNY and CUNY will also be able to have a voter registration form as part of their enrollment packet, as well as a number of state agencies.

Mr. President. I would be glad to entertain any questions from the ranking member of this committee, the Elections Committee, as well as any other member who may have any questions.

ACTING PRESIDENT FARLEY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President, and thank the Senator for yielding.

Just a couple of questions, and I first want to congratulate the sponsor and all

the people who worked very hard over the past months to negotiate this legislation. I think it will be truly a landmark opportunity for more and more New Yorkers to participate in our electoral politics.

Senator Nozzolio, as you pointed out, this bill does provide that at SUNY and CUNY registration forms will be given out, and I note that it does not include language mandating the schools to collect the registration forms or otherwise assist in it, but what I would like to make clear, am I not correct in saying there is nothing in the law that would prevent the administration at any branch of SUNY or CUNY from establishing on their own a system for assisting students to complete the forms to register or collecting them and forwarding them to the board of elections? There is nothing that would prevent that; is that correct, Senator?

SENATOR NOZZOLIO: That's correct, Senator. There was a decision, as you know, not to make this a mandate, but there is

nothing at all, we believe, to preclude this practice from occurring.

SENATOR CONNOR: Thank you. And if the Senator, Mr. President, would yield to one further question?

ACTING PRESIDENT FARLEY: Would you yield for another question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FARLEY: Yes, he will.

SENATOR CONNOR: Am I not correct in looking at this bill that it repeals existing provisions of law which prohibit state agency personnel from advising or assisting applicants in the completion of forms to register to vote, and that we are also repealing the language that requires that registration forms can only be collected in locks boxes? Is that correct?

SENATOR NOZZOLIO: Yes, that is correct.

SENATOR CONNOR: Thank you, Mr. President. Thank you, Senator.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR COOK: Mr. President.

ACTING PRESIDENT FARLEY: Senator Cook.

SENATOR COOK: Will Senator Nozzolio yield for a question, please?

ACTING PRESIDENT FARLEY: Senator Nozzolio will you yield?

SENATOR NOZZOLIO: Certainly.

SENATOR COOK: In regard to the registration forms at SUNY campuses, will the forms be in blank, that is, forms that will be returned to the home district of the registrants, or will all those people be registered in the community in which the college is located?

SENATOR NOZZOLIO: Senator, the form that will be presented to those at the universities will be the regular, traditional state board form in which an individual will have to declare an address. If that address is their home address or their address of origin

that county will receive the registration form, but it depends on where the student declares their address. There is no intention that students have declaration of addresses at the university but, rather, where they have their individual residence.

ACTING PRESIDENT FARLEY: Read the last section. Hold on.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I feel somewhat compelled to rise because -- in deference to my colleague from Monroe County. I know that we've had a number of debates on bills involving Election Law changes over the course of the last eighteen months in which I've used terms like itsy-bitsy, teeny-weeny. This is not itsy-bitsy, teeny weeny. This is a huge step.

And I believe that your comment that this bill will bring democracy to millions of new voters in New York State is absolutely accurate. I commend you and the work of this committee in difficult negotiations with the

Assembly. It's a good piece of work. It really goes a long way; and my hope is that having made this giant step, we'll continue to be on the forefront of the states in this country that push voter access to ballot, access to the process of democracy, so that more and more people will be a part of it.

I commend the Election Committee and its chair for this excellent piece of work.

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

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1649 are Senators Cook, DiCarlo, Johnson, Lack, LaValle, Maltese and Trunzo. Ayes 53. Nays 7.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR KUHL: Regular order.

ACTING PRESIDENT FARLEY: Regular order.

THE SECRETARY: Calendar Number 1575, by Member of the Assembly McLaughlin, Assembly Bill 9205A, an act to amend the General City Law, the Town Law, and the Village Law.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for by Senator Connor.

Senator Padavan.

SENATOR PADAVAN: The explanation was requested, I believe. This bill will allow local governments do adopt ordinances or local laws dealing with the issue of loitering consistent with the requirements as laid down in Court of Appeals decisions on this subject. Such loitering laws are restricted by statute in this bill under very narrow circumstances and are so stated in three different parts of the bill.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR CONNOR: Excuse me. Can we have just a second.

ACTING PRESIDENT FARLEY: All right.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT FARLEY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. Will Senator Padavan yield for a question?

SENATOR PADAVAN: Yes.

SENATOR CONNOR: Thank you, Senator. I just want to make sure, as you know, historically, anti-loitering statutes were just a license for a police officer to arrest anybody they didn't like the looks of.

SENATOR PADAVAN: Right.

SENATOR CONNOR: Is the intent of this bill to limit the statutes adopted by a locality to situations where the person is clearly or is, in effect, loitering for the purposes of an illegal activity.

SENATOR PADAVAN: Yes, and it's

very specific, if I may read it. Again, as I said, earlier, the same sentence is used in three different parts of the bill, line 5 and 6 and then 17 and 18 on the front page, and I think elsewhere, as well. But the fact remains, it says very specifically that "loitering prohibited... in punishing loitering... and prowling in a place at a time... where lawful activity... not usual for lawful activity under circumstances that warrant alarm or immediate concern for safety of persons or property in the vicinity."

So in any event it's very specific in terms of how you could develop a local law. And, again, as I said earlier, relates very directly to two Court of Appeals decisions that laid down the guidelines for such a statute.

SENATOR CONNOR: Okay. Thank you, Senator. Last section.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1577, by Senator Saland, Senate Bill Number 7961A, an act to amend the Election 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1585, by Senator Levy, Senate Bill Number 8726, an act to amend the Transportation.

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: Hold on. Withdraw the roll call. Senator Connor has asked for an explanation, Senator Levy.

SENATOR LEVY: Senator Connor, what this bill does is to require state projects that are five million dollars or in excess to have the State Department of Transportation take a look at whether night time construction is feasible to do those projects.

We can all be justifiably proud of the $21 billion transportation financing plan that we put into place a year ago, a year ago April, and really finalized with the MOU last December. That piece of legislation and the carryover highway and bridge projects on a state level from the Action Bond Issue, particularly

in the City of New York and places like Long Island and the other suburban counties, that are now having a tremendous amount of construction that's ongoing, it really has -- in the City and in the suburban areas and it's really not limited to downstate -- but because of the magnitude of the construction, it has generated major congestion.

All this bill does is to say to DOT, on projects over $5 million take a look at them and, if you can, do them at night. And it, furthermore, says -- says to DOT, make your determination open to the public if they want to take a look at what was the basis for this action.

A number of years ago before we got into a program of this magnitude, we passed legislation like this in the Senate. My recollection is that maybe seven or eight years ago before we had an explosion in construction such as we have today, it passed both houses and was vetoed by the Governor.

ACTING PRESIDENT FARLEY: Senator

Connor.

SENATOR CONNOR: Yes. Thank you, Mr. President. On the bill just very briefly.

I recollect a project on the BQE in my district some 14 or 15 years ago where, because of the disruption that would be caused, we actually worked it out and we had to go to - I guess it was an Interstate. There was some federal money involved. The then Congressman was very helpful and we actually got the work done at night, and it worked very, very well in that situation, and it minimized the impact on surrounding communities.

Since then, there were a number of other projects in the same area, and we haven't received a very sympathetic ear when one of the things we suggest is, "Do it at night." I don't know what's changed in 15 years.

But I do want to congratulate Senator Levy for bringing this out. I recall a few weeks ago, I think this was a key element in a gubernatorial candidates platform. I think Howard Stern, besides his other two or three

issues that he wanted to do this. So I guess maybe we can all take credit. You know, typical third party, as we know the history of third parties or the major parties in our system tend to co-op their ideas. So I guess this is the beginning of the Democrats and the Republicans co-opting one of Howard Stern's ideas.

SENATOR GALIBER: Senator, would you yield for a question, just one question?

SENATOR LEVY: Certainly, Senator.

SENATOR GALIBER: You know, I think it's a great idea. You come in in the morning to try and get downtown, and all of a sudden they put a bridge up, put up some construction. You got to bear to the right, bear to the left. Excellent.

But do you have any idea how much this is going to cost? Because now we run into the unions. You're talking about night pay, double pay, triple pay, depending on what's negotiated. So is it conceivable -- and I don't want to put one of those dramatic multipliers in

there, but would you agree that in order -- if this legislation is passed -- on the one hand I hope it is. On the other hand, I would like to know what your guesstimate would be or estimate would be. What would be the cost of this above what it would normally cost, taking into consideration the unions and night work.

SENATOR LEVY: Senator Galiber let me answer to comments by Senator Connor and then also respond to you.

With all due respect to Howard Stern, this legislation was something that we initiated before Howard Stern started to articulate, so it was legislation that had been passed here. Senator Galiber, all this bill does is require DOT to make an evaluation. Then once they make an evaluation and decide to do night time construction, they got to fit it within their budget.

SENATOR GALIBER: That's not answering the question. Maybe you can't answer it because there's too many -- you know, there's so many variables involved. Would you agree,

Senator -- let me put it to you another way. Would you agree -- you have been head of transportation for a number of years, and doing an excellent job. I'm not massaging you, but you really have, so I won't disturb -- I don't want to hold up $92 billion because of a reason, but that was a momentary thing.

The fact of the matter is with your experience in transportation and knowing some of the costs, isn't it a fact that if we start doing this work at night that it's going to be a substantial amount of additional cost on the contract?

SENATOR LEVY: All right. Senator, before introducing this bill again, I spoke to union officials in the construction field. Due to the fact that there is little - underscored little -- private sector construction as opposed to highway and bridge construction, the union officials indicated to me that as an incentive to do this type of work, they would be very, very flexible as it relates to overtime and premium pay.

Based upon those conversations, I can not say, Senator Galiber that there would be an additional costs involved.

Let me additionally say, what is going on in this field is innovative bidding and innovative awards to do construction projects. Where like in California after the earthquake, in the state of California, they were giving bonuses on contracts when contracts were completed before they were supposed to be scheduled, and conversely penalizing. We are starting to use these type of bidding procedures in the State of New York, and they are being tried in the New York City Metropolitan area. So I don't think we can -- I don't think that we can say on a given project whether it would cost more or cost less. All I can tell you is what the union officials indicated to me, that they were willing -- they were willing to even scale back -- scale back the different premium pay, hourly pay that they received because of the need for the work.

SENATOR GALIBER: Yes. I don't

want to belabor the point. Senator, that's a great answer.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: That's a great answer, but it doesn't really answer, and you know it as well as I do, that the unions are going to come in and they're going to -- because they are primarily concerned about their workers. They are going to charge for the insurance; they are going to charge for the overtime; they are going to charge for the night work. And you know it as well as I do.

This -- whatever these gentlemen agreements, and they're gentlemen -- they just don't honor handshakes and gentlemen's agreements. This is going to cost the taxpayer an awful lot of money, but I would like to see it happen, but I'm just disagreeing with you as to this good will all of a sudden with the unions. And what they'll say, "We'll take advantage -- we'll -- we'll consider this factor and another factor, and we'll be gentlemen about

it. We're not going to ask for the $2,000 and the $3,000 with the fringes and the union costs and the pension funds."

It costs them now maybe $2,000 for each worker out there. Can you imagine what it's going to cost to do this work at night. And I'm not arguing. I'd love to see it passed, work out some kind of way. The only thing I'm arguing with you about -- not arguing. I'll find a softer word -- disagreeing with you is that your answer as to this agreement that you have with the the union as relates to cost - not you personally, but this understanding that you have with the union is pure nonsense. They don't know what the handshakes mean. They don't know what one's word represents. They have one object in mind, one thrust, and that is to protect those union persons, and they are not going to have them out there working at different wages other than the night wages.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR KUHL: Mr. President.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Could we have the Secretary call up Calendar Number 1562. I believe there is a message at the desk.

ACTING PRESIDENT FARLEY: Yes, there is.

THE SECRETARY: Calendar Number 1562, by Senator Cook, Senate Bill Number 8815, an act to amend Chapter 737 of the Laws of 1989.

SENATOR KUHL: I move we accept the message.

ACTING PRESIDENT FARLEY: All in favor of accepting the message, please say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Mr. President. Would you now call up 486, please.

ACTING PRESIDENT FARLEY: 486.

THE SECRETARY: Calendar Number 486, by Senator Levy, Senate Bill 1245A, an act to amend the Public Authorities Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY:

Explanation has been asked for.

SENATOR LEVY: Senator, I will be happy to answer any questions. This is a very comprehensive bill. We have passed this bill every year in recent history aimed at reform of the MTA. It has some of the concepts that you have been interested in, Senator Leichter. I wish I could tell you that the Assembly was going to pass it this year as opposed to not having passed it in the past.

SENATOR LEICHTER: Yes, Senator Levy, if you would be so good as to yield.

ACTING PRESIDENT FARLEY: Senator Levy, do you yield?

SENATOR LEVY: Yes, certainly.

SENATOR LEICHTER: My question, in part, is prompted just because of the flurry of bills and all that we're going through. It's hard to keep track. Is this the same bill that we passed last year?

SENATOR LEVY: It is substantially the same bill possibly with some

changes in dates and maybe a little fine tuning.

SENATOR LEICHTER: All right. Other than changes in dates -

SENATOR LEVY: There really is nothing substantively added to this bill.

SENATOR LEICHTER: And some of the changes, and I remember we talked about it, you were very gracious. You asked my opinion on some of these things and so on.

SENATOR LEVY: Some of your concerns about hearings before you eliminate and diminish service and so on.

SENATOR LEICHTER: Okay. Good. That's really what I wanted to know. Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR KUHL: Mr. President.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 607, please.

ACTING PRESIDENT FARLEY: 607, the Secretary will read it.

THE SECRETARY: Calendar Number 607, by Member of the Assembly Bragman, Assembly Bill Number 748C, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: There is a local fiscal impact note here at the desk.

You can 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 Onorato, are you voting? Negatives raise your

hands.

THE SECRETARY: Those recorded in the negative on Calendar Number 607 are Senators Cook, DeFrancisco, DiCarlo, Farley, Hoffmann, Kuhl, Libous, Nanula, Present, Seward, Stafford and Wright. Ayes 48. Nays -

ACTING PRESIDENT FARLEY: Senator Sears is also in the negative.

THE SECRETARY: Also Senator Sears in the negative.

ACTING PRESIDENT FARLEY: Senator Nozzolio.

THE SECRETARY: Also Senator Nozzolio. Also Senator Larkin in the negative. Ayes 45. Nays 15.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: I think it's come a time when we must stand at ease briefly unless you've got some housekeeping.

ACTING PRESIDENT FARLEY: Are there any motions or resolutions on the floor.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT FARLEY: Senator Spano.

SENATOR SPANO: I would like unanimous consent -- I'd like the record to indicate I'm reported in -- recorded in the negative on Calendar 1579.

ACTING PRESIDENT FARLEY: 1579, Senator Spano is in the negative.

Senator Holland.

SENATOR HOLLAND: My I be recorded in the negative on 607, please.

ACTING PRESIDENT FARLEY: 607, Senator Holland is in the negative.

No other motions or -- on the floor?

(There was no response.)

Senator Present, we have nothing in the line of housekeeping.

SENATOR PRESENT: At ease for a few minutes.

ACTING PRESIDENT FARLEY: We will stand at ease for a few moments.

Senator Pataki, and then Senator

Stachowski.

SENATOR PATAKI: Mr. President. I request unanimous consent to be recorded in the negative on Calendar 607.

ACTING PRESIDENT FARLEY: Without objection.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President. I request unanimous consent to be recorded in the negative on Calendar 607.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: I would also request unanimous consent to be recorded in the negative on 607.

ACTING PRESIDENT FARLEY: Without objection.

Senator Jones.

SENATOR JONES: Same.

ACTING PRESIDENT FARLEY: Senator Jones also in the negative on 607.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I request unanimous consent to be recorded in the negative on 1564.

ACTING PRESIDENT FARLEY: 1564, Senator DeFrancisco will be in the negative.

Senator Saland.

SENATOR SALAND: Mr. President. I request unanimous consent to be recorded in the negative on Calendar 607, Senate 71B.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR GALIBER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: I think so. Mr. President. I ask for unanimous consent to be recorded in the negative on 1575.

ACTING PRESIDENT FARLEY: 1575, Senator Galiber will be in the negative.

Senator Libous.

SENATOR LIBOUS: Can we go to motions and resolutions?

ACTING PRESIDENT FARLEY: Yes, we can.

SENATOR LIBOUS: Mr. President. On behalf of Senator Skelos, I wish to call up his bill, Senate Print 8151A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Skelos, Senate Bill Number 8151B, an act relating to the Ocean Side Library.

ACTING PRESIDENT FARLEY: It's a little noisy in here. We want to hear Senator Libous' motion.

Senator Libous.

SENATOR LIBOUS: Mr. President. I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on

reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Libous.

SENATOR LIBOUS: Mr. President. I now offer the following amendments. And I move to discharge from the Committee on Rules Assembly Print Number 11970A and substitute it for Senator Skelos' identical bill. The Senate bill on first passage was voted unanimously, and I now move that the substituted Assembly bill have its third reading at this time.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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: Unanimous.

ACTING PRESIDENT FARLEY: The

bill is passed.

Senator Wright.

SENATOR WRIGHT: Mr. President. I request that the sponsor star be removed from Calendar Number 1311, Senate Print 7942A.

ACTING PRESIDENT FARLEY: Star is removed.

Senator Paterson.

SENATOR PATERSON: Mr. President. If there is no objection, I ask that I be recorded in the negative on Calendars Number 1574 and 1575.

ACTING PRESIDENT FARLEY: 1574 and 1575, Senator Paterson will be in the negative.

Senator Rath.

SENATOR RATH: I would like to be recorded in the negative on 607.

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR DALY: Mr. President. May I be voted in the negative on Calendar Number 607, Print Number A.748C.

ACTING PRESIDENT FARLEY: Senator Daly will be in the negative on 607.

(Whereupon, at 5:30 p.m., Senate was at ease.)

(Whereupon, at 5:55 p.m., Senate reconvened.)

SENATOR KUHL: Mr. President.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: May we return to motions and resolutions?

ACTING PRESIDENT FARLEY: You certainly may. Go ahead.

SENATOR KUHL: I wish to call up my bill, Senate Print 6109B, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: The Secretary will read it.

THE SECRETARY: By Senator Kuhl, Senate Bill Number 6109B, an act to amend the General Business Law and the Executive Law.

ACTING PRESIDENT FARLEY: Senator Kuhl.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Kuhl.

SENATOR KUHL: I offer up the following amendments.

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

Senator Present.

SENATOR PRESENT: Mr. President. Can we go to Supplemental Calendar Number 1. Noncontroversial.

ACTING PRESIDENT FARLEY: Supplemental Calendar Number 1, noncontroversial.

Secretary will read, page 1.

THE SECRETARY: Calendar Number 1602. Senator Dollinger moves to discharge the Committee on Rules from Assembly Bill Number 12003 and substitute it for the identical Calendar Number 1602, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section. Oh, there is a home rule - I'm sorry.

Substitution is ordered. There is also a home rule request at the desk.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1603, by Senator Velella. Senator Velella moves to discharge the Committee on Rules from

Assembly Bill Number 7668B and substitute it for the identical Calendar Number 1603, an act to amend the General Municipal Law.

ACTING PRESIDENT FARLEY: Substitution is ordered. There is a home rule request at the desk.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1604, by Senator Kuhl, Senate Bill Number 5222A, an act to amend the Agriculture and Markets Law.

SENATOR KUHL: Lay the bill aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number

1605. Senator Ohrenstein moves to discharge the Committee on Rules from Assembly Bill Number 11562 and substitute it for the identical Third Reading 1605, an act to amend the Public Health Law.

ACTING PRESIDENT FARLEY: Substitution -

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Can we lay this bill aside, please.

ACTING PRESIDENT FARLEY: Lay the bill aside.

SENATOR GOLD: Yeah, I've got a lot of problems with the sponsor.

ACTING PRESIDENT FARLEY: We'll substitute it first. Substitution is ordered. Lay the bill aside.

THE SECRETARY: Calendar Number 1606. Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 10184A and substitute it for the identical Third

Reading 1606, Criminal Procedure Law.

ACTING PRESIDENT FARLEY: Substitution ordered.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes. With your indulgence, if we can go back to 1605. I understand the sponsor will accept passage without debate.

THE SECRETARY: Calendar Number 1605, substituted earlier, by the Assembly Committee on Rules, Assembly Bill Number 11562, an act to amend the Public Health 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1607, by Senator LaValle, Senate Bill Number 6703A, an act to amend the 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1608. Senator Farley moves to discharge the Committee on Rules from Assembly Bill Number 10073B and substitute it for the identical Third Reading 1608, Parks, Recreation and Historic Preservation Law.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 1609. Senator Nanula moves to discharge the Committee on Rules from Assembly Bill Number 8530A and substitute it for the identical Third Reading 1609.

ACTING PRESIDENT FARLEY: Substitution is ordered. There is a home rule request at the desk.

You can 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1610. Senator Nozzolio moves to discharge the Committee on Rules from Assembly Bill Number 10645 and substitute it for the identical Calendar Number 1610.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1611. Senator Saland moves to discharge the Committee on Rules from Assembly Bill Number

10925 and substitute it for the identical Third Reading 1611.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1612, by Senator Holland, Senate Bill Number 7957A, an act to amend the Social Services 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1613, by Member of the Assembly DiNapoli, Assembly Bill Number 9639B, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1614. Senator Stafford moves to discharge the Committee on Rules from Assembly Bill Number 11461A and substitute it for the identical Third Reading 1614.

ACTING PRESIDENT FARLEY:

Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR GOLD: Reconsider the vote and lay it aside.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: Lay the bill aside.

THE SECRETARY: Calendar Number 1615. Senator Cook moves to discharge the Committee on Rules from Assembly Bill Number 11987A and substitute it for the identical

Calendar Number 1615.

ACTING PRESIDENT FARLEY: Substitution is ordered. Lay that bill aside because it's high.

THE SECRETARY: Calendar Number 1616. Senator Trunzo moves to discharge the Committee on Rules from Assembly Bill Number 10855A and substitute it for the identical Third Reading 1616.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1617, by Senator Daly. Senator Daly moves to discharge the Committee on Rules from Assembly

Bill Number 11550A and substitute it for the identical Calendar Number 1617.

ACTING PRESIDENT FARLEY: There is a home rule request at the desk. Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1618. Senator Padavan moves to discharge the Committee on Rules from Assembly Bill Number 11902 and substitute it for the identical Calendar Number 1618.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1619. Senator Daly moves to discharge the Committee on Rules from Assembly Bill Number 6207A and substitute it for the identical Calendar Number 1619.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1620, by Senator Daly, Senate Bill Number 8402A, 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 60.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 1621. Senator Velella moves to discharge the Committee on Rules from Assembly Bill Number 11957A and substitute it for the identical Calendar Number 1621.

ACTING PRESIDENT FARLEY: Substitution is ordered. There is also a home rule message at the desk.

You can 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1622. Senator Velella moves to discharge the Committee on Rules from Assembly Bill Number 11427A and consitutes it for the identical Calendar Number 1622.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Ayes 59. Nays 1. Senator Present recorded in the negative.

ACTING PRESIDENT FARLEY: That bill is still passed.

THE SECRETARY: Calendar Number 1623, by Senator Saland, Senate Bill Number 8491, an act to amend the Tax Law.

ACTING PRESIDENT FARLEY: There is a local fiscal impact note here at the desk.

You can 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 60.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 1624. Senator Goodman moves to discharge the Committee on Rules from Assembly Bill Number 12091 and substitute it for the identical Calendar Number 1624.

ACTING PRESIDENT FARLEY: Substitution ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1625. Senator Velella moves to discharge the Committee on Rules from Assembly Bill Number 10916, and substitute it for the identical Calendar Number 1625.

ACTING PRESIDENT FARLEY: Substitution is ordered.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar number 1626, by Senator DiCarlo, Senate Bill Number

8644, an act to amend the Vehicle and Traffic Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1627. Senator Libous moves to discharge the Committee on Rules from Assembly Bill Number 11496A and substitute it for the identical Calendar Number 1627.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1630, by Senator Kuhl, Senate Bill Number 8752,

an act to amend the Transportation 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 59. Nays 1. Senator Levy recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1631. Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 12081 and substitute it for the identical Calendar Number 1631.

ACTING PRESIDENT FARLEY: Substitution ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1632. Senator Saland moves to discharge the Committee on Rules from Assembly Bill Number 11893A and substitute it for the identical Calendar Number 1632.

ACTING PRESIDENT FARLEY: Substitution is ordered. Lay it aside.

The bill is high. We can't pass it. The substitution was ordered. But the bill is high. We have to lay it aside.

THE SECRETARY: Calendar Number 1633. Senatorial Pataki moves to discharge the Committee on Rules from Assembly Bill Number 12095 and substitute it for the identical Calendar Number 1633.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1634. Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 12123 and substitute it for the identical Calendar Number 1634.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 1635. Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 12124 and substitute it for the identical Calendar Number 1635.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1636, by Senator Johnson, Senate Bill Number 8806, in relation to limiting exemption under the Air Pollution Control Act.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay the

bill aside.

THE SECRETARY: Calendar Number 1637. Senator Present moves to discharge the Committee on Rules from Assembly Bill Number 12139 and substitute it for the identical Third Reading 1637.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 59. Nays 1. Senator Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1638. Senator Tully moves to discharge the Committee on Rules from Assembly Bill Number 12055 and substitute it for the identical Calendar Number 1638.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1639, by Senator Hannon, Senate Bill Number 8818, an act to amend the Penal Law.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1640, by the Committee on Rules, Senate Bill Number 8824, an act to amend the Public Authorities 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1642, by Senator DeFrancisco, Senate Bill Number 8827, amends Chapter 53 of the Laws of 1994.

ACTING PRESIDENT FARLEY: Senator DeFrancisco has a local fiscal impact note at the desk.

You can 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1643. Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 12198 and substitute it for the identical Calendar Number 1643.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1644, by the Committee on Rules.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1645, by Senator LaValle.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1646, by Senator Goodman, Senate Bill Number 8845, 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1647, by Senator Rath, Senate Bill Number 8846, an act to amend the Social Services Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number

1648. Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 10889 and substitute it for the identical Calendar Number 1648.

ACTING PRESIDENT FARLEY: Substitution is ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1650, by the Assembly Committee on Rules, Assembly Bill Number 12135, an act to enact the Petroleum Overcharge Restitution Act of 1994.

ACTING PRESIDENT FARLEY: Substitution ordered -- no substitution on that one. You can 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1651, by Senator Stavisky.

ACTING PRESIDENT FARLEY: Lay the bill aside. There is no home rule message. That's why we're laying it aside.

THE SECRETARY: Calendar Number 1652. Senator Paterson moves to discharge the Committee on Rules from Assembly Bill Number 4217A and substitute it for the identical Calendar Number 1652.

ACTING PRESIDENT FARLEY: Senator Paterson has a home rule message at the desk.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1653, by Senator Montgomery, Senate Bill Number 4713A, authorizing the City of New York to reconvey its interest in certain real property.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: You're right. Thank you very much. Apparently there is a home rule message at the desk.

Now you can 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present, that's the first time through.

SENATOR PRESENT: We will take the controversial calendar, Supplemental Calendar Number 1.

ACTING PRESIDENT FARLEY: We need to reconsider the vote on 1646, Senator Present, before we do that if we may.

SENATOR PRESENT: Yes.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration on Senator Goodman's bill, 1646.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: Lay that bill aside.

Controversial. Page 1.

THE SECRETARY: Calendar Number 1604, by Senator Kuhl.

SENATOR KUHL: Lay the bill aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1606, substituted earlier, by Member of the Assembly Meeks, Assembly Bill Number 10184A, Criminal Procedure Law.

SENATOR GOLD: Hold on a minute.

ACTING PRESIDENT FARLEY: All set.

SENATOR GOLD: Last section.

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 59. Nays 1. Senator Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1614, substituted earlier, by the Assembly Committee on Rules, Assembly Bill Number 11461A State Finance Law and the Public Authorities Law.

SENATOR GOLD: Explanation, please.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1625, substituted earlier.

ACTING PRESIDENT FARLEY: 1625. 1615 is high, Senator Gold, so we're on 1625.

THE SECRETARY: 1625, substituted earlier, by Member of the Assembly Kaufman, Assembly Bill Number 10916, in relation to lawful rents for certain plots or parcels rented.

SENATOR GOLD: Last section.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1626, by Senator DiCarlo, Senate Bill Number 8644, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR DiCARLO: Mr. President.

ACTING PRESIDENT FARLEY: Senator

DiCarlo.

SENATOR DiCARLO: To explain my vote.

ACTING PRESIDENT FARLEY: The bill has already passed. Go ahead.

Senator DiCarlo.

SENATOR DiCARLO: If I might. This bill is a bill that I'm very pleased to be able to bring out, and I just want to say a couple of things on it. This bill basically is the toughest unlicensed, unregistered drunk driving bill in the nation, and some people have asked me if it's going to pass the Assembly. It is in the Assembly, and I don't know whether it's going to pass the Assembly, and I would hope that it would.

I do this, and I pass this bill in memory of a number of people, constituents of mine, who many have read about in the last few months. There was a family in my district that was slaughtered by an unregistered, unlicensed driver -- Kathy Vaccarello, 43; Maria Vaccarello, 19; Consetta Vaccarello, 17, two

months ago; and just four weeks ago Donna Blanchard, 43, and Michelle Blanchard, 6 years old, were killed. And they are all constituents of mine.

This morning, for those of you who don't know, on the AP wire, a car driven by a man whose license has been revoked plowed into a crowded Brooklyn sidewalk Saturday morning killing one man and injuring two other pedestrians.

The carnage that's going on, especially in the City of New York has gotten to a state that something has to be done, and I think this bill does it.

So on behalf of the families who have lost their loved ones, I pass this bill and I thank the Mayor of the City of New York for his support and guidance in this legislation, also.

SENATOR GOLD: How do you vote?

SENATOR DiCARLO: I vote yes.

ACTING PRESIDENT FARLEY: Secretary will read.

THE SECRETARY: Calendar Number 1636, by Senator Johnson, Senate Bill Number 8806, in relation to limiting exemption under the Air Pollution Control Act.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

Senator Johnson.

SENATOR JOHNSON: Mr. President. The State of New York has been required by the federal EPA to develop regulations to control emissions of volatile organ compounds from some sources which are not currently controled. Right now, they are concentrating on the bakeries.

This bill is dealing with the bakeries. Only bakeries -- and there is a limit, I say, of an amount of one-tenth of one percent of all volitile organic compound emissions in this state come from bakeries, and 80 percent of those are exempted, all the small bakeries and bagel shops and so on.

The larger bakeries have to go

through a procedure to evaluate, called reasonably available control technology. What the DEC has said is that if it costs more than $5,000 a ton, after an analysis to exempt some of these ovens, they will be exempted because there's a cost benefit analysis included in the regulations.

We know that a limit of 15 tons per year, anything below that, will be exempted automatically after this procedure has gone through. What we're trying to do here is go right ahead and say if they're under 15 tons per year, they shall not have to go through the one or two years of testing and the expenses involved only to get an exemption ultimately anyhow from the DEC.

And so what this is going to do really is exempt the small ovens in advance, and the large ovens which emit over that limit and where it will be cost effective to retrofit them, they will be retrofitted with a catalytic oxidizer as anticipated by the DEC.

We're just speeding up the

process to get ultimate resolution of this and save some money for our bakeries. And I might say that we followed the California car example. We followed the California bakery example. They've actually excuded these ovens if it cost more than 3,000 a ton to retrofit, so they are not doing it. Pennsylvania is not doing it. And we are again overregulating, and this is just a way to get us to a reasonable level and only controlling those which are so-called major emitters, even though all together it would be much less of a fraction of one-tenth of one percent.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Mr. President. There is some opposition on this bill, and I have in front of me the latest memo, which you may not have, Senator Johnson. It is handwritten, but you know the way things run out of Rules, I admire these people. I'm not making fun of them, because they're trying -- people

are trying to keep track of the last day or night, or whatever, of session.

But this is a memo signed by a person from NYPIRG, and it says, "NYPIRG, EPL and American Lung Association, all strongly oppose this legislation."

I should point out there is also a memorandum in opposition from the State Department of Conservation opposed to it, and it's I think all for very, very obvious reasons. The question is whether or not we should completely exempt a specific category of air pollution sources from reduction requirements.

And I would urge everyone to oppose the legislation.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Johnson.

SENATOR JOHNSON: I did mention something about ultimately they will be exempted according to the DEC's own rules. We are just taking away a lot of the paperwork and expense

involved; and, ultimately, I might say since we mentioned cost-benefit analysis, which even the Governor agrees on, and the DEC agrees upon in general but not in specific cases, but it is interesting that we got a message from the Department of Economic Development, because they know that the surrounding states are not being this severe, and they support this legislation.

I think everyone here ought to know that. I think it's a welcome change.

Thank you.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yield to Senator Oppenheimer.

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Senator Johnson, it confuses me that you say that the DEC is going to eventually -- can you not hear me?

SENATOR JOHNSON: Will you close the door, please.

ACTING PRESIDENT FARLEY: Will the sergeant at arms please close the door. Senator Johnson can't hear.

SENATOR JOHNSON: Yes, Senator.

SENATOR OPPENHEIMER: It puzzles me, Senator, that you say the DEC is going to be approving this, but they are also in strong opposition. They are in opposition to your bill, but you say that this will be happening, that the DEC will be granting them a waiver.

SENATOR JOHNSON: Senator, I think we're both having problems hearing. I said that DED, the Department of Economic Development, Vincent Tese's office, which is concerned about keeping businesses and jobs in this state, they support this.

And I would like to clarify if I didn't say it clearly before. This deals collectively, only emissions of this type, from bakery ovens in the state would equal one-tenth of one percent of the volatile organic compounds emitted in the entire state. We're exempting 80 or 90 percent of all the bakeries in this state

because they are too small. The large ones, their smaller ovens will also be exempted after this procedure has gone through. The larger ovens will have to be retrofitted. There's agreement they'll do that.

So I think we're going to end up at the same destination, except the DEC still hasn't gotten the message, Department of Environmental Conservation, that we should simplify things and not extend them and make them more expensive.

The process we're assured will end up the same way. The large ovens, which are major emitters, will be regulated and will be retrofitted and will be no hazard to the air quality of our state.

SENATOR OPPENHEIMER: Thank you, Senator.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

SENATOR MARKOWITZ: Mr. President to explain my vote.

ACTING PRESIDENT FARLEY: Senator Markowitz to explain his vote.

SENATOR MARKOWITZ: The reason why I'm voting in the affirmative rather than in the negative is that New York City and New York State has lost most of their bakeries. Quite frankly, very often the City of New York Board of Education are forced to purchase bakery goods from Pennsylvania, and I think that we have already hemorrhaged too greatly. And this vital service mainly manufacturing bakery goods employs men and women who work with their hands that don't require a master's degree or a Ph.D., the very jobs New York City and New York State desperately need to retain, to insure the opportunity of full employment to all in our society, and so while I recognize and respect the organizations in the environmental field who obviously have laudable goals, in this case, as

it relates to this type of industry that New York so desperately needs to attract again, I have to part company. It's most regrettable parting company, and I applaud those who are voting in favor of the legislation.

ACTING PRESIDENT FARLEY: Senator Markowitz in the affirmative.

Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1636 are Senators Connor, Galiber, Gold, Jones, Kruger, Leichter, Montgomery, Ohrenstein, Onorato, Oppenheimer, Stachowski, and also Senator Stavisky and Waldon. Ayes 47. Nays 13.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1639, by Senator Hannon, Senate Bill Number 8818, an act to amend the Penal Law.

SENATOR HANNON: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 1644, by the Committee on Rules, Senate Bill Number 8836, Real Property Tax Law.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Stafford. I don't know who's got this. I think it's you.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 1645, by Senator LaValle, Senate Bill Number 8837, Education 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 60.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 1647, by Senator Rath.

SENATOR RATH: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside. We're waiting for a sub. That's a substitution, not a submarine.

THE SECRETARY: Calendar Number 1651, by Senator Stavisky, Senate Bill Number 424C.

ACTING PRESIDENT FARLEY: Sorry, we don't have a home rule. Lay it aside.

That's the second time around, Senator Present. What's your pleasure?

Senator Present.

SENATOR PRESENT: Calendar 1614, please.

ACTING PRESIDENT FARLEY: 1614.

THE SECRETARY: Calendar Number 1614, substituted earlier, by the Assembly Committee on Rules, Assembly Bill Number 11461A, State Finance Law and the Public Authorities Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: Hold on.

ACTING PRESIDENT FARLEY: Hold on.

SENATOR LEICHTER: Mr. President. No, I'm not going to oppose this bill. I think there's some constitutional questions that this bill raises, both under the commerce clause and some other provisions, discrimination among persons from different states. I really question whether we can do what we're trying to do here, but go ahead and try it. And four years from now, the Supreme Court will tell us whether we were right or wrong.

SENATOR GOLD: Last section.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present, can we go back to 1646. The substitution is here.

SENATOR PRESENT: 1646.

ACTING PRESIDENT FARLEY: 1646. There is a sub here.

SENATOR GOLD: We passed it.

SENATOR PRESENT: Yes, let's take it up.

ACTING PRESIDENT FARLEY: 1646. The Secretary will read.

THE SECRETARY: Senator Goodman moves to discharge the Committee on Rules from Assembly Bill Number 889 and substitute it for his identical Calendar Number 1646.

ACTING PRESIDENT FARLEY: Substitution ordered.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I would like unanimous consent to be recorded in the negative on I believe Calendar Number 1622.

ACTING PRESIDENT FARLEY: 1622, Senator Libous will be in the negative.

Senator Present.

SENATOR PRESENT: Mr. President. Unless you have some housekeeping or anything else to do right now, we will stand at ease for a moment.

SENATOR LEVY: Mr. President.

ACTING PRESIDENT FARLEY: Senate will stand at ease.

Senator Levy.

SENATOR LEVY: I wish to be

recorded in the negative on 1636.

ACTING PRESIDENT FARLEY: 1636, Senator Levy is in the negative.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, I would like unanimous consent to be in the negative on Calendars 1574 and 1248. 1246, I'm sorry.

ACTING PRESIDENT FARLEY: Without objection. 1246.

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT FARLEY: Senator Tully.

SENATOR TULLY: May I have unanimous consent to be recorded in the negative on Calendar 1636?

ACTING PRESIDENT FARLEY: 1636, Senator Tully will be in the negative.

Senator Wright.

SENATOR WRIGHT: Mr. President. I request unanimous consent to be recorded in the negative on 1622.

ACTING PRESIDENT FARLEY: 1622, Senator Wright will be in the negative.

Senator Bruno. I guess not.

SENATOR BRUNO: Mr. President. Can I ask for unanimous consent to call back Calendar 1622 to be recorded in the negative.

ACTING PRESIDENT FARLEY: 1622 has left the house, Senator Bruno.

SENATOR BRUNO: I want to be recorded in the negative.

ACTING PRESIDENT FARLEY: Without objection, Senator Bruno will be in the negative on 1622.

SENATOR BRUNO: Thank you.

ACTING PRESIDENT FARLEY: Sears. Senator Sears.

SENATOR SEARS: Would you do likewise on 1622, I would like to be recorded in the negative.

ACTING PRESIDENT FARLEY: Without objection.

Senator Hannon.

SENATOR HANNON: Mr. President. I also would like to be recorded in the negative on 1622.

ACTING PRESIDENT FARLEY: Without objection 1622 in the negative.

Senator Present.

SENATOR PRESENT: Mr. President. I'm going to announce a Rules Committee meeting at 8:30.

ACTING PRESIDENT FARLEY: There will be a Rules Committee meeting at 8:30 in Room 332.

SENATOR PRESENT: And we will now recess until 9:00 o'clock.

ACTING PRESIDENT FARLEY: The Senate will stand recessed until 9:00 o'clock.

(Whereupon, at 6:39 p.m., the Senate recessed.)

(The Senate reconvened at 10:18 p.m.)

THE PRESIDENT: The Senate will come to order.

Senator Present.

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

THE PRESIDENT: Secretary will read.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following bills directly for third reading:

Senate Bill Number 2146-B, by Senator Goodman, an act to amend the Education Law;

2355-C, by Senator Larkin, New York State Veterans' Bill of Rights;

3597-A, by Senator Stachowski, an act to amend the Executive Law;

3636-C, by Senator Holland, an act to amend the Education Law;

4951, by Senator Farley, an act to amend the Banking Law;

5573-D, by Senator Padavan, an act to amend the Judiciary Law and the Mental Hygiene Law;

5854-B, by the Committee on Rules, an act to amend the General Business Law;

6092-A, by Senator Tully, New York State Medical Care Facilities Finance Agency Act;

7053, by Senator Rath, an act to amend the State Administrative Procedure Act;

7141-A, by Senator Rath, State Administrative Procedure Act;

7188-B, by Senator Libous, an act to amend the Mental Hygiene Law;

7371-B, by Senator Johnson, Public Health Law;

7587-A, by Senator Libous, Mental Hygiene Law;

7608-A, by Senator Cook, an act to amend the Education Law;

7839-A, by Senator Spano, Workers' Compensation Law;

7949-A, by the Committee on

Rules, Public Authorities Law;

8004, by Senator Rath, State Administrative Procedure Act;

8110-A, by Senator Skelos, General Obligations Law;

8149-A, by Senator Johnson, Education Law;

8211-B, by Senator Johnson, Navigation Law;

8576-A, by Senator Daly, Public Health Law;

8744-A, by Senator Daly, Cooperative Corporations Law;

And 8786, by Senator Oppenheimer, an act to amend the Vehicle and Traffic Law.

All bills reported directly for third reading.

THE PRESIDENT: Third reading.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I wish, on behalf of Senator Seward, to call up his bill, Senate Print 8839,

which was recalled from the Assembly which is now at the desk.

THE PRESIDENT: Secretary will read.

THE SECRETARY: By Senator Seward, Senate Bill Number 8839, an act to amend the State Finance Law.

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

THE PRESIDENT: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

SENATOR FARLEY: I now move to discharge from the Committee on Rules Assembly Print 12200, and substitute it for Senator Seward's identical bill. The Senate bill, on first passage, was voted unanimously. I now move that the substituted Assembly bill have its third reading at this time.

THE PRESIDENT: Substitution ordered. Third reading.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Unanimous.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, can we call up Calendar 1406.

SENATOR TULLY: What calendar?

SENATOR PRESENT: 1406.

THE SECRETARY: Calendar Number 14...

SENATOR TULLY: Regular calendar.

THE SECRETARY: On the regular calendar of today, Calendar Number 1406, by Senator Johnson, Senate Bill Number 8584-A, an act in relation to providing a retirement in centive for certain public employees in the town

of Babylon.

SENATOR PRESENT: Mr. President, is there a message of necessity on 1406?

THE PRESIDENT: There is a message at the desk.

SENATOR PRESENT: I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The motion is agreed to. The message is accepted.

SENATOR PRESENT: Last section.

THE PRESIDENT: There is a home rule message at the desk. Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is

passed.

Senator Present.

SENATOR PRESENT: Mr. President, can we call up Calendar Number 591.

THE PRESIDENT: Secretary will read.

THE SECRETARY: On the regular calendar, Calendar Number 591, by Senator Wright, Senate Bill Number 6120-C, an act to amend the Public Authorities Law and the Executive Law.

THE PRESIDENT: There is a message.

SENATOR PRESENT: Mr. President, if there's a message at the desk, I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

Last section.

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

THE PRESIDENT: Call the roll.

SENATOR GOLD: Lay it aside. You accept the message. Lay it aside.

THE PRESIDENT: The bill is laid aside.

SENATOR PRESENT: Mr. President, can we take up Calendar 1532.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 1532, by Senator Volker, Senate Bill Number 8777-A, an act in relation to providing a retirement incentive for the city of Buffalo.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk?

THE PRESIDENT: Yes.

SENATOR PRESENT: I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

SENATOR PRESENT: Last section.

THE PRESIDENT: The ayes have it. The motion is agreed to. The message is accepted. There is a home rule message at the desk. Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

SENATOR PRESENT: Mr. President.

THE PRESIDENT: Senator Present.

SENATOR PRESENT: Can we call up 126.

THE PRESIDENT: 126.

SENATOR PRESENT: On the active list.

THE PRESIDENT: Secretary will

read.

THE SECRETARY: Calendar Number 126, restored to third reading earlier today, by Senator Kuhl, Senate Bill Number 6109-C, an act to amend the General Business Law, in relation to the licensing of security guard companies.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk?

THE PRESIDENT: There is a message of necessity at the desk.

SENATOR PRESENT: I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

SENATOR GOLD: Mr. President.

THE PRESIDENT: The Senate will be advised that this bill was restored earlier today. It is not on the calendar, on the

printed calendar, for today. We're on a supplement or on a supplemental calendar.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, I am going to ask Senator Kuhl, who is the sponsor, to yield just to explain briefly, so I think that will answer a lot of questions.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President.

About three weeks to a month ago, this house adopted almost unanimously a bill that meant to redefine a -- what was called the Security Guard Act of 1992. That bill essentially eliminated three groupings of people who were included in a definition other than security guard companies, those people, groups, being not-for-profit governmental entities and proprietaries.

Since that time we've had some

very intense negotiations, and we've worked out a scheme to try to maintain the public trust in security guards and at the same time eliminate people that I mentioned at the time that were being included in that bill, people like ski patrol, ushers at the various types of concerts, volunteers at county fairs, individuals and policemen.

Under this revised bill, which is three -- there's a three-party -- three-way agreement -- those people would be eliminated. We think it's a significant savings, contribution coming from the state to people and yet there's a great deal of security that people should be assured of.

SENATOR GOLD: Last -

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Mr. President, Senator Leichter has asked what is a very, very reasonable question as usual, and that is, quotes, Do we have a bill that's been distributed to the desks?

THE PRESIDENT: The bills are

being distributed as we speak.

SENATOR GOLD: I see. Well, Mr. President, I know this is a significant bill which is worth at least two shots a side, but perhaps we can just hold the vote for a minute until we see the actual piece of legislation. I'm sure there's no problem. I appreciate Senator Kuhl's explanation.

Mr. President, I think in passing, I don't even know whether it's worth two shots a side now.

Will the Senator yield? Would Senator Kuhl yield to a question, please?

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yeah, thank you.

Senator, now that the bill is distributed, as I understand it, this bill is basically a compromise worked out with the Assembly some place in the middle of where we were and what their bill was, is that correct?

SENATOR KUHL: That's -- that's a fair statement.

THE PRESIDENT: Senator

Dollinger.

SENATOR DOLLINGER: Will Senator Kuhl yield to one question?

SENATOR KUHL: Certainly.

SENATOR DOLLINGER: Through you, Mr. President, just to explain to me what the effect of this on a -- this compromise on a nursing home that happens to employ a night watchman or a couple of college kids on a part-time basis, to provide some security services, what's the impact of this bill on that arrangement?

SENATOR KUHL: Frankly, number one, a nursing home under this particular bill probably would be exempt from registering as a security guard company, so there's the elimination of a $400 fee every two years and all the time that's involved in that. There's also an application that's involved in the language here that would allow for those individuals who don't necessarily fall within the concept of what's normally considered to be a security guard by being totally exempted from

the training requirement if they meet certain standards. There's a waiver provision that's built in here for the department or Division of Criminal Justice Services to address that issue.

So it's -- while I can't say definitively exactly what it means to them, there's a potential that it could be not only significant savings but a significant saving relative to actual training that we're already conducting.

SENATOR DOLLINGER: O.K. Thank you, Mr. President. I think that's a good step in the right direction. I commend the sponsor for it.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up 1632.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 1632.

SENATOR TULLY: Mr. President.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: If this is saving a lot of time, do you think we could be told whether these bills are on the regular calendar, the Supplemental 1 or Supplemental 2?

THE PRESIDENT: Yes, that's a very reasonable request. This is on page 4 of Supplemental Calendar Number 1.

THE SECRETARY: Calendar Number 1632, by the Assembly Committee on Rules, Assembly Bill Number 11893-A, an act to amend the Highway Law and the Public Authorities Law.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk on this bill?

THE PRESIDENT: There is a message at the desk.

SENATOR PRESENT: I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Excuse me, ayes 59, nays one, Senator Larkin recorded in the negative.

THE PRESIDENT: Senator Present.

SENATOR PRESENT: Call up Calendar Number 591.

THE SECRETARY: On page -- on page 9 of the regular calendar, Calendar Number 591, by Senator Wright, Senate Bill Number 6120-C, an act to amend the Public Authorities Law.

SENATOR GOLD: Message?

THE PRESIDENT: We have already accepted the message on this bill.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

SENATOR PRESENT: Mr. President, could we call up Calendar 1590.

THE SECRETARY: On page 29 of the regular calendar, Calendar Number 1590, by Senator Skelos, Senate Bill Number 8757, Real

Property Tax Law.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk on 1590?

THE PRESIDENT: Yes, there is.

SENATOR PRESENT: I move that we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

SENATOR GOLD: Mr. President.

THE PRESIDENT: The ayes have it. The motion is agreed to. The message is accepted.

Senator Gold.

SENATOR GOLD: Yeah. Will Senator Skelos yield to a question?

Senator, my notes say it excludes income derived from the proceeds of a mortgage, from senior citizen tax exemption. I'm assuming it includes it, not excludes it.

SENATOR SKELOS: Excludes income.

SENATOR GOLD: I mean my note may be wrong here. I assume what it means it includes it as something that is exempt from a tax. Am I correct?

SENATOR SKELOS: Yes.

SENATOR GOLD: All right.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Can we call up 1482.

THE PRESIDENT: On page 24 of the regular calendar.

THE SECRETARY: Calendar Number 1482, by Senator Bruno, Senate Bill Number 7162,

an act to amend the Public Authorities Law.

THE PRESIDENT: There is a message.

SENATOR PRESENT: Mr. President, I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

Senator Present.

Thank you, Senator Gold, for your help.

SENATOR PRESENT: Can we call up Calendar Number 1361?

THE PRESIDENT: 1361, I believe -- page 21 of the regular calendar.

THE SECRETARY: Page 21 of the regular calendar, Calendar Number 1316, by Senator Tully, Senate Bill Number 8392, an act to amend the Public Health Law.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

SENATOR DALY: What number?

THE PRESIDENT: 1316. It's on page 21 of the regular calendar.

SENATOR PRESENT: Mr. President, could we call up Calendar 1510.

THE PRESIDENT: Page 24.

THE SECRETARY: On page 24 of the

regular calendar, Calendar Number 1510, by Senator Velella, Senate Bill Number 8569-A, an act to amend the Insurance Law.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk?

THE PRESIDENT: There is.

SENATOR PRESENT: I move that we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Take up 1565.

THE PRESIDENT: 1555?

SENATOR PRESENT: 1565.

THE PRESIDENT: '65, O.K.

THE SECRETARY: Page 25 of the regular calendar, Calendar Number 1565, by the Committee on Rules, Senate Bill Number 8822, an act to amend the State Finance Law, in relation to contents of appropriation bills.

SENATOR GOLD: Explanation, please.

THE PRESIDENT: Senator Gold. Senator Stafford. There will be order in the chamber. Now, there's going to be some discussion, so we need some order.

Senator Stafford.

SENATOR STAFFORD: Mr. President, it's certainly understandable for a request for an explanation. This is a bill which really is analogous to or an answer to the bankers' case which came out of the Court of Appeals which said that we could put no language into the

budget. The Governor would prepare a budget and have appropriations and then we'd write in how that appropriation was going to be spent and, in fact, we would, in effect, write programs in there. The Court of Appeals said that we could not do that.

This bill now answers and says - and limits what the Governor can do in the budget and he can't now write and really have explanations in the budget and appropriations have to be in effect one at a time.

Now, I can see why we're moving in that direction. I can see why we're moving in that direction for clarity so we will understand, while in another part of the bill it defines what an appropriation is because through the years there have been questions and it states, as you can read, an appropriation is an amount of money authorized to be expended for a single object or purpose. An appropriation may include one or more items.

Two, what an item is, as far as this area goes, is defined, you'll note. An

item is an undivided sum of money within an appropriation to be expended and the identity of the single program or purpose for which such sum is to be expended.

I feel I can really explain it more clearly than the actual words come out. This is what this bill is about.

SENATOR LEICHTER: Mr. President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Mr. President, I thank Senator Stafford for particularly his clear explanation and, Senator, I can only say as the session goes along, your explanations get clearer and better. I had a little trouble understanding the explanations on the legislative budget, but tonight you were crystal clear and I think Senator Stafford has given us a good explanation of the bill which is that we're trying to impose on the Governor the same limitation that the courts imposed on us, which is that we can not by language shape -- that we

can not, by language, shape governmental programs but neither should the Governor in an appropriation bill put in language which creates programs or modifies or alters programs because that's really the function of the Legislature and I'm going to support the bill. I don't know if the Governor is going to sign it. I know the Assembly is going to support it because this is really a battle of the third floor versus the second floor. We're all together on this one, guys.

But let me just point out one thing. I appreciate the sort of punctilious care that the Majority in this house and in the other house shows for the budgetary process except as we've noted when it comes to the legislative budget. Then, well, you know, who cares if it's itemized? Who cares how we define appropriations? Who cares how we define items?

And it just seems to me that, if we're going to hold the feet of the Governor to the constitutional fire, we ought to do the same thing. Unfortunately, too often we see a double

standard here. We see Senator Bruno get up and rail about waste in government, but when it comes to the Legislature, nothing is too good, no expenditure is too great. Create another temporary commission, give it money, provide staffing and, of course, never reveal how public money is being spent.

I would just hope that, as we pass this bill, that we might reflect that what's good for the Governor is also good for the Legislature.

Thank you, Mr. President.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: I know that we all want to be able to legislate out in the open and understand the debate and since Senator Stafford, according to Senator Leichter, gave one of his clearest explanations, for those of you who are concerned about Senator Leichter's remarks about "punctilious," where he decided that we ought to tell you, I've checked the dictionary, and it basically means careful

observance of forms, observance of a code.

Thank you.

Last section.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, let's take up the non-controversial calendar Supplemental 2 Calendar, non-controversial.

THE SECRETARY: Supplemental Calendar Number 2, Calendar Number 1641, Senator Goodman moves to discharge the Committee on Rules from Assembly Bill Number 425-B and substitute it for the identical Third Reading 1641.

THE PRESIDENT: Substitution ordered. Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Those recorded in the negative on Calendar Number 1641 are Senators Cook, Daly, Farley, Johnson, Kuhl, Larkin and Saland. Also Senator Nozzolio. Ayes 52, nays 8.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1654, Senator Larkin moves to discharge the Committee on Rules from Assembly Bill Number 3671-D and substitute it for the identical Third Reading 1654.

THE PRESIDENT: Substitution ordered. Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1655, Senator Stachowski moved to discharge the Committee on Finance from Assembly Bill Number 6068-A and substitute it for the identical Third Reading 1655.

THE PRESIDENT: Substitution ordered. The bill is laid aside.

THE SECRETARY: Calendar Number 1656, Senator Holland moves to discharge the Committee on Rules from Assembly Bill Number 5411-C and substitute it for the identical Third Reading 1656.

THE PRESIDENT: Substitution ordered. Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1657, Senator Farley moves to discharge the Committee on Rules from Assembly Bill Number 961-A and substitute it for the identical Third Reading 1657.

THE PRESIDENT: Substitution ordered. Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1658, Senator Padavan moves to -

SENATOR CONNOR: Lay aside.

THE SECRETARY: Senator Padavan moves -

THE PRESIDENT: Yes, we're going

to substitute.

THE SECRETARY: Senator Padavan moves to discharge the Committee on Rules from Assembly Bill Number 5681-C, and substitute it for the identical Third Reading 1658.

THE PRESIDENT: Substitution ordered. The bill is laid aside.

THE SECRETARY: Calendar Number 1659, Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 7808-A and substitute it for the identical Third Reading 1659.

THE PRESIDENT: Substitution ordered.

SENATOR CONNOR: Lay aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1660, Senator Tully moves to discharge the Committee on Rules from Assembly Bill Number 8627-B, and substitute it for the identical Third Reading 1660.

SENATOR CONNOR: Lay aside,

please.

THE PRESIDENT: Substitution ordered. The bill is laid aside.

THE SECRETARY: Calendar number 1661, by Senator Rath, Senate Bill Number 7053, an act to amend the State Administrative Procedure Act.

SENATOR PRESENT: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1662, by Senator Rath.

SENATOR PRESENT: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1663, Senator Libous moves to discharge the Committee on Rules from Assembly Bill Number 10883-B, and substitute it for the identical Third Reading 1663.

THE PRESIDENT: Substitution

ordered.

SENATOR PRESENT: Mr. President, is there a message on 1663 at the desk?

THE PRESIDENT: There is a message at the desk.

SENATOR PRESENT: I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1664, by Senator Johnson, Senate Bill -- Senator Johnson moves to discharge the Committee on Rules from Assembly Bill Number 8355-D and substitute it for the identical Third Reading 1664.

THE PRESIDENT: Substitution ordered.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1665, Senator Libous moves to discharge the Committee on Rules from Assembly Bill Number 10913-A, and substitute it for the identical Third Reading 1665.

THE PRESIDENT: Substitution ordered.

SENATOR PRESENT: Mr. President,

is there a message on Calendar 1665 at the desk?

THE PRESIDENT: There is a message at the desk.

SENATOR PRESENT: I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes of it. The motion is agreed to. The message is accepted.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1666, Senator Cook moves to discharge the Committee on Rules from Assembly Bill Number

11762-A, and substitute it for the identical Third Reading 1666.

THE PRESIDENT: Substitution is ordered. The bill will be laid aside. It is high.

THE SECRETARY: Calendar Number 1667, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 16721-A, and substitute it for the identical Third Reading 1667.

THE PRESIDENT: Substitution is ordered.

SENATOR PRESENT: Mr. President, is there a message of necessity on 1667 at the desk?

THE PRESIDENT: There is.

SENATOR PRESENT: I move we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1668, Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 10665-A, and substitute it for the identical Third Reading 1668.

THE PRESIDENT: Substitution ordered.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1669, by Senator Rath.

SENATOR PRESENT: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1670, Senator Skelos moves to discharge the Committee on Rules from Assembly Bill Number 11839, and substitute it for the identical Third Reading 1670.

THE PRESIDENT: Substitution ordered. The bill is laid aside. It is high. Oh, it isn't. Still laid aside.

THE SECRETARY: Calendar Number 1671, Senator Johnson moves to discharge the Committee on Rules -

SENATOR PRESENT: Lay it aside.

THE SECRETARY: -- from Assembly Bill Number 12039-A and substitute it for the identical Third Reading 1671.

SENATOR PRESENT: Lay it aside.

THE PRESIDENT: Substitution ordered. The bill is laid aside.

THE SECRETARY: Calendar Number 1672, by Senator Johnson.

THE PRESIDENT: The bill will be laid aside for a substitution.

THE SECRETARY: Calendar Number 1673, Senator Daly moves to discharge the Committee on Rules from Assembly Bill Number 11829-A and substitute it for the identical Third Reading 1673.

THE PRESIDENT: Substitution ordered.

Last section.

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

THE PRESIDENT: Call the roll.

The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1674, Senator Daly moves to discharge the Committee on Rules from Assembly Bill Number 12054-A and substitute it for the identical Third Reading 1674.

THE PRESIDENT: Substitution ordered.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1675, Senator Oppenheimer moves to discharge the Committee on Rules from Assembly Bill Number 12049 and substitute it for the identical Third Reading 1675.

THE PRESIDENT: Substitution ordered. There is a home rule message at the desk.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 1641.

THE PRESIDENT: Without objection, so ordered.

Senator Jones.

SENATOR JONES: Yes. Mr. President, I would also like to be a "no" on 1641, please.

THE PRESIDENT: 1641.

SENATOR JONES: Yes.

THE PRESIDENT: Without objection, so ordered.

Senator Present.

SENATOR PRESENT: Mr. President,

I move that we adopt the Resolution Calendar that's -- copies of which are on our desk.

THE PRESIDENT: On the resolutions, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The resolutions are adopted.

SENATOR BRUNO: Mr. President.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: I would like unanimous consent to be recorded in the negative on Calendar Number 1656. Thank you.

SENATOR NANULA: Mr. President.

THE PRESIDENT: Senator Nanula.

SENATOR NANULA: I'd like to request unanimous consent to be recorded in the negative on Calendar Number 389 and 1646.

THE PRESIDENT: Without objection, so ordered.

Senator Present.

SENATOR PRESENT: Let's take up

the controversial calendar on Senate Supplemental Calendar Number 2.

THE SECRETARY: Supplemental Calendar Number 2, Calendar Number 1655, substituted earlier, by member of the Assembly Bragman, Assembly Bill Number 6068-A, an act to amend the Executive Law.

SENATOR PRESENT: Last section.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

SENATOR KUHL: Mr. President.

SENATOR LEVY: Mr. President.

THE PRESIDENT: Senator Levy.

SENATOR LEVY: Mr. President, I expect that this will be the last meeting of the Transportation Committee to consider a nomination. A nomination has just come up from

the Governor for Bert Conovy to be a member of the MTA from Orange County and we want to do this before the regular session ended.

Immediate meeting in Room 124 of the Capitol.

THE PRESIDENT: Immediate meeting of the Transportation Committee in Room 124.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I'd like to request unanimous consent to be recorded in the negative on Calendar Number 1656. 1656.

THE PRESIDENT: 1656. Without objection, so ordered.

SENATOR SPANO: Mr. President.

THE PRESIDENT: Senator Spano.

SENATOR SPANO: I'd like unanimous consent to be recorded in the negative on Calendar Number 1656.

THE PRESIDENT: Without objection, so ordered.

Senator Wright.

SENATOR WRIGHT: Mr. President.

Mr. President, I request unanimous consent to be recorded in the negative on 1656.

THE PRESIDENT: Without objection, it's so ordered.

SENATOR SEWARD: Mr. President.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Yes. I was out of the chamber when 1656 passed, and I would ask unanimous consent to be recorded in the negative on this bill.

THE PRESIDENT: Without objection, it's so ordered.

THE SECRETARY: Supplemental Calendar Number 2, Calendar Number 1658, substituted earlier, by member of the Assembly Connelly, Assembly Bill Number 5681-C, an act to amend the Judiciary Law.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

SENATOR CONNOR: Explanation.

THE PRESIDENT: Explanation is requested. Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

This bill would add a new section to the Mental Hygiene Law establishing a three-year involuntary out-patient pilot project at a general hospital in the city of New York which will involve that facility in a program that would reach out not only to those who are involuntarily committed for the brief period of time that the current law provides but also establish a mechanism for mandatory out-patient treatment program which will involve therapy, medication and whatever is deemed appropriate depending upon the particular needs of the individual involved.

This bill has passed the Assembly as is obvious. It is supported by the Department of Mental Health; it is supported by advocacy groups such as the Alliance for the Mentally Ill, State Communities Aid Association

and, of course, it is advanced very strongly by the city of New York.

SENATOR LEICHTER: Mr. President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Mr. President, I'd appreciate if Senator Padavan would yield, please.

SENATOR PADAVAN: Yes.

SENATOR LEICHTER: Senator, let me first say I commend you for the work that you've done on this issue. It's obviously a very difficult and complex issue, but the one thing that isn't clear to me now, we're going to have a pilot program, it's going to be one hospital.

SENATOR PADAVAN: Right.

SENATOR LEICHTER: Which hospital is it?

SENATOR PADAVAN: Bellevue.

SENATOR LEICHTER: It's going to be Bellevue, and really the question I have, is

the pilot program going to work in the catchment area of Bellevue or are they going to go throughout the City, or I assume they're not going to go outside the City; what area?

SENATOR PADAVAN: Could be anywhere within the City, could be anywhere within the city of New York, but in order to properly evaluate this program which is for three years, then it will expire depending upon obviously what we do thereafter or at some point in time, and has to be obviously coordinated, and so the focal point will be Bellevue.

But as you know, there are crisis teams that got out throughout the City. As a matter of fact, there's another bill sponsored by Senator Libous which presumably we'll get to in a little while that expands upon their function and how they operate on a citywide basis sending teams out wherever they are needed to deal with this population.

SENATOR LEICHTER: Good. Thank you.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays one, Senator Spano recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1659, substituted earlier, by the Assembly Committee on Rules, Assembly Bill Number 7808-A, an act to amend the General Business Law.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays one, Senator Leichter recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1660, substituted earlier, by -

SENATOR CONNOR: Could we lay it aside for a few minutes.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1661, by Senator Rath.

SENATOR PRESENT: Lay aside.

THE PRESIDENT: Bill is laid aside.

THE SECRETARY: Calendar Number 1662, by Senator Rath, Senate Bill Number 7141-A, State Administrative Procedure Act.

SENATOR PRESENT: Lay it aside.

THE PRESIDENT: Bill is laid aside.

THE SECRETARY: Calendar Number 1669, by Senator Rath.

SENATOR PRESENT: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1670, substituted earlier, by the Assembly

Committee on Rules, Assembly Bill Number 11839, General Obligations Law.

SENATOR GOLD: Explanation.

SENATOR SKELOS: Senator Gold, this bill modifies the statutory short form power of attorney to, number one, clarify the powers granted, allows for multiple principles, you would have to confer the powers individually, allows the powers to remain in effect even after the subsequent disability of the principal and provides the power may only be resolved or terminated in writing.

SENATOR GOLD: Would the Senator yield to a question?

SENATOR SKELOS: Sure.

SENATOR GOLD: Senator, there are -- there are a number of situations in the law where we try to make common sense out of something and there are some situations in the law, as you know, I'm sure, where you just have to have an answer.

So, for example, if somebody sends somebody a letter offering you a contract

and they accept it, some states may say, well, when you mail the acceptance back, you have the contract, I'm saying when you receive it, either way one or the other knows, you got to have it to see.

Senator, right now the law provides one way and we're changing it. Is there some reason; is there a case; have people been injured; is there some rationale for changing it?

SENATOR SKELOS: It's just a good common sense approach.

SENATOR GOLD: Well, Senator, will you yield for a question?

SENATOR SKELOS: Sure.

SENATOR GOLD: I know it's rare in this place, but I'm willing to listen to good common sense. What's the difference between people if they vacate a power of attorney and straighten some things out or make some checks which is an affirmative act?

SENATOR SKELOS: I think the affirmative act of having to designate each of

the powers which you wish to give to an individual, you have to think of each one that you're giving, I think, more specifically. Sometimes people will fill out powers and not really fully comprehend the extent of what they are giving to somebody else in terms of their lives and their -- their businesses, and I think this would specify more directly where you would -- you would specifically have to initial in each box what powers you are giving.

SENATOR GOLD: Well, if the Senator will yield to one more question.

SENATOR SKELOS: Sure.

SENATOR GOLD: I mean it's not worth a lot of time, but it just struck me as strange. I mean this is -- we've had a situation where I think it was Senator either Holland or Daly who spoke about somebody who had $160,000 and was getting social services and was upset and Senator Volker has that classic case of an assistant D.A. who made a mistake and we're changing the law.

Is there any bar association or

is there a case from the courts that shows some injustices; is that the reason we're doing this, or I mean it's just this -- something that three three years from now, we'll get another pen certificate changing it back? I'm just asking. I have no problem one way or the other.

SENATOR SKELOS: I'm not familiar with it.

SENATOR PRESENT: Last section.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -- ayes 59, nays one, Senator Hannon recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, with unanimous consent, I'd like to be recorded in the negative on Calendar Number 1641,

please.

THE PRESIDENT: Without objection, so ordered.

THE SECRETARY: Calendar Number 1671, substituted earlier, by the Assembly Committee on Rules, Assembly Bill Number 12039-A, Environmental Conservation Law.

SENATOR GOLD: Yeah. Will the Senator yield to a question?

SENATOR JOHNSON: What number is this?

THE PRESIDENT: 1671.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR JOHNSON: Yes.

SENATOR GOLD: Senator, under the bill -

SENATOR JOHNSON: Yes.

SENATOR GOLD: -- I'm only concerned about this for Senator Ohrenstein. The -- one second. No, he says he understands it.

Last section.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays one, Senator LaValle recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1672, Senator Johnson moves to discharge the Committee on Rules from Assembly Bill Number 10,225-B, and substitute it for the identical Calendar Number 1672.

THE PRESIDENT: Substitution ordered.

Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is

passed.

(The Senate stood at ease.)

(The Senate reconvened.)

THE PRESIDENT: Senator Present. Senator Present.

SENATOR PRESENT: Calendar Number 1644, on Supplemental Calendar Number 1.

THE SECRETARY: Supplemental Calendar Number 1, Calendar Number 1641 -- 1644, by the Committee on Rules, Senate Bill 8836, an act to amend the Real Property Tax Law.

SENATOR GOLD: Just a moment, please. Getting to look at the bill.

SENATOR LEICHTER: Explanation.

SENATOR GOLD: Senator Leichter would like an explanation.

SENATOR PADAVAN: Senator Leichter, the general purpose of this bill is to allow the city of New York to grant 421-a tax benefits to certain commercial buildings that are now being rehabilitated or potentially rehabilitated for residential use.

SENATOR LEICHTER: Senator

Padavan, if you'd be good enough to yield.

SENATOR PADAVAN: Yes.

SENATOR LEICHTER: Bear with me just one minute. I want to get the bill.

Senator, I'm advised that the aim and purpose of this bill is to benefit one particular developer; is that your understanding?

SENATOR PADAVAN: No, and I'd appreciate if you'd tell me who that might be. We're talking about buildings that have not been used for residential purposes for a period of 50 years prior to the conversion, so these are very old buildings, at least 50 years old if not older. I don't know of any portion of this bill that would relate to a singular owner of a singular piece of property. There are, as you notice from the description, limits in terms of what areas of the City would be covered by this, and, of course, the adoption of rules and regs by the City Council.

SENATOR LEICHTER: Senator Padavan, I'm just passing on to you the

information that I have that this is to benefit Mr. Eichner's project that he has, and I'm always very suspicious when I see such a -- a bill, but I must say, in all honesty to you, that this is something that I was advised and I can't vouch for the veracity of the information.

But let me -- let me address another aspect of this. As you know, Senator, we've had the 421-a program around for some time and it's been somewhat controversial, particu larly because it was used not to create affordable housing, but ended up subsidizing a lot of luxury housing primarily in Senator Good man's district, and we then changed the program to exclude it from certain areas of the City because we wanted to build housing in areas where it would provide affordable housing in areas where housing construction didn't occur. Maybe that was in some parts of your district; it certainly included parts of my district or the district that I used to have in northern Manhattan.

As I read this bill, we're not putting back some of the very streets and parts of the city that were excluded because it was felt that 421-a was not necessary.

SENATOR PADAVAN: M-m h-m-m.

SENATOR LEICHTER: And I'd just like to understand from you why that's being done.

SENATOR PADAVAN: It's not my area either, lot closer to yours than it is to mine, but the difference here is that this particular program relates to commercial buildings -- that's what I would say, the difference, Senator, is that this bill relates to commercial buildings older than 50 years that are now being converted.

That's quite different than I think what you were talking about, these high rise luxury apartments that were being built from the ground up. It's an entirely different matter.

SENATOR LEICHTER: Well, Senator, in that regard, I -- I have a problem and let me

ask this question of you, if you will continue to yield, please.

SENATOR PADAVAN: I'll do my best.

SENATOR LEICHTER: Senator, we had not used 421-a for commercial or for the conversion from commercial buildings to residential, and one reason was that we have lost commercial space, mainly industrial space, and a lot of it was in Manhattan.

SENATOR PADAVAN: Yeah.

SENATOR LEICHTER: Old industrial buildings that were converted to loft use. Most of that was also what you would call luxury housing, and what we really needed was to keep that industrial space because it was good cheap industrial, or relatively cheap space for industry, provided manufacturing jobs, which as you know, we've lost. At one time Manhattan had 200,000 manufacturing jobs.

SENATOR PADAVAN: That's right.

SENATOR LEICHTER: In the -- have a few -- I don't know, 20-, 30-, 40-, 50,000,

we've lost most of those partly because we've also lost space for them.

SENATOR PADAVAN: Right.

SENATOR LEICHTER: So aren't you going to further exacerbate this loss of good industrial space by providing a subsidy if you convert from industrial space to residential space?

SENATOR PADAVAN: Well, Senator, I would be guided by your views on where this will be applicable beginning on Line 11, I guess or 12, bounded on the north by 81st Street, on the south by 79th Street, on the east by Second Avenue and on the west by Third Avenue.

I -- my recollection of that area is that it is not an industrial area by any means. There obviously are commercial buildings there, but it's not an industrial manufacturing area.

SENATOR LEICHTER: Senator, you're right, that the area as such is not, but I'm just saying in principle, I think it's a mistake.

SENATOR PADAVAN: Well, in principle, you would be, if this bill were not limited in the fashion that I just read to you.

SENATOR LEICHTER: Senator, let me just say to you since it's limited very narrowly, it's between 81st Street, 81st Street and 79th Street, so it's two blocks and it's on the east Second Avenue and on the west by Third Avenue, so it's obviously such a narrow area -

SENATOR PADAVAN: Seems that way.

SENATOR LEICHTER: -- that it would seem to me that the information that I got that it's to assist one developer is correct.

SENATOR PADAVAN: Could you tell me about this person? I never heard of him personally.

SENATOR LEICHTER: Eichner. He's a fairly active developer in New York.

SENATOR PADAVAN: I'd like to withdraw that question.

THE PRESIDENT: I'd like to ask there be some semblance of order.

SENATOR PADAVAN: Thank you, Mr. President.

THE PRESIDENT: I meant it for both Senators.

SENATOR PADAVAN: Thank you.

SENATOR LEICHTER: Senator, you've withdrawn the question. My answer would have been neutral anyhow, because I don't know. He's had some difficulties. I think he once built a building that turned out to be higher than the zoning code allowed.

Thank you, Senator. You've been very helpful -

SENATOR PADAVAN: I tried.

SENATOR LEICHTER: -- in carrying this bill which isn't even your area.

My colleagues, I would say on principle this bill is wrong because we should not provide a subsidy to convert commercial space to residential. The Majority has often expressed concern about the loss of jobs. Well, one of the reasons we've lost manufacturing jobs, certainly not the main reason, but one of

them is because we've also lost cheap industrial space that is needed, so we shouldn't further the loss of this space, but clearly, as you look at the area and you deal with it, it seems to be to benefit one individual. We just shouldn't be passing this sort of legislation. I'm going to urge people to vote in the negative.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58 -- ayes 58, nays two, Senators Leichter and Ohrenstein recorded in the negative.

THE PRESIDENT: The bill is passed.

SENATOR PRESENT: Mr. President, can we take up 1647 on the first supplemental calendar?

SENATOR GOLD: Which one?

THE PRESIDENT: 1647.

THE SECRETARY: Supplemental

Calendar Number 1, Calendar Number 1647, Senator Rath moves to discharge the Committee on Rules from Assembly Bill Number 12205 and substitute it for the identical Third Reading 1647.

THE PRESIDENT: Substitution ordered.

SENATOR GOLD: Last section.

THE PRESIDENT: Last section.

THE SECRETARY: Last section?

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President, just briefly to explain my vote.

THE PRESIDENT: Senator Leichter is recognized to explain his vote.

SENATOR LEICHTER: I'm supporting this bill which is going to provide additional monies and a means by which to further construction of day care facilities. I am somewhat concerned that the Urban Development

Corporation is being brought into this process to work with the Department of Social Services. I just don't feel that the Urban Development Corporation has either the expertise in this area or the background. I don't think it's an ideal agency to do this, and I think in many ways we've really created a sort of a super government in the Urban Development Corporation.

I'd feel much more comfortable if we had an agency that we controlled, that we supervised, that didn't have the history of activity that the Urban Development Corporation has, but I think the important thing is to get this program going, and I'm told by the sponsors that this was the only way it could be done, so I'm going to support the bill, but I wanted to state my hesitation about the Urban Development Corporation.

THE SECRETARY: Ayes 60.

THE PRESIDENT: The bill is passed.

SENATOR PRESENT: Mr. President,

can we call up Calendar Number 389 on our first calendar.

THE SECRETARY: Calendar Number 389, by Senator Volker, Senate Bill Number 2629-A, an act to amend the Civil Practice Law and Rules.

SENATOR PRESENT: Is there a message of necessity at the desk on 389?

THE PRESIDENT: There is a message at the desk.

SENATOR PRESENT: I move that we accept the message.

THE PRESIDENT: On the motion, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is agreed to. The message is accepted.

Last section.

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

SENATOR GOLD: I'm sorry,

Senator.

THE PRESIDENT: I'm sorry. Senator Gold.

SENATOR GOLD: I'm sorry, explanation.

THE PRESIDENT: Senator Gold requests an explanation. Senator Maltese.

SENATOR MALTESE: Mr. President, this measure is being introduced at the request of the chief administrator of the courts upon the recommendation of his Advisory Committee on Civil Practice. It would amend the C.P.L.R. to regularize the giving of notification to other parties upon application for TROs, thereby curtailing unwarranted ex parte orders for such relief, by introducing a simple and expeditious method that would also provide for TROs -- that would also provide for TROs without such notification when appropriate.

The measure is designed to expedite the entire procedure for obtaining a TRO while providing for notification to other parties. Prior notification should still be

regarded as the norm, thereby avoiding the two-step procedure under which notification is not given until ordered by the court, and the application must then be re-submitted to the court.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: There is a memorandum which maybe my colleague was referring to in support by the Office of Court Administration, and also one from the Conference of Mayors. However, there is opposition on this bill from the Legal Services of the city of New York, and from the New York State Tenant and Neighborhood Coalition and from the Metropolitan Council on Housing.

The Tenant and Neighborhood Coalition memo is the shortest, so I will just make some reference to that.

"The bill will work a great hardship, particularly on tenants acting pro se in eviction proceedings. It would amend the Civil Practice Law and Rules to require any

party seeking a restraining order to notify adverse parties before submitting the application. Tenants, acting pro se, without the benefit of an attorney or access to knowledgeable legal advice and under the stress of a threat of eviction, can unknowingly impair their case. Because of the lack of financial resources, pro se appearances are very common for tenants facing eviction. In its present form," and they're talking about the "A" print, "this bill will result in injustice. It can and should be amended to avoid such a result."

SENATOR HANNON: Mr. President.

THE PRESIDENT: Senator Hannon.

SENATOR HANNON: Mr. President, I rise to express my deep concerns about the changes this would make. Obviously there are people who are concerned about the work load of the courts, but this is not the way to go about it.

This procedural change gives protections to many people in specific situations. The purported changes that the

C.P.L.R. Committee would like to make just don't work. It says you must give an affidavit if the notification is not going to be practical, but you don't know that when you're going into court to get your notification, and what's -- if they wanted to make the change, they ought to have suggested that the standards for which the TRO is available ought to be changed, not the procedure.

I would not urge -- I would urge a vote against this.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR MALTESE: Mr. President.

SENATOR PRESENT: Mr. President, would you withdraw the roll call and lay the bill aside.

SENATOR GOLD: Thank you so much.

THE PRESIDENT: The bill is laid

aside.

SENATOR PRESENT: Call up Calendar 1660.

THE PRESIDENT: 1660, Supplemental Calendar 2.

THE SECRETARY: Page 1 on Supplemental Calendar Number 2, Calendar Number 1661, substituted earlier, by the Assembly Committee on Rules, Assembly Bill Number 8627-B.

SENATOR GOLD: Last section.

THE SECRETARY: New York Medical Care Facilities Finance Agency Act.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

SENATOR GOLD: Mr. President.

(The Secretary called the roll.)

THE PRESIDENT: Senator Santiago.

SENATOR SANTIAGO: Mr. President, I'd like to be excused from voting on this

bill.

SENATOR GOLD: Without objection.

THE PRESIDENT: Without -- thank you very much, Senator. Without objection, so ordered.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yes, on behalf of Senator Espada, I ask permission he be excused from voting. Senator Espada.

THE PRESIDENT: Without objection, so ordered.

THE SECRETARY: Ayes 58.

THE PRESIDENT: The bill is passed.

Senator Santiago.

SENATOR SANTIAGO: Mr. President, without objection, I'd like to be recorded in the negative on Calendars 1246, 1473, 1574 and 1564.

THE PRESIDENT: Without objection, so ordered.

SENATOR SANTIAGO: Thank you.

THE PRESIDENT: Senator Smith.

SENATOR SMITH: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 1473.

THE PRESIDENT: Without objection, so ordered.

SENATOR SMITH: Thank you.

SENATOR PADAVAN: Mr. President, would you recognize Senator Spano.

THE PRESIDENT: Senator Spano.

SENATOR SPANO: Mr. President, there will be an immediate meeting of the Senate Labor Committee in Room 332 for the purpose of considering seven nominations from the Governor for the Workers' Compensation Board.

THE PRESIDENT: Immediate meeting of the Labor Committee.

SENATOR GOLD: Mr. President. Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Would you please recognize Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President.

I wish to have unanimous consent to be recorded in the negative in Calendar Number 1473, regular calendar.

THE PRESIDENT: Without objection, so ordered.

SENATOR MENDEZ: Good.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: I've heard these motions made all day, but I don't think I've heard it made quite that classy in a long time.

THE PRESIDENT: Senator Present.

SENATOR PRESENT: May we return to reports of standing committees.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations: Members of the Metropolitan Transportation Authority, John S. Dyson, of New York City; James L. Sidori, Jr.,

of Fishkill, and Edward A. Vrooman, of Garrison.

THE PRESIDENT: The question occurs on the con...

SENATOR GOLD: Hold on.

SENATOR LEICHTER: Hold it.

THE PRESIDENT: Oh.

SENATOR PRESENT: Lay it aside temporarily.

THE PRESIDENT: The nominations are laid aside.

Senator Present.

SENATOR PRESENT: Mr. President, a few moments ago we laid aside the three - yeah, we're laying awake. We laid aside three nominees. We'll bring them back on the floor.

THE PRESIDENT: The nominees for the Metropolitan Transportation Authority are - yeah, why don't we have, the Secretary will read the nominees again.

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

Metropolitan Transportation Authority, John S. Dyson, of New York City; James L. Sidori, Jr., of Fishkill, and Edward A. Vrooman of Garrison.

SENATOR GALIBER: Mr. President.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: This, Mr. President is -- it's usually customary, and this is not, where we would vote on all three nominees for the MTA. I would respectfully ask that we vote on -- pull them and vote on them individually.

SENATOR PRESENT: No objection.

SENATOR GOLD: No objection.

Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yeah, Mr. President. We all know the situation, and my - my suggestion is, if you want to take the two that are not Mr. Dyson, maybe we can vote on that, and we can get -- I mean I know everybody is trying to be delicate, but I figure maybe at 12:30, we'll move it along a little bit.

THE PRESIDENT: Fine. So the -

then the appointments before the Senate are of James Sidori and Edward Vrooman.

On the confirmation of the nominees, all those in favor say aye.

SENATOR GOLD: Aye.

(Response of "Aye.")

THE PRESIDENT: Opposed nay.

(There was no response.)

The nominees are confirmed.

Now, the nomination of John S. Dyson is before this Senate. Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President.

Mr. Dyson is a Democrat serving in a Republican administration in the city of New York, and I became aware of a statement attributed to him a few days ago, and it's easy to take cheap shots at someone for political purposes, but I never wish to be remembered as such a person, and I don't think that anyone who gives of himself or herself in public life should have that occur, and so in the spirit of cooperation and collaboration, I spoke with our

esteemed chairman of the Transportation Committee, Norman Levy, and had some dialogue with him regarding my personal consternation regarding the statements alleged to have been made by Mr. Dyson.

Subsequent to that, I spoke with the deputy mayor on the phone and, in fact, met with him on two separate occasions, and in the spirit of cooperation and collaboration again, I listened to his clarification of his remarks.

Subsequent to that, I called a number of people who I believe knew him and have known him for quite some time and some actually reached out to me and we spoke of the merits of John Dyson, the man, the history of him as a public servant, and his philosophy in terms of government and governance -- governance, especially now that he's a member of the administration of the city of New York.

And why did I take such pain in doing this? The reason for that is that the stakes are very high when someone is alleged to have made, in the papers and by my personal

assessment, a racist remark. The New York Daily News, which I am not a true supporter of, but in an editorial said in regard to these statements, "Offense is not dependent on intent." All of the people of New York City have a right to expect a higher standard of speech from top officials.

I believe that these remarks, which arose during negotiations for the letting of a contract and the possibility of the letting of that contract to a minority firm, really are the direct result of the posture and attitude of this mayor. I believe that he has set a tone that would allow this kind of statement to be made and anyone in 1994 who is sophisticated, traveled, intelligent and well educated, knows, in my opinion, without a doubt that saying that one should "know the difference between a bid and a watermelon," when the firm in question is a female headed firm, African-American headed firm, is speaking in a racist fashion.

Now, you say, Well, gee whiz, maybe it wasn't racist, maybe the firm wasn't so

good. There's an organization which rates these firms which functions in the bond market and P.G. Corbin happens to be the third rated firm in the nation. In fact, they did 14 billion dollars of work last year, so we're not talking about someone who is slow and incompetent. We're talking about a firm that knows how to do the job, and it's unfortunate that this happened, but the unfortunate occurrence does not mitigate the damage nor the perception of this administration, nor the pain and suffering that people like myself feel when we are exposed to this kind of behavior at the highest levels of government.

I've worked too hard, put too many hours and years with the Division of Human Rights as a life member of the NAACP, and as a person who's tried to be fair in all that I've done in my public life, to be tolerant of such behavior.

Despite my conversations with Mr. Dyson, I find him not convincing of me and for me that he did not make this statement with a

racist tone. Heaven only knows what his true intent was, but I'm not in a position to judge in a heavenly manner. I can only judge as someone who walks on this earth on a daily basis and, in my opinion, his appointment to the MTA is a mistake because the people who are strap hangers, who come out of my district, would hold me in high disrespect if I do not reflect their feelings and their needs, their anger, their disillusionment and their disappointment in this administration and in someone who is part of this administration who would make such a reprehensible remark.

We should not be institutional izing racism in 1994. We should be, in fact, institutionalizing acceptance and equity for all. There was no excuse for what John Dyson said, in my opinion. There is no excuse for what this mayor has done to keep minorities out. We can not tolerate that. We will not tolerate that. I will not tolerate that.

What my constituents want, my dear colleagues, is justice, j-u-s-t-i-c-e, not

just us, j-u-s-t u-s. I am compelled from a moral perspective and more, to vote in the no on Mr. Dyson's appointment to the MTA.

Thank you, Mr. President.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'll be voting no for another reason and one which has been documented.

I'd like to quote what Mayor Giuliani said when he was a candidate before he was elected mayor, and this is my -- my problem with this appointment.

The quote is, "It's not my intention to nominate members of my administration, as outside citizens could bring valuable perspectives to the decision-making process," and he was talking about future MTA nominees that he would make were he to become mayor of the city. He went on to say, "They should come from diverse backgrounds and will be expected to be frequent users of mass transit and advocates for the interest in the riding

public," the feeling being that an independent person, not part of the administration, would not be beholden to any elected official, not do that official's bidding, so to speak, and therefore, could operate in a totally independent manner.

It was felt that it was a mistake in the Dinkins administration and in prior administrations when people were appointed who were members of the administration, to the MTA Board, and in both those cases or several cases in both administrations, the people who were high level deputy mayors were not able to devote the considerable amount of time that is necessary to do a complete and competent job as a member of the MTA Board.

The -- that is really the basis of my disagreement with these -- this appointment. There are many groups who feel likewise that this is not a wise choice. Already we have appointed one person as the governor -- as the mayoralty appointment to the MTA Board who is from the administration, and it

would not be wise to continue to appoint only administrative people.

It is also important, I think, to have people who not only are not part of government but are riders of the MTA, Metro-North, the City Transit Authority, and the Long Island Rail Road, and people who reflect the diverse culture that is out there riding the subways and the trains.

I think we should note the groups who have sent in letters or memos in opposition to this appointment because they are an inter esting cross-section of environmental and transit groups. We have the Environmental Defense Fund, the Natural Resources Defense Council, in Albany the Environmental Planning Lobby. We have New York City Transit Authority Advisory Council, the New York City Environmental Justice Alliance, the Committee for Better Transit, Transportation Alternatives, Straphangers Campaign, and the advisory - Permanent Citizens Advisory Committee to the MTA, and basically all of them object to the

issue that I spoke to.

I'll be voting no.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Mr. President, I am going to support the nomination of Mr. Dyson to the MT Board -- MTA Board. I am -- I have had a discussion with him pertaining to the - the phrases, the phrases, the unfortunate phrase that was used that it's said that he did say that phrase, and I made it very clear to the gentleman that, as a member of a minority group, we certainly cannot tolerate anybody making disparaging remarks about any one of us, because if we let that go unanswered, we would be contributing to foster and reinforce existing prejudice in our society about various groups, African-Americans, Puerto Ricans, Italo Americans, everybody.

So were it not because I -- I know of his previous record. At the time that he worked with state government in the administration and the prior administration, he was responsible for bringing aboard to serve

from his Commerce Department, the first African-American person serving on that high level, and also the first Puerto Rican person serving at that high level. So I personally believe that he himself is not what we usually call a racist.

If I would believe that, with the same -- in the same manner in which I will be voting for him, I would -- then I would not be being supporting his candidacy.

I think that the unfortunate situation that occurred with those words that were uttered had to do with something that I am very familiar with, as a Puerto Rican many times I have seen how behavior that is engaged by Puerto Ricans is oftentimes interpreted with being the Anglo cultural milieu, and mis understandings of interpretations do occur. Mr. Dyson is a gentleman from upstate and definitely there are some, let's say, cross-cultural - there is room for some cross-cultural mis understandings within the same Anglo culture in terms of upstate New York and downstate New

York.

I think that academically he's superbly qualified for that. This unfortunate incident -- out of this unfortunate incident something positive has occurred, and that is that there has been a continuous dialogue for a couple of days with -- with minority Senators meeting with him, and I think that out of being introverted by nature, I think that out of all that dialogue and everything else, better - better understanding will occur.

He's intelligent enough to know that New York City is a very diverse city and that all that Minority members are asking for is to go -- to function between a level playing field, that is to help equal access to -- to whatever opportunities there are there, so again I -- I am supporting his candidacy.

I think his understanding and sensitivity to all of us has been raised as a - as a result of this situation. So I urge my colleagues to support Mr. Dyson's nomination for the MT Board -- the MTA Board.

Thank you.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Mr. President, my colleagues, the issue is not whether John Dyson is a racist. I don't believe he's a racist. The issue is that he made a totally intolerable, insensitive statement and two or three days after he made a statement which was an affront not just to the African-American community, it was an affront, I think, to every decent New Yorker and most -- the overwhelming number of New Yorkers are decent and care about intergroup relations and don't want to see any group in this state maligned by a high official, and it is not sufficient for him to say afterwards, Well, I'm sorry, which I gather he really has not said, with any great conviction. That doesn't sanitize it, because the issue here is whether three days after he has made this statement, the Senate of the state of New York is going to give its imprimatur on him and say, This is a person that we think is well qualified

to serve on a very important state board.

I find it unbelievable that we return to our constituents, whether it's in East Harlem or in Riverdale, as I represent, or in upstate New York and say, We disregarded the statement made by this person.

SENATOR MENDEZ: Will the Senator yield for a question?

SENATOR LEICHTER: Certainly.

SENATOR MENDEZ: In your enthusiasm, Senator Leichter, your enthusiasm against the candidacy of Mr. -- Mr. Dyson, you mention something that is very disturbing to me, and I suppose that afterwards as good colleagues that we are, we will straighten it out among ourselves.

You mentioned that you categorized those who support Mr. Dyson as being sort of indecent New Yorkers, and those supporting him, not supporting him, decent New Yorkers. Would you clarify what exactly do you mean by that? I mean this is a democracy, Senator Leichter, and we are people who can

decide on major issues and yes, maintain full respect, especially among colleagues that we have known for many, many years.

So would you clarify that statement because definitely, Senator Leichter, I have never in my life considered myself an in decent New Yorker, and I really for me -- and I love you -- it's very important to have a clarification on that issue.

SENATOR LEICHTER: Well, the clarification is very simple, Senator Mendez. I suggest you read the record. I never used the word "decent" or "indecent". Maybe you weren't paying attention or something, and you will find that I did not make that statement.

I happen to think it's wrong to support his nomination, and if that makes you uncomfortable I'm sorry, Senator. I just -- I'm stating my opinion. I didn't say the word "indecent". I said the only indecency, Senator, are in the comments that Senator Dyson made.

May I suggest, though, I'll get

the transcript for you because that will relieve your concern.

SENATOR MENDEZ: No, I -- I certainly appreciate, that's what I heard, but again I want to say that I -- and you have always been a gentleman on this floor, but I merely want to say that the other question that I want to ask of you is, if a person has a good record all his or her life and makes one mistake -- one mistake -- should that disregard the record of many, many other years of service? Should it?

SENATOR LEICHTER: Senator, when you -

SENATOR MENDEZ: Especially if the person has already been censured?

SENATOR GALIBER: Point of order, Mr. President. I can't understand it. The question is asked. Certainly he should have an opportunity to answer the question because some of us are concerned not only with the question but the answer.

THE PRESIDENT: I don't

understand the Senator's point of order, but as I understand it, Senator Leichter has yielded to Senator Mendez.

SENATOR GALIBER: Well, if there's something you don't understand, Mr. President, in all due respect I certainly will attempt to clear up my observation and what I was objecting to and ask for a point of order.

The question was being asked. Without the question being fully completed, there was an answer, and I don't think that's quite fair to all of us, and it happens in reverse, so in the sense and the spirit of order, I'm asking that you as a presiding officer, ask the person to let her finish the question so we could have a complete question and a complete answer.

THE PRESIDENT: I will try to keep order and comity, and I will recognize Senator Leichter. He has the floor.

SENATOR LEICHTER: Thank you.

Senator Mendez, may I just suggest if you -

SENATOR MENDEZ: I do not -- I was just about to ask him -

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: -- just a second question, and that I didn't finish, Senator Galiber said, and may I, Senator Leichter?

SENATOR LEICHTER: Senator -

THE PRESIDENT: Does Senator Leichter yield?

SENATOR LEICHTER: I will yield to my good colleague at any time, any place, anywhere.

SENATOR MENDEZ: And the question is, if a person has managed to have a good record in his or her history of public service and that person makes a mistake, should that prior record be completely obliterated from the matter and that person should be not allowed to contribute any further for the benefit of the citizens? That's the question.

SENATOR LEICHTER: Good. Senator, I'm glad you asked that because that's precisely the point that I'm trying to make that

there are some statements, Senator, particularly when they come from high public officials, that are such an affront to public decency as this statement was, to every New Yorker who cares about intergroup relations, that to my mind it disqualifies him certainly from three days later ever being confirmed by the New York State Senate.

Yes. Now, I would like to be able to say that this was the only time that Mr. Dyson has ever engaged in what is commonly referred to as "hoof in the mouth disease." Unfortunately, and we've known Mr. Dyson, this is not the first instance. He, in January, made a remark about two white men when he was up here in Albany. I remember the time that he showed up before Senator Marchi in the Finance Committee dressed as the Lone Ranger, and so on, but I'm not asking at this time that the mayor fire him.

I'm not saying that he could never hold public office. I'm just saying it just seems very strange that three days after

remarks that I can consider only horrendous, horrendous, that the Senate of New York State says this is the sort of person we will confirm for the MTA. Maybe it's a confirmation if it came a year from now and Senator -- I -- Senator -- I don't know why I refer to him as "Senator Dyson," if Mr. Dyson had shown that he can avoid these sort of painful outbursts, maybe I would feel somewhat differently, but I think at this time, I find it strange that we would act on his confirmation.

Let me just say that words - words are important. Words cannot be erased. You can't just sanitize this by saying, "I'm sorry." It has particular meaning to me, maybe as a Jew, and Jews are sometimes accused of being -- well, we're too sensitive, but I think our history gives us that right, and I can understand also why African-Americans are sensitive.

But the truth is that all of us ought to be sensitive about words that are hurtful and painful to a large group within this

state. We need to bring the level of public discourse on such a basis that we don't have these sort of statements that create divisiveness. I don't know what it says to particularly African-Americans, but really to all the people of the state of New York that the Senate would say Dyson, after the remarks that he made within this past week, is a person that we consider qualified to serve on the board of the MTA.

I certainly don't consider him qualified, and I will vote against him.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Mr. President, I support the nomination and before I, especially considering the hour, go into just a few remarks, I'd like to just point out at the very time that my good colleague, Senator Leichter, was casting aside if you will, or at least diminishing the -- a lifelong record for a remark -- for one single remark -- he himself at that very time possibly was misinterpreted by my

other good colleague, Senator Mendez, and I don't know that a lot can be read into any single remark, especially since Senator Leichter, Mr. President, indicated that he felt that Mr. Dyson was not a racist.

I rise simply because I've known Mr. Dyson for many, many years. I do not, by the way, because of this furor, I do not believe in any -- by any stretch of the imagination that he is a racist. I do know that, like all of us from time to time and possibly more than some of us, he would do an act that would arouse others to a fever pitch -- the illustration made of the Lone Ranger before my good colleague, Senator Marchi.

At the same time, Mr. Dyson has served as a Commissioner of Commerce for New York; he has led the effort to rebuild Astoria Film Studios. He has a multi-varied experience as Commissioner of Agriculture, chairman of the New York Power Authority. His academic qualifications are superlative, but more than just what's on paper, he brings -- he brings a

fresh approach. He brings, I think, a street wise approach despite being from upstate, despite his background in Dutchess. I note that his address is New York City, but it's more than that. I think that he could best be described as a "no bull" guy, not somebody that's going to accept by rote anything that's said to him without looking into it and questioning it in the most positive way on behalf of the citizens of New York.

Mr. President, this furor, I concur with Senator Mendez. I think something salutory has come out of it, the dialogue that has been entered into by Mr. Dyson and the other members of this chamber. I think that does have a salutory purpose. I think especially that he intends to continue that dialogue. I think the approach probably will be a much more sensitive one in the future. He's changed hats, and I think he has worn many hats in the past, and I think this is one he could wear with credit for the people of the city, the people of the state and for the Senate, I would -- I would be most

pleased to second his nomination.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, my reactions are a little bit different than -- than what I've heard because the remark which was first addressed this evening by Senator Waldon is something which has tried to be explained in certain ways, and while obviously said in one sense, very, very offensive.

There have been attempts by the -- the sayer of the words, Mr. Dyson, to explain them, and I will leave it at that point. However, there was something that was said by Mr. Dyson a few days before that which there is really no question about, and that is what causes me the greatest problem.

In the last number of years, I don't know whether it's 10 years, 15 years, one of the devisive theories in our society has been the struggle on behalf of minorities to enter into government service, businesses, grab

opportunities, get opportunities, and their fight against a word used against them, this word "quota", are we setting quotas? Are we opening opportunities? What is it all about? And this is something where it has been a constant fight. We want to open doors, and yet we're always faced with this issue: Are we creating quotas?

Before the watermelon incident, Mr. Dyson reacted to statements made by the elected comptroller of the city of New York and when I picked up the newspapers that morning, every newspaper said the same thing, that Mr. Dyson was, in essence, accusing the comptroller of involving himself in racial preferences.

Now, by using that phrase, right away, right away, Mr. Dyson created a difficult situation in the city of New York because, while there are public officials who are trying to open up the doors and make it possible for qualified minorities to get into the act and have a piece of the pie, the minute Mr. Dyson made that reference, it had to be inflammatory

to a lot of people in the city of New York who don't like quotas and right away, what happened to merit systems, et cetera, et cetera.

Unfortunately, for every one of us, things can be going along very, very well, and the Giuliani administration, by the way, I didn't support the mayor, but I was the first to hope that he would be successful, and indeed some of the things that his administration has done have been very, very good.

But if you go back to the negative thinking about Mr. Giuliani and his administration, people were there saying, well, you wait and see, you know, you're still dealing with the U.S. Attorney mentality and this and that and, lo and behold, the one thing which some people have been critical of during the first months is a confrontational attitude which pops up every now and then, so the comptroller and so the public advocate has tasted that whip from time to time and here is the elected comptroller of the city of New York giving his opinion on a public matter, and the response

from a member of the administration is rhetoric which has to cause problems among the citizens of the city of New York.

Now, Alan Hevesi immediately denied that his suggestions or ideas had anything to do with racism, but Alan was fit to be tied that in giving an opinion which might vary from the opinion of the mayor's office, that this kind of a vicious -- and that's what it was -- attack would come.

Now, I have lived through a Governor Rockefeller, with a -- an Arthur Levitt, and they were not always in agreement, but they had public dialogue; and I've lived through a Comptroller Regan with a Governor Carey and a Governor Cuomo, and they disagreed, but the public rhetoric was what one might expect.

I did not believe -- I can't believe in my heart that John Dyson, who I know as a racist or has any racist feelings, I cannot believe that, but the fact of the matter is that I don't think that we can afford in the city of

New York having a spectacle between elected public officials, so that whenever there's a disagreement over whether the budget's in sync', how the budget should be handled, how things should be happening, the level of rhetoric becomes non-intellectual, but insulting and that is really not the way to go.

Now, I don't want to blame Mr. Dyson for every member of the Giuliani administration who has, at one point or another, perhaps done that and, in all fairness to Mr. Giuliani, I wish him a wonderful administration because I live there. My children live there, and it's good for us if he succeeds. That's very self-evident. I think every New Yorker should root for him, but you get an attitude from the top, and I think that this kind of thing should stop, and that is what offends me, the concept of Mr. Dyson being the one who started this kind of rhetoric, even before the one remark.

Now, in terms of the comments by my colleague, Senator Mendez, I think Senator

Mendez' attitude is one of understanding and compassion, and I understand that too, and Senator Mendez asked my colleague, Senator Leichter, if somebody makes a mistake, do you hold it against him forever? And I think certainly after the number of years I've voted on this floor, on criminal justice issues and every other kind of issue, I don't have to worry about my credentials on giving somebody a second chance and a break.

But what Senator Leichter said becomes important because of one word, and that is "perception". Now, we are in a business where we don't have to make a certain amount of widgets and see that they sell in the marketplace. Nobody takes a look at the end of the year what our bottom line is, but they do look at what we do and they get a perception from it, and I do agree with Senator Leichter, absolutely.

If we were six, seven months down the line, ten months down the line, everything cools down, Mr. Dyson performed, that might be

one thing. I think it would be a terrible public perception to, within days of this kind of aggravation of the public rhetoric in the city of New York, to take this step and ignore what has happened.

I'm not saying the man should be condemned forever. I have not called for his resignation and I think, as others have said, he has done wonderful work for the state, and I'm hoping for my children's sake as well as mine, that he is a wonderful addition to the administration. But that doesn't change the fact that, if we confirm him tonight, because of the proximity, that people in the city of New York, my constituents and even people throughout the state, will wonder about our sensitivity and whether or not what has happened is something which will be going over our heads.

So, Mr. Dyson, I wish you well in the City administrations. I hope that you will serve the people well, and I, as a citizen in New York, will benefit. Maybe, but I think it would be insensitivity on my part if I didn't

refuse to confirm you at this point, and I will vote against the nomination. **REPAIRED** Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I rise to oppose the nomination of Deputy Mayor John Dyson to the MTA board, and the reason that I do is because -- not because I don't believe for one moment that he is certainly qualified and has the qualities of public service, and a public servant that are a desirable and good and will be very good for the city eventually.

However, I think that one of - the issue that has brought us to this point which resulted in the deputy mayor using certain inflammatory statements to describe a situation was the fact that there is opposition, apparently, on the part of the mayor of the city of New York administration, expressed by the deputy mayor to resist the inclusion of minority- and women-owned businesses, to give them an opportunity to participate fully in

doing business with the city, and it is really very, very frustrating and disappointing that we have in 1994, a city that is so diverse and has -- represents and reflects what is the new world right here in our city, including the United Nations located within the city of New York, and we have an administration at the same time that absolutely resists any recognition of the kind of diversity and opposes and rejects special considerations to make it possible for all of the members of the city -- city politic and city population to participate fully and equally, and I would not be able to go back to my district and explain to my constituents not why the deputy mayor made racist remarks because I think those remarks, I can name a number of people inside this Legislature, outside the Legislature, in cities across the state, who have made worse remarks that the deputy mayor made.

So I don't think that I have to explain to my constituents why he made those remarks. I think it was a mistake and I believe

and I hope that he does not make the same mistake again, but I cannot explain that I would vote for the appointment of someone to the MTA where there will be huge contracts, huge opportunities to do business with the city, and we have someone there that I voted for to be there who resists and rejects opening the doors for every one of my constituents who might be eligible and willing and desiring to do business with the city, and especially with the MTA, and those opportunities would be closed off because the administration, speaking through Deputy Mayor Dyson, resists that happening.

So, my vote is in the negative, and I hope that this message goes back to our mayor because he is the mayor of all of us, and I want him to know that this is not the time for his voice to reflect a resistance to inclusion that comes through many other voices that are not our mayor. We don't want our mayor to reflect that and to represent that.

So my vote is in the negative. I'm very sorry that I have to do that, but I

think that I have to go back and say to my constituents that I voted against the exclusion of people that I represent.

Thank you.

THE PRESIDENT: Senator Present.

SENATOR PRESENT: Mr. President, may I interrupt for just a moment and announce an immediate meeting of the Rules Committee in Room 332?

THE PRESIDENT: Senator Ohrenstein.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yeah, Senator Present, we have been, as you know, trying to run more than one thing at once, but I know there are a member of Rules Committee who are involved in this, and do you think we could hold it for a short time, not a long time, but a short time? I don't think -- thank you very much.

SENATOR STAFFORD: I apologize so everybody can be thinking. We will have after

the rules meeting a finance meeting, so we'll be able to -

SENATOR OHRENSTEIN: I'm sure everyone is going to be mentally prepared for these very two important meetings because they're going to think about it during all the time that I'm up on my feet.

Mr. President, I rise to support this nomination, and I want to make something very clear at the outset. I'm speaking for my self. I'm not speaking for the Democratic party in this instance. We have not conferenced this matter, and every member of this Minority has the absolute right and as they do and have already taken advantage of to express their own opinion and to vote the way they please. I speak for myself personally.

I regret the remarks that were made by Mr. Dyson which have sparked this controversy. I'm not going to go into dissecting when the remarks were made, how they were made, and what context they were made. I think that will lead us down very idle paths.

The remarks in the public domain are regrettable, because they stir up racial stereo types and racial accusations which have no place in our dialogue.

Mr. Dyson has apologized for those remarks. He's come here, and for the last two days has taken a great deal of pains and trouble to talk to members of this house respectfully, without trying to bend anybody's arms or pushing anybody politically, and has indicated he was -- he regretted that he made the remarks. He has said that he did not, perhaps understand the full meaning of the term that he used.

To me, that's enough, and it's enough for me because I know John Dyson for 20 years, and I know John Dyson is not a racist, is not interested in racial confrontation, has never engaged in it and has been a very fine public servant. So, to me as regrettable as this incident is, and as much as I feel for some of the reaction in the public and amongst my colleagues, and I respect their reaction, and I

honor that, and I respect their vote and their conclusion on this matter.

I would not respect myself if I was to vote against Mr. Dyson for these remarks alone because of the fact that I know him, and I know him very well, and I know the kind of person he is. So for me, while this whole incident is regrettable, and in some ways embarrassing, I cannot allow myself to be swayed by it particularly because he has -- as a decent man that he is, has taking enormous trouble and patience and has been willing to accept the criticism head to head by many members of this body and others outside of it.

So, as far as I'm concerned, I cannot take it into consideration and to my consideration in evaluating him and his life, and to me -- and I respect Senator Leichter's conclusion. To me, I cannot hold this particular incident against him and then hold him up to public obloquy and say, "one strike and you're out." We even are debating here proposition of three strikes and you're out, so

I can't accept that proposition.

I want to make one other comment on my colleague, Senator Gold's very important observation on the question of the confrontational nature of some of the dialogue that's happening in the city of New York, and I respect that as well. I think Manny Gold makes an excellent point. I think there has been a little bit too much confrontation. It hasn't all come from the Giuliani administration. It sometimes come from other quarters as well, but I have lived by one credo, one of many credos, but one I remember when I was a very young man, I was always interested in reading history and I read Winston Churchill's books on the second World War which were a magnificent statement by a magnificent public offical, not always accurate but a great statement, and one of his mottos was "in war, determination; in victory, patience -

SENATOR GOLD: In victory, magnanimity.

SENATOR OHRENSTEIN: -- in

victory, magnanimity." You're correct. And so I think when you've one and you've achieved the power, you can afford to be magnanimous, and I have pointed that out. I like Manny Gold, support what the mayor is trying to do. I didn't vote for him. I didn't campaign for him, but I want him to succeed because I want the city to succeed, but I have advised him and some members of his administration that if they lower the rhetoric a little bit, it might help everyone, but with respect to the conclusion that Senator Gold draws, again, I disagree because my conclusion is, I don't believe it's fair to make this vote a referendum on the Giuliani administration. I think that referendum take place every day and the way we dialogue, and so on, and so forth, and ultimately will play itself out at the ballot box.

Now, I want to talk about the reasons why I support this nomination. Again, I find myself in some disagreement with my good friend, Senator Oppenheimer, who says -- who's

very distrubed by the fact that too many members of the city administration -- and I assume the state administration because the Governor has appointments, some of which are state offical - too many of these state or city officials are being appointed. Well, I -- doesn't disturb me. Oh, there she is. I didn't see her. It doesn't disturb me because the MTA is not an unguided missle. The MTA is a very important agency which affects the lives of millions of people and I must tell you, I have not been happy with the way they have conducted themselves over the last few years, and I think we need some strong voices on that board. They maybe controversial voices. They may not always agree and we may not always agree with them, but I would like some strong people on that board who have experience and who have thought through the very complicated transportation issues that we face here every day and every year.

That's why I supported Abe Lackman. I don't know how many times I've agreed with Abe Lackman when he was a member of

the Senate -- of the Majority of the Senate Finance Committee, but I know he knows his business and I know he knows the issue, and I may not agree with him half the time when he votes on the MTA board but I know what he's doing and his point of view deserves to be expressed, and above all, the mayor of the city of New York has the right to have people who share his point of view on that board, which brings -

SENATOR OPPENHEIMER: Mr. President.

SENATOR OHRENSTEIN: Sure.

SENATOR OPPENHEIMER: May I be recognized?

SENATOR OHRENSTEIN: Senator Oppenheimer would like me to yield.

SENATOR OPPENHEIMER: Yes. Would the good Senator please yield for a question?

SENATOR OHRENSTEIN: Sure.

SENATOR OPPENHEIMER: Would you yield for a question? Are you aware that the reasons behind the various organizations that

submitted statements opposing this nomination was for the opposite reason that you're giving? You're saying -

SENATOR OHRENSTEIN: I'm fully aware.

SENATOR OPPENHEIMER: -- that their strength in having members of the immediate administration involved in the MTA board decisions. They say that over the past many years where deputy mayors have been appointed, they have not shown up at meetings. They are not at all participating in the decisions of the MTA board. Perhaps they could be strong decision-makers if they did not have so many other responsibilities that deterred them from participating in board decisions.

SENATOR OHRENSTEIN: Well, Senator Oppenheimer, I'm glad you asked the question. It's a very good question. I think if a mayor appoints a deputy mayor or a budget director on the MTA board and they don't show up, that mayor ought to be held accountable, and if Mayor Dinkins' people didn't show up, then he

ought to be willing to explain that, and I would say the same thing about the Governor. If the Governor was to appoint some state officials, the Transportation commissioners and others and they didn't show up, they would be held accountable but it is not -- and they should be held accountable politically, but it is not a reason to prohibit them from doing it.

SENATOR OPPENHEIMER: Thank you.

SENATOR OHRENSTEIN: That brings me to, I hope the final point. We are here in a position of advice and consent. That's our position, and that has a long checkered history. We have been through it in the United States Senate on the Supreme Court as to what standards should be applied, whether it is the standard this Senator who votes on it, whether he agrees or disagrees with the individual or whether the primary -- the primary guideline is the judgment of the appointing authority.

My belief is this particular appointment by law is advised and consented to as an appointment by the mayor of the city of

New York. I believe the mayor has a right for us to judge the qualifications of the individual if we found that he's -- he's appointed some yo yo, we have a right to reject it, but if the person is competent and the fact that we disagree with that person does not necessarily mean we have a right to disagree with it or defeat it, and that's the way I feel about this particular situation.

I said the other day when Abe Lackman was on -- on the floor here or was being nominated that I was shocked by the way the Long Island Rail Road negotiations were being conducted, and that in the end, it was a dispute, a very -- dispute of a very small nature, an important one. I have absolute respect for Mr. Stangle's ability to raise the question of work rules or other items like this in the negotiation, but in the end, a public offical has to make a judgment on what basis are you going to hold millions of people hostage in terms of their ability to go to work, and I think he made a bad judgment. Unfortunately, it

was not the first time I have seen that kind of stubbornness and blinded -- blindfolded zeroing in on one issue rather than having the ability as the chief executive of an extraordinarily important agency with a great deal of influence and power on the lives of ten of millions of people in the metropolitan region, and so I believe John Dyson has the kind of independence, the kind of knowledge, the kind of experience to deal with that kind of blindness which I believe exists now in the Metropolitan Transit Authority.

So, this is very complicated. There are these considerations which I put before you respectfully. I am upset and distrubed by the incident which brought us to this particular situation. I wish it hadn't occurred. I don't think anybody is more sorry for the fact that it did occur than is John Dyson, and I'm sure it if he could take it back and change that particular combination of words, he would do it in a minute, but it doesn't diminish him as a public service or as a human

being and it certainly doesn't make him a racist, and it's for those reasons that I respectfully submit to you he should be confirmed.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: One of the advantages and, perhaps disadvantages of service over a period of years in state government is the ability to recall other incidents that have arisen in the history of this state.

John Dyson, in my opinion, is one of the ablist, most intelligent individuals to serve in government, and I say that at the very beginning. Therefore, it becomes even more inexcusable to find him using that talent in perhaps the most pejorative manner.

I remember John Dyson as Commerce Commissioner, I think with Governor Carey, and there was a very fine Environmental Conservation Commissioner by the name of Peter Burley, and Burley's jurisdiction was the environment and conservation and John Dyson was the economic commerce spokesperson for the Governor.

Repeatedly, John Dyson became embroiled, not in the issues of his agency, but in the issues most affecting Peter Burley. In an agrumentative, pejorative manner, that caused two departments of state government to be at each others throats, and that's strike one in my opinion. That's the reason why so many environmental groups are asking us to oppose John Dyson's confirmation here at this time.

I remember John Dyson also becoming involved in the Commissioner of Education's area of responsibility as though from his vantage point he had a better understanding, Mr. Dyson felt he had a better understanding of what was needed in the field of education than the Education Commissioner of the state of New York. Again, did he this as the Commerce Commissioner, and I believe again demonstrated the pejorative nature, his willingness to attack rather than to reason.

In our society we have too many people attacking each other. We have too many groups fighting with each other. This society

needs healers, people who will be bringing other people together in a common consensus and a resolution of problems, and I find repeatedly Mr. Dyson's career the exact opposite.

He began to put his photograph on announcements concerning the state of New York, and somebody says, "Hey, John, you're not running for the United States Senate any longer. Why does your photograph have to appear?" And so this very intelligent individual embarrassed himself; he didn't embarrass the Senate Finance Committee or the Assembly Ways and Means Committee. He put on a Lone Ranger outfit and he said "I'll put on a mask so I will not be accused of having my photograph all over the state of New York." Again, childish, pejorative, not worthy of a state commissioner and not worthy of our support after this latest and temperate outburst directed against Alan Havesi who maybe will gain more experience in the field of comptroller of the city of New York, but I'm not sure that My Ty... Mr. Dyson -- sometimes I think he's

Tyson, he wants to battle with everybody. Sometimes I find Mr. Dyson deciding that he is the arbiter of everybody else's service in government.

I have reason to believe that his confirmation would be a disaster for those legislators in Queens County, and I'm surprised that one of my colleagues spoke in favor of the confirmation. Many of us voted for the MTA's capital budget, its capital plan with an expenditure of $9.6 billion, I believe was the amount, a commitment with the understanding that the suburbs and the central city would all be sharing in some of the benefits of that commitment.

We were defrauded because while we did the right thing in providing the funding for the MTA's capital program, its five-year plan, the city of New York, the previous mayor and this mayor have yet to provide the city's contribution for the improvement of the New York City Transit system, buses and subways. I have represented constituents who will travel on two

crowded subway lines, standing all the way. From downtown Manhattan, for example, they'll stand all the way to Times Square on the Lexington Avenue line or the number 7 -- the 7th Avenue line, and then at Times Square or Grand Central Station, they will switch onto the number 7 line of the IRT, and they will stand all the way on that line as well, and they will arrive exhausted, totally exhausted after a trip of that duration, and then they will try to get off at the last stop because their journey is not over. They will have to arrive at the Main Street/Roosevelt Avenue location, one of the most dangerous, busiest subway locations in the city of New York, 40,000 people a day, and they will have to walk up narrow, dangerous stairs passing through a narrow, dangerous subway platform, two and a half stories to the street level, and that was something that could have been corrected and was scheduled to be corrected with a rehabilitation program for the Flushing IRT subway line. That has not been done because the city has not made its contribution.

I ask you, how will Mr. Dyson, Deputy Mayor Dyson come as a free agent when his mayor to whom he has to report has not provided the funding for the city's contribution? Would anyone expect that the deputy mayor serving on the MTA board will argue with the man who recommended his appointment, for whom he works, the mayor of the city of New York, and I maintain that Deputy Mayor Dyson as an MTA board member will be locked into a position of having to sustain the mayor's refusal to provide city funds for the rehabilitation of rapid transit service in the city of New York.

Those people now that they climbed the two and a half stories to the street, are not home yet. They will wait on the line for buses, about 30 bus lines, criss-cross that one area, and they'll wait on line and they'll have to stand on the buses, and Deputy Mayor/MTA board member/ambasssador for business, since we are now giving now titles, will be the same individual beholden to the same mayor who has not provided city funds to implement what we

did in the MTA capital program.

It's a rotten idea to have too many people who hold other positions serving where there is a possibility of a conflict of interest, and I believe there is a possibility of a conflict of interest here because the deputy mayor serving for a mayor who is not funding rapid transit in the city of New York is a captive, not an menial servant because he's too intelligent to be that, but a captive of a person who appointed him, and he will either have to serve as an MTA board member at variance with his employer, the mayor of the city of New York, or find himself in a dreadful conflict of interest.

The constituents for all of us, our constituents, and by the same token, the mayor's constituents need proper subway and bus service in the city of New York and we will not get it if too many people in lock step with an administration at City Hall that is not funding rapid transit is now providing an additional voice and an additional vote on the MTA board.

For these reasons, apart from the pejorative nature of the latest outburst, I find myself unwilling to support this confirmation.

THE PRESIDENT: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

It's now the ninth inning and this particular game is almost over. Some of my colleagues talked about one strike and one remark, but I seem to remember more remarks than that.

I remember the headlines about the two white men who ran the city of New York which on first blush, did not seem to be racist but it was.

I remember another incident when they talked about the mayor of the city of New York moving around the city and going to different places, and the remark was, "every place except Harlem." Maybe that wasn't considered racist, but some of us who come from the valley of Harlem tended to think it was discriminatory. I think that was strike two.

And the remarks of the last week certainly were racist, and even though some of us have received what is supposed to be an apology, I still haven't been able to find in my heart that it was an apology.

I certainly believe that this man is an intelligent person. I'm calling this the third strike for this game, but in all championships and in all world series, there's more than one game, and I hope that John Dyson will learn from this game and return to win another game in this world series.

I may rule him out today and hopefully, I will have the opportunity to vote for him at another time.

THE PRESIDENT: Senator Levy.

SENATOR LEVY: Thank you very much, Mr. President.

When I read the comments in the press attributed to Mr. Dyson as it related to the statements he made to the bond buyer, I want you to know that my reaction to those remarks was that the remarks were thoughtless, they were

insensitive, they were so insensitive that they evoked a response of repugnancy in the widest spectrum of persons, and they cause pain and they cause polarization.

In looking back at the events subsequent to the press reports of those statements -- and we've talked about some of them tonight, but I would like to just review them and add to them.

Last Thursday, with the mayor, Mr. Dyson had a press conference and he apologized publicly for those remarks, and he explained them.

Friday here in Albany as we have heard at the nominee's request and graciously, Senator Galiber convened a meeting of at least six Senators on that side of the aisle, and Mr. Dyson met with the group. He explained -- I am told. I was not there. He explained and he apologized.

As Senator Waldon has told us, he met with Senator Waldon twice and apologized, and last night at the meeting of the Senate

Transportation Committee -- and there was a wide representation of press when we considered his nomination, he again explained his remarks. He again apologized publicly, and I asked him, I said to him, "John, what have you learned from this incident"? And I believed him when he said that he had learned, that it was a painful experience for him, he had learned painfully from the incident and importantly, he said that he understood the pain that his remarks had created.

Last night, though, Senator Paterson was not a member of our committee. He came down to the meeting to listen to the dialogue and discussion with Mr. Dyson, and we certainly invited Senator Paterson to join with us as a part of the members of the committee who were meeting with and talking to Mr. Dyson, and it was one of many things that Senator Paterson said that -- that has been left with me.

At one point, Senator Paterson said to Mr. Dyson, that many of us, if not all of us have made statements during our careers.

They certainly were not statements like the one -- the one attributed to Mr. Dyson, but had made statements during our careers that we regret, all of us, that we regret, and wish that we could take back. Let me just move from the incident to talk -- as the chair of the committee to talk about Mr. Dyson's qualifications.

I believe from having observed him that he has really an extraordinary demonstrated ability. He has an outstanding record of a success, not only in government, but in the business sector. He has served as we have heard tonight with distinction as the Commissioner of Agriculture, the Commissioner of Commerce under both -- under both Governor Carey and Governor Cuomo, and as the head of the Power Authority, under Governor Cuomo.

I have to tell you as the chair of the committee with an oversight responsibility and jurisdiction over the MTA, that I believe that Mr. Dyson has the qualifications. I believe he has the

experience. I believe he has the ability. I believe he has the experience and expertise, and I believe that he will be a strong -- and I was the one that had the conversations with the mayors in the Koch administration. I was the one that had the conversation with the deputy mayors in the Dinkins administration, and I want you to know that I believe that John Dyson, if confirmed by the Senate, will be a strong and a fully participating member of the Metropolitan Transportation Authority, notwithstanding what other men and women who have represented the city and served on that board have done as it relates to a level of participation, and I support Mr. Dyson's nomination and I intend to vote for him.

SENATOR STAVISKY: Would Senator Levy yield for a question?

SENATOR LEVY: Yes, certainly.

SENATOR STAVISKY: Senator Levy, I accept everything that you've said with regard to Mr. Dyson's qualifications, but do you believe that Mr. Dyson would part company with

the mayor of city of New York on the issue of putting additional city funds in for rapid transit services and facilities in New York City? Do you believe he will be able to part company with the mayor on that issue?

SENATOR LEVY: Mr. Dyson is not there as -- assuming now he's confirmed, he is not there as an appointee of the Governor. He is there as an appointee of the mayor, and I believe that he will, on that board, reflect the policies of the mayor and he will advance the interests of the city of New York as well as the region as a member of that -- of that board. He is the mayor's appointee, and I think that we all would be naive to believe that if we did not have an appointee of a governmental offical, that we might not have a situation where someone was appointed by the mayor or appointed by the Governor or appointed by one of the county executives where there would be a matter of interest to the county or to the state where the Governor or the county executive or the mayor would not make known to that nominee what that

chief elected offical believed to be the interests of the county, the city or the state, and that that nominee would very well reflect the policy of the person that appointed him or her to the board.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

My colleagues, I rise in support of the nomination of John Dyson. I've listened to, I believe virtually everything that has been said by my colleagues during the course of this -- the debate, and I would like to, if I might, come back to the comments of Senator Ohrenstein a bit earlier, and I think in part what we're seeing here is really two levels of dialogue, one dealing truly with things philosophical, the nature of the advice and consent function of this chamber, and others -- other comments going to the political process itself, and I certainly am not as qualified as many of my colleagues who happen to represent portions of the city to discuss those particular political issues, but

let me dwell, if I might, on the advice and consent portion. I have been called on numerous occasions to consider gubernatorial nominations, and I must tell you that, were I to view the candidates from a philosophical perspective where I had philosophical clashes with those candidates, there would probably be a goodly number of instances in which I would have be - felt compelled to cast my vote in opposition to that candidate.

That, however, is not the standard which I feel that I must use. The Governor is the chief executive of this state. He has the ability to make appointments, and when I look at those appointments, I look in terms of competence, perhaps would consider questions of moral turpitude if they were relevant, and I think with one or two exceptions where I thought issues of competence came down against the prospective nominee, I have continuously cast votes in favor even where I had deep philosophical questions with regard to the prospective nominee.

John Dyson has made comments or made a comment which given its worst possible application to -- to -- just given its worst possible application, certainly would at the very least be considered insensitive. He apparently has reached out to not only members of the committee but members of the Black Conference or Black Caucus, and has endeavored, I think, to try and make a good faith effort to, as sincerely as he can, apologize.

My concern is that if it becomes a personality issue, than each and every nominee must be considered as a personality issue, and we've seen what has happened on the federal level when that has occurred. I'm not aware that that's the standard we've used here, nor do I believe that is the standard which we should use. I know John Dyson, certainly not as well or as intimately as many people in this chamber. Certainly can't say I've know him, as I've said, as Senator Ohrenstein for some 20 years, but I know his family and members of his family for a number of years and they have certainly pillars

of the community where -- within my district.

John Dyson has for three decades served admirably in every capacity that he has been asked to serve in. He has served two governors with distinction. There may have been times when the manner of his service may have been troublesome to some in terms of personality or delivery, but I'm not aware of anybody anywhere who could say that he did not serve and serve well.

When I look as a member or resident of the MTA district in Dutchess County, when I look to him as a prospective appointment, I look at that resume and I say that I derive great comfort from having that caliber of an invidivual serving on that board.

Here's a man who was the chief player for another major authority. Here's a man who has served a cross section of appointments and again, served very well.

If you look to intellect, if you took to integrity, if you look to ability, if you look to commitment to public service, there

are very few prospective appointees who are more worthy of your support. We're not being asked to judge personalities. We're not being asked to base our decision based on -- injudicious or insensitive -- an injudicious or insensitive comment. We're being asked to determine today whether the Chief Executive of the city of New York has put forth a candidate to fill a position on the MTA board, whether that person meets the standards in terms of competence and ability to do that job, and I think that that is the standard by which we measure as we measure time and again, dozens and dozens of people who we are asked to confirm, than the answer is an obvious "yes".

And it is with great pleasure that I again say I will support this man's nomination because I know that he will do the kind of job that will do well by the MTA and by everybody within that district.

Thank you, Mr. President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Mr.

President.

Mr. President, I have listened to the prior speakers, and some of them, including Senator Ohrenstein talked about how they thought that Mr. Dyson would do a very good job at the MTA and, perhaps cure some of the things that ail it, but if there's one thing I've learned, it's, there's more to government in politics, there's more to life than making the railroads run on time, and it's our job when we confirm someone to look into the whole question. Certainly, we don't second guess the appointing authority when it -- as to matters of policy, I agree with that, but in life and politics, everything is timing, and the timing is very, very bad for Mr. Dyson, in my opinion, and it's not just one remark a few days ago, as others have mentioned.

I was quite distrubed that the two white men running the city of New York for 200 years remark some time back left me shaking my head, willing to say, "well, maybe it was poor choice of words or a poor way of phrasing

things" or a little flip, willing to give somebody the benefit of the doubt which we all do, but then the attack on the comptroller and the use of the word racial preferences and - again, was inflammatory, as Senator Gold pointed out, and now we have the remark about the bid in the watermelon. Enough is enough, Mr. President. This is a very fresh remark. It's in the public consciousness. It's probably one of the last things a lot of people read in the newspapers because I think we get up here, we forget we're in the middle of a holiday weekend. People read the newspapers on Thursday and Friday, they took off to enjoy their holiday weekend, so it's very fresh in the public's mind, and we get into a lot lately about condemning people, condemning remarks, demands to condemn this one or that one. I sort of have a rule. I don't condemn people but I condemn remarks that I find offensive or hateful or insensitive, and we all talk about it. We've seen a spectrum across this country of people who are at the very least insensitive, some go

far beyond that with the kind of charges and the kinds of rhetoric they use to inflame people and -- one group against another, but insenstitivity counts, and it certainly counts in public life.

We're not talking about a shock jock on the radio. We're talking about the Deputy mayor of the city of New York. We're talking about someone who's been in government for many, many years, and in the very same week that he hits the newspapers with a remark that many, many people find offensive, we are called upon to confirm him to the MTA board, a very, very powerful governmental institution in our state, and also he's on the list to be confirmed as a trustee of one of the finest educational institutions in the country, the board of Cornell University. That's also before us. What kind of message do we send to the public as they come back on Tuesday from their long holiday weekend still fresh in their minds the last time they bothered to watch the news or read the newspapers, Dyson was in the paper

about his remark about the watermelon, and they see in Tuesday, John Dyson has now been twice confirmed by the New York State Senate, before the ink was dry in the newspapers, reporting his remarks of last week.

Now, I don't condemn John Dyson. I condemn his insensitivity in these instances. I wouldn't rule him out for confirming to anything for all time. I believe in redemption, particularly for people in public life. It's happened. We have seen it happened. We know it can happen, but I also believe that you need time. You need time between some instance like this and a pat on the back for John Dyson. Lest we send the wrong message, that wrong message being that we, the New York State Senate, don't care or aren't that concerned about remarks that are so insensitive, and I appreciate the effort Mr. Dyson has made in the last two days to apologize, explain, come up here and meet with people but, come on, he was on the list for confirmation. If he didn't come up here for the last two days, if he didn't try and explain and

meet with people, would we even be here with this on the floor? I doubt that and, I mean, I'm not saying he did the wrong thing in coming up here. It was the only thing he could do, the only thing he could do, but there's not enough time. There's not enough time to let it settle. There's not enough time to make sure there won't be recurrences of such insensitivity. There's not enough time to let his actions speak louder than his words, and that's very important.

And, you know, the one thing that sort of came out of discussions with Mr. Dyson in the last day or two is, he will be the mayor's representative on the MTA board. He will carry the mayor's message. He will advance the mayor's policies. Hey, he's supposed to. He's a deputy mayor. He's an appointee, whether it's to the MTA board or as deputy mayor, and it's clear where the mayor's administration seems to be coming down with respect to things like affirmative action, minority business, enterprise,-set-asides and out-reach, and it's

not for us here to redo last years mayoral election. The mayor's entitled to his policies. Of the mayor is -- you know, he won the election, and we can't expect John Dyson to be other than the mayor's representative to carry out the mayor's policies, and it's clear to me that some of those policies or important -- or a component of those policies are to take a dim view and not be in favor of those kinds of affirmative action programs, that we here in Albany in the Legislature have made with respect to very large -- time and again, the very large capital programs the public policy of this state.

The MTA is always in the process of spending billions -- I forget how many they have on the table, 7-, 8-, $9 billion - billions of dollars that they're going to spend in renovations, capital acquisitions, repairs, and so on.

To put someone on that board to represent a view point, the mayor's view point that the MTA shouldn't pursue the kinds of set

asides and minority business out-reach that it has, that we have mandated it in many cases to have concerns me, but it's the mayor's call. I think it would be a grave mistake for us to confirm someone to that board to carry out or advance those policies, and the mayor's appointees won't control the board but they'll certainly make noise about those policies. It would be a grave mistake for us to confirm someone to that kind of position who is bona fides on the issue could be clouded by these insensitive remarks. It won't help the public discourse. It will make people in New York City think that, "Aha, there he is." He's against this program or that program and the spending of this money, and they will relate it back to these very insensitive remarks. I think we have to cut that off. If we have to take the mayor's appointee who would do other than many of us would do with respect to those kind of programs, let's at least take someone who is not carrying the baggage of such insensitive remarks. I think we owe the public that, and I think under

the circumstances, I believe there is no way I can vote this week or any time in the near future to put John Dyson on MTA board, certainly not to put him on a university board.

THE PRESIDENT: Senator Marchi.

SENATOR STAFFORD: Mr. President, I again have apologize, Senator Marchi. We'll no now have the Finance Committee meeting in Room 332, please.

THE PRESIDENT: Finance Committee meetin in Room 332.

Senator Marchi.

SENATOR MARCHI: Yes, Mr. President.

Mr. President, I did many years ago have an experience with John Dyson, the Lone Ranger experience, and I have to differentiate the experience I had with the recent episode that brings us to discuss his qualifications and whether we should or should not confirm him as the mayor's representative on the MTA board.

The dimensions of this prospect were greater than the ones that I had. I was

offended at that time when he came in with the mask and my response might have been, perhaps a little more severe, but I had no regret having done what I did. I immediately gaveled a meeting that we were having, a departmental hearing in response to his coming in with the mask, but I also discovered and also reflected on the fact that there was no rancor in what he had done, and I was reminded, I think and sensitized by Senator Levy's reference to the fact that our pretensions of infallibility are not available to us as human beings. It is our -- what is basic, I think, is our humanity and this has caused pain. That was mentioned by Senator Waldon, by Senator Montgomery and others, and yet, at the same time, there was this simultaneous disclaimer of the notion that was prompted by a spirit of racism or a feeling that would be demeaning if he continued even as -- in service as a deputy mayor, but much more -- of much greater importance, continuing as deputy mayor if, in fact, it was the product of rancor or of racism or of a spirit that was

inconsistent with the respect that public trust demands of us to have reverence for the people and the society in which we live in, and there was nothing in the experience, certainly the rapidity with which he expressed his regret that it had caused pain, at least was indicative to me as he indicated to me personally that he was, indeed, regretful, that an inconsiderate remark did not reflect a -- his basic attitude towards society and his fellow man, and I mean this in a generic sense. It was -- it was part of those fallible episodes that were referred to, I think very sensitively by Senator Levy.

We have the individual -- the New York times, at least in the information that was furnished, observed editorially when he had departed from public service, when they observed editorially that Mr. Dyson has shown rare energy, originality and independence of thought, his return to public life will be as welcome as it is probable and, indeed, his service has been characterized by dedication, by ability and competence.

I believe that -- I believe that he has professed his real feelings and a -- a - an expression of personal pain because he had caused that. As the two of you, I think you stated that best, "What am I going to say to the people in my district? " But I think we can learn from experience. We can remember one individual, nothing comparable to a John Dyson -- John Dyson is a man of humanity, of sentiment, one who had been -- had pursued a - in his earlier life, a code of conduct that would really prologue to a different result later on, and that was Hugo Black who was a member of the Ku Klux Klan and yet turned out to be one of our ablist and most sensitive individuals in public service by his conduct on the Supreme Court.

I believe that John Dyson will sensitize by this experience, will be reflecting that in his public service, and it is this profession of confidence that he will be doing this on the basis that he has served two governors over a period of years demonstrating

throughout this entire period, not an insensitivity, perhaps a little flippancy on some occasions but not an insensitivity, so I have -- I feel I feel very comfortable in urging his confirmation to the office that he has been nominated to by the mayor of the city of New York.

THE PRESIDENT: Senator Babbush.

SENATOR BABBUSH: It's not often that I get up on an issue like this, but let me tell you, Mr. Dyson has done things which I think are beyond where he can't bring it back anymore.

This is not an one-time issue. He's done this many of time with the two white men or whatever, you know? Now he's saying other things. I'm not talking about the merits. He's a bright man. He deserves whatever he can get, and in any position he wants to be at but, no, there comes a point, you know, where we can't tolerate what he's doing, at least I can't. I mean, what is he going to say next, jokes the Jews, the Catholics,

whatever? No way can I support that, and I understand what they're saying, that he should be the candidate because the mayor wants him, the Governor wants him or whatever, but not on these issues, you know? No way. And I'm from Brooklyn and I don't speak that well, whatever. All I'm going to do right now is to make a motion to table, and I'm going to ask for a slow roll call and I understand it's not debatable, and I'll ask four of my colleagues to stand up with me.

THE PRESIDENT: The motion to table has been made. Those who wish to take this vote by slow roll call, that is also been requested, evidently an insufficient number have arisen. Let me ask, those Senators who wish to take this vote by a slow roll call, please rise. Evidentally, a sufficient number of Senators have arisen.

SENATOR WALDON: Mr. President, if I may. This is not about the tabling. This is about the slow roll call, correct?

THE PRESIDENT: No, this is about

whether to take the motion to table by a slow roll call.

SENATOR WALDON: I retract my -

THE PRESIDENT: All right. I'll state it again, if I may. Senator Babbush has made a motion to table the nomination of John Dyson to the MTA. On the question of whether the motion to table should be by slow roll call, those who wish to take it that -- in that fashion should rise. It is evident that an insufficient number have risen, so all those in favor of the motion to table will say aye.

(There was no response.)

Those opposed to the motion to the table will say nay.

(Response of "Nay".)

In the opinion of the Chair, the nays have it. The nominee -- the question of the nomination is before the Senate.

Senator Markowitz.

SENATOR MARKOWITZ: Thank you, Mr. President.

This is a difficult appointment

for all of us who are concerned and view with a significant amount of concern, the fact that the mayor of the city of New York who may be riding high in the polls in terms of two out of three New Yorkers, yet that third New Yorker are primarily African-Americans who, perhaps did not makeup the fact -- not perhaps but did not, in fact, makeup his supports in terms of his winning election as mayor of the city of New York and who continues in many ways, not to have accomplished or sought to accomplish the out reach necessary, in my opinion, to be the mayor of all the people.

A number of years ago we remember when Jessie Jackson referred to New York City as "Hinny Town". Words have a way of hurting. When Mr. Jackson made that statement, it hurt me and many years and, in time, he asked to be forgiven for that statement, and I and many other New Yorkers of Jewish background understood that at times, all of us, the high and mighty and the low, whatever, all of us at times make statements that we wish we had not

made.

In case of the situation with Mr. Dyson, there's no question that the statements alluded to earlier by my colleague, Senator Smith, as well my other colleagues, there's no question that one can construe at the very least, a measure of insensitivity, and yet, if the message can be delivered home to our mayor who most of us sincerely hope and pray succeeds in making New York City a safer, better place to live for all. If, as a result of Mr. Dyson's regrettable remarks, if the message can be delivered home that this city is not a majority white city, it is not a majority black city, it is not a majority Latino city, nor Asian city, nor Pakistani city, nor any of the other ethics that make up this great, great city of New York, but rather, New York City is a city of minorities; it is. It is a city of minorities. You may ride high in the polls, two out of three, but it's the quality of the management of the city that concerns all of us.

And so I hope that as a result of

this recent experience, that we'll be able to have the mayor as well as Mr. Dyson understand the ethnic compositions and the sensitivities that are necessary to represent all of the people, and that's what I hope will be a result.

Mr. Dyson's remarks were unfortunate. He has been up in Albany the last few days. He has asked to be forgiven. I've made statements in my life that I wish I could take back. I have been fortunate to have people forgive me, and I in turn have forgiven others whose remarks I felt to be offensive. I take him at his face value. He has asked to be forgiven. He has apologized for his remarks. I hope that he will make a contribution at the MTA that will be meaningful to those of us in New York that depend upon buses and subways. If he fails, I hold the mayor responsible. He's the mayor's appointment. If he succeeds, then it's the mayor who deserves the praise. That's what we're voting on this evening. It's not an easy decision, Mr. President, for me, but nonetheless, it's one that, in reflecting about

it the last few days and, certainly listening to my colleagues, I hope it's the proper one.

Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Mr. President, we have a very diverse state which we live. We're Asian, black, we're Hispanic, white. We're upper middle class, we're welfare recipients, we're tenants, cooperators, landlords and even the homeless. We send our children to public and private schools.

We have an immense opportunity in a situation like this, if we stop for a moment and stop to look at who we are, what we are, from where we have come, and most importantly, Mr. President, what we can be.

Senator Levy was kind enough to allow me to participate in the questioning of Deputy Mayor Dyson at the Transportation Committee inquiry last night, and Mr. Dyson, the deputy mayor said that he had -- was not familiar with the true meaning of what the watermelon representation was. If that's the

case, then why don't we demur to Deputy Mayor Dyson's representation. Why don't we accept that he didn't actually know, and if we do accept that, then maybe we need to talk about what that term really means.

The watermelon which would otherwise just be a harmless fruit associated with the seasonal time period in summer and picnics and pleasure, has actually been manipulated to stereo type the perception of African-Americans as being lazy, shiftless, ignorant, dishonest and of no consequence or meaning as citizens in this country. It started in the 1860s and has continued up until today.

A friend of mine told me last week, he is a law clerk in a prestigious law firm and the only of a African-American employee, that a few days before he came back from lunch and found a picture of a watermelon on his desk. What message do you think his co-workers were trying to send him?

The watermelon is something that was portrayed in film, in Birth of a Nation, in

our gang comedies, in the Three Stooges, always to depict a very ignorant life-style for African-Americans. That's what the watermelon means.

In most recent civil rights marches after hate crimes, individuals who lived in Bensonhurst ran in Howard Beach brought watermelons out to greet the marchers in those particular incidents. That's what the watermelon means to African-Americans. They are synonymous about the other stereo typical characterizations by African-Americans by uses of monkeys and other types of symbols to denigrate and degrade the life-style and the living of 35 million people in this country. That's what the watermelon means. Now, most educated people who -- I would assume would know that meaning.

A great baseball player, Jackie Robinson in 1953 hit two homeruns and stole three bases in a game to lead the Brooklyn Dodgers into a victory over the Milwaukee Braves. A pitcher for the Milwaukee Braves

named Lou Burdett made a comment as he was leaving the stadium to Jackie Robinson which is fabled in sports law, "I guess you earned your watermelon today", and Jackie Robinson then threw a baseball at him and engaged him in a fight.

Later on, Lou Burdett said he should have known better. He knew that that statement was inappropriate; it was racist, and it was a statement that depicted a ridicule that, obviously Jackie Robinson was not going to stand for.

I think I saw that same expression on the face of Senator Waldon when he addressed this issue for the first time yesterday. That's what the watermelon means for those who are unaware or do not understand the full meaning of that terminology, and so as we go on from that understanding of what the symbol actually meant, we now have to address the context in which it was used.

It was used a few days after a mayor discontinued a 20 percent minority

insensitive -- minority and women's business incentive program by saying it was racially motivated. The mayor said that. Apparently, he did not want to include the research of over two years in the Blue Ribbon Panel that had been set up by the previous mayor to try to comply with the Clossan versus Richmond decision of the United States Supreme Court in the spring of 1990. The Patterson case, the McClean case, the AT&T case and Martin v Wilts which all which took place in an 18-month period of time pretty much obliterating the Duke versus the -- Briggs versus the Duke Power Company, a Florida decision in 1971.

In other words, what the mayor of the city of New York was trying to do was to increase the seven percent participation of minority and women businesses that existed when he came into office in 1990 without being in conflict with a Supreme Court decision. He was able in the last two years of his administration to bring the minority and women participation up to 17 percent.

Now, if the new mayor doesn't like that policy, he doesn't have to conform it but it was major Giuliani who went out of his way to characterize it as racially motivated. Maybe that's the atmosphere that allowed his deputy mayor, Mr. Dyson, to feel so comfortable continuing this discourse with the comptroller and then inevitably making the remark that was actually made. And so, just days after that, as Senator Leichter commented, we are asked to come to this chamber and confirm this nomination.

I want to suggest that Senator Markowitz is right. If an individual gives you their word that they did not understand, I think we have no other -- we have no other course than to accept it and, therefore, I forgive Deputy Mayor Dyson for that remark.

Forgiveness, I believe is actually a virtue and an attribute that is ordained to the only Al Mighty but can become the privilege of another man or another woman if requested. I forgive him but I cannot vote for this nomination because, in my opinion, the

intent is not the issue that we're really discussion here. I'm pretty sure Mrs. O'Leary's cow didn't intend to knock over a lamp and start the Chicago fire, but he did, and the result is, how are we going to put the fire out? How much more foresighted would it have been had the mayor or the Majority or even Mr. Dyson himself tabled his own nomination for a while to give us a chance to get over this particular remark? How much more foresighted would it have been for a resolution to have passed this Senate or the New York City Council condemning the remarks so at least we can divorce the individual from his remarks? Nobody suggested that. One member of this chamber did; Senator Galiber, and I think we owe him all a debt of gratitude for trying to take an action in this process to bring people together.

How much more foresighted would it have been if Mr. Dyson had met with a group of African-Americans, legislators after the February 10th reported remark about two white men running the city? Are we to conclude that

Deputy Mayor Dyson only met with the group because he had to get past the group to get his confirmation to sit on the MTA board? Why wasn't meeting held in February? That would have demonstrated some responsibility about the previous remark, so I can't be sure that the meetings were actually an out growth of a real sincere desire to atone for the statements or a highly professional politicized attempt to create damage control.

And finally, in the press conference in which Mr. Dyson and the mayor addressed the issue, there was absolutely no sensitivity demonstrated for what the meaning of the watermelon remark actually does to individuals that have to hear it, as much as I tried to describe this evening.

And so, I cannot support this nomination, but I do hope that if there is a silver lining around this dark cloud that it has brought us together and given us an opportunity to discuss this issue.

I agree with Senator Smith that

Mr. Dyson can go on from here and demonstrate the kind of sensitivity that he definitely portrayed today in his meetings and in his conversations.

We hope that this will be an immense opportunity to probably create a dialogue and an understanding among legislators and among people around this state that didn't exist before.

But finally, I just say that as we sit here in the chamber, those of us who are elected, those of us who are appointed and those of us who work for elected officials, let us not remember that on the lower frequencies of society, people are reading newspapers about a watermelon and the indignity they must feel about being associated with these kinds of remarks, and there hasn't been one administrative or governmental response to it other than saying "I'm sorry." There are too many people in this state who suffer because of these kinds of remarks and they are so serious that a mere apology is not going to be enough.

There were remedies that could have been sought and there were not. Had they be, I'm sure I could have voted for this nomination. Maybe the next time we'll think of something a little more creative to try to address an issue because somebody in unawareness or ignorance is going to offend someone else probably in too short a period of time as we speak.

Thank you, Mr. President.

THE PRESIDENT: The question occurs on the confirmation of the nominee. All those in favor say aye.

(Response of "Aye".)

SENATOR GOLD: Slow roll call has been requested.

THE PRESIDENT: Slow roll call is requested. Those who wish to have a slow roll call are evidently sufficient. The Clerk -- the Secretary will call the roll by slow roll call.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

(There was no response.)

THE SECRETARY: Senator Connor.
SENATOR CONNOR: No.
THE SECRETARY: Senator Cook.
SENATOR COOK: Yes.
THE SECRETARY: Senator Bruno.
SENATOR BRUNO: Yes.
THE SECRETARY: Senator Daly.
(There was no response.)
Senator DeFrancisco.
(There was no response.)
Senator DiCarlo.
SENATOR DiCARLO: Aye.
THE SECRETARY: Senator Dollinger -- Senator Dollinger.
SENATOR DOLLINGER: No.
THE SECRETARY: Senator Espada.
(There was no response.)
Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Galiber.
SENATOR GALIBER: No.
THE SECRETARY: Senator Gold.
SENATOR GOLD: Mr. President, I

will be very, very brief.

THE PRESIDENT: Senator Gold is recognized to explain his vote.

SENATOR GOLD: I admire the comments made today by everybody. They came from the heart, and I want to make one comment. I have my notes around here from my comments, and I noted that, and I think everyone did, that Senator Paterson was not using notes. Rarely have I heard such a statement from the heart that was that good in so many ways and as important and, Senator Paterson, I'm glad you gave that history. I think it was important and I just wanted to thank you publicly for it. I vote no.

THE PRESIDENT: Senator Gold votes no.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

(There was no response.)

Senator Hoffmann.

(There was no response.)

Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Jones.

(There was no response.)

Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

SENATOR LACK: Mr. President.

THE PRESIDENT: Senator Lack is recognized to explain his vote.

SENATOR LACK: Thank you, Mr. President.

I will try to be brief. I think prior to this evening's vote, I'm probably the only one in this chamber who has voted against Mr. Dyson, and I did so when he sought to be confirmed to be chair of the Power Authority of

the state of New York, and I did so because of a long-standing relationship that I've had with Mr. Dyson which started when I was Commissioner of Consumer Affairs of Suffolk County and he was a state Agricultural Commissioner.

When he was made Chair of -- - chair of PASNY, he was appointed by the Governor and as chair of PASNY to represent my constituents and myself to the extent that PASNY services were ever to able available for people on Long Island. I didn't then then, I wouldn't think now that Mr. PASNY should be representing my constituents.

But time and time again tonight, it has been said and do I agree with it, that Mr. Dyson, as Mayor Giuliani's appointee to the MTA, I have heard in 16 years I have been here, time and time again, members on the other side of the aisle when there's an appointment by the mayor of the city of New York that it is the mayor's appointment and that we should respect that appointment. I have followed that in the past. I have voted for several appointees of

mayors for 16 years that I have been here, that I would not vote for if they were gubernatorial appointees and if they were being appointed to serve in positions to represent my constituency that I have been elected to represent.

I will follow that consistency tonight and recognize Mr. Dyson's appointment to the MTA as the mayor's representative, and I will vote in the affirmative, somewhat reluctantly.

THE PRESIDENT: Senator Lack votes aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Nay.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Marino, aye.

Senator Markowitz.

SENATOR MARKOWITZ: Also, briefly, with the proviso of the comments that I made earlier with the hope that Mr. Dyson and the mayor will show the sensitivity necessary to all the people, regardless of the polls, to understand that it's not just the management of the city, but the quality of the management of the city, and it is a city of all, and that it can only work when everyone feels apart of the city, and hope that the vote will be a reflection on the hope that the sensitivities of concerns that I hope and pray will happen now with the full realization of the last few days and the fact that Mr. Dyson and his colleagues have heard the remarks of my colleagues.

I vote yes.

THE PRESIDENT: Senator Markowitz

votes yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, to explain my vote very briefly, Mr. President.

I wanted to make two statements to clarify my position very clearly here tonight. I voted against the prior mayor's appointee to the MTA for different reasons, so I wanted to be very clear that I'm not voting only against this mayor's appointee. I've done that in the past.

And the second point that I want to make is, I do not believe that Mr. Dyson is a racist. I take that very seriously and I don't believe that he is a racist and that is the reason he made the statements, but I do believe that the issue of opportunities for all of the people of the city of New York, especially

minorities and women to do business with the city is important, and that is why I am voting against this appointment -- this appointment.

I vote no.

THE PRESIDENT: Senator Montgomery votes no.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nolan.

(There was no response.)

Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Ohrenstein, aye.

Senator Onorato.

SENATOR ONORATO: To explain my vote, Mr. President.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: It seems like we're having a week of controversy with the nominations.

Yesterday, while we were not confirming directly a person that I did not want

to see in the City University, Chancellor Reynolds, for being very insensitive to the needs of the Italian-American community, I confirmed -- I voted to confirm the members of the board of trustees for the City University, but today I have a direct opportunity to show my displeasure with someone who made a very insensitive remark about our minority community, and I will not tolerate that and I, therefore, vote no.

THE PRESIDENT: Senator Onorato votes no.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.
SENATOR RATH: Yes.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
SENATOR SANTIAGO: No.
THE SECRETARY: Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Aye.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Solomon.
(There was no response.)
Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
(There was no response.)
Senator Stafford.
SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: No.
THE SECRETARY: Senator Trunzo.
SENATOR TRUNZO: Aye.
THE SECRETARY: Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella -- Senator Velella.
SENATOR VELELLA: Yes.
THE SECRETARY: Senator Volker, excused.
Senator Waldon.
THE PRESIDENT: Senator Waldon is recognized.
SENATOR WALDON: Thank you very much, Mr. President, to explain my vote.
Rarely if ever since I've been in this house have I seen the dignity of the debate as evidenced this evening. I've never, ever seen it so quite throughout the long period of the debate.
I want to thank everyone for their remarks. I thought it was a very high

level and sensitive display of how we really feel about a very important issue. I especially want to thank those who saw this issue the same as myself, because perhaps they walked the road and in the shoes that I have walked.

I think one of the things that happened here tonight was that we all learned a little bit about what certain insensitive remarks mean to and do to others than ourselves, and I want you to know that myself am a mere reflection of a lot of people, some who are angrier than I, some who may have experienced racism in a more intense fashion than I, and I would hope that there would be a greater sensitivity in this body to people who are not hateful, spiteful, vicious people looking to perform vendettas but just want a fair shake, just want equity, want their children to grow up like you want your children to grow up with the best opportunities, just want to be Americans, just want to be accepted. That's what this is really all about.

This thing began with discussion

on minority participation in a government which, in my opinion, has been most insensitive to black Americans, African- and Caribbean Americans and Latinos. I hope this will be a signal to this mayor to change, somehow his ways, but I hope it will also at the same time, be a signal to those of us in this room that we have an obligation to work on behalf of all of the people of the state of New York, black and white, Jew and gentile.

I vote in the negative and I thank you, Mr. President and my colleagues, for your indulgence and for your high level of debate this evening.

THE PRESIDENT: Senator Waldon votes no.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

THE PRESIDENT: Call the absentees.

THE SECRETARY: Senator Daly.

SENATOR DALY: Yes.

THE SECRETARY: Senator

DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Espada.

(There was no response.)

Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Yes.

THE SECRETARY: Senator Nolan.

(There was no response.)

Senator Solomon.

(There was no response.)

Senator Stachowski.

SENATOR STACHOWSKI: No.

THE PRESIDENT: The Secretary will report the results.

THE SECRETARY: Ayes, 37, nays 18.

THE PRESIDENT: The nominee is

confirmed.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: I don't doubt Mr. Cornell at all, I'm serious about that, but usually we read the negatives, and I think in this situation, most people would be more comfortable knowing that it's accurate and I mean no respect to our distinguished Secretary, no disrespect. I meant no disrespect.

THE PRESIDENT: Is Senator Gold asking for a detailed statement of the vote?

SENATOR GOLD: I'm not saying that. Normally I thought we -- that you read out the negatives.

THE PRESIDENT: We never read the negatives on a slow roll call or do not routinely read them on a slow roll call.

SENATOR GOLD: Well, fine. I just -

THE PRESIDENT: Only on a regular roll.

SENATOR GOLD: No, yes, no? Let

it alone.

THE PRESIDENT: The nominee is confirmed.

SENATOR PRESENT: Mr. President, we're not quite ready to proceed. We'll stand at ease for a few moments.

(Whereupon, the Senate stood at ease.)

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT SKELOS: Senator Present.

SENATOR PRESENT: I understand there is a report of standing committees at the desk.

ACTING PRESIDENT SKELOS: The Secretary will read.

SENATOR STAFFORD: Finance.

SENATOR PRESENT: Finance.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations: Member of the Workers' Compensation Board, Raymond A. Charles, Jr. of New York City, Marjorie J. Hill of Brooklyn,

Julia Jorge of the Bronx, Carmine Ruberto of Latham, Walter Shields of Williamsville, Ilene J. Slater slate, Esq. of New York City, Ferdinand Tremiti, Esq. of Oswego;

Member of the New York State Employment Relations Board: Thomas H. Hines of Loudonville;

Commissioner of the State Insurance Fund: Charles G. Moerdler, Esq. of Riverdale and Avery Neumark of New York City;

Member of the State Fire Prevention and Building Code Council: Nicholas Lomuscio and -- of Douglas Manor, Herbert R. Martin of Gloversville and Terence J. Moakley of West Nyack; also, John J. Torpey of Nyack;

Member of the Metropolitan Transportation Authority: Bert Corneby of Monroe.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT SKELOS: Senator Spano.

SENATOR PRESENT: With respect to the appointments and reappointments to the

members of the Workers' Compensation Board, as the chairman of Labor Committee, I would like to just thank the Governor's appointments who spent the last couple of days here awaiting confirmation. I apologize for the fact that you had to sit in the gallery until 3:00 o'clock in the morning for your confirmation today, but to congratulate you as well as to congratulate Tom Hines for the state Employment Relations Board. The members of the Workers' Compensation Board, Mr. President, are seated in the gallery, and I would hope that you would just offer our sincere congratulations to them.

Thank you.

ACTING PRESIDENT SKELOS: The question is on the confirmation of the nominees. All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominees are confirmed. Congratulations to all.

(Applause.)

ACTING PRESIDENT SKELOS: Senator Present.

SENATOR PRESENT: Mr. President, I believe we have a report from the Rules Committee at the desk.

ACTING PRESIDENT SKELOS: The Secretary will read.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following bills directly for third reading:

Senate Bill Number 4554-A, by Senator Spano, Local Finance Law;

8668, by Senator Saland, an act to amend the Banking Law;

8755, by Senator Skelos, General Municipal Law;

8788-A, by Senator Sears, an act to amend the General Business Law;

8807, by Senator Pataki, an act to amend the Energy Law;

8809, by Senator Trunzo, Retirement and Social Security Law;

8826-A, by Senator Johnson,

Environmental Conservation Law;

8863, by Senator Present, Public Health law;

8865, by Senator Nozzolio, proposing an amendment to the constitution in relation to registration to vote;

8874, by the Committee on Rules, Education Law;

8875, by the Committee on Rules, in relation to the continuation of education of children;

8877, by the Committee on Rules, an act in relation to effecting the health insurance benefits and contributions of retired employees;

8878, by Senator Holland, Social Services Law;

8880, by Senator Skelos, Social Services Law;

8881, by Senator Libous, Social Services Law;

8882, by Senator Holland, Social Services Law;

8896, by the Committee on Rules, Education Law;

8897, by Senator Volker, Executive Law;

8753, by Senator Hoffmann, authorizing the city of Rome to issue serial bonds;

8801, by Senator Hoffmann, authorize the city of Rome to transfer and convey the Rome Hospital and Murphy Memorial Hospital to a hospital corporation;

And 8767, by Senator Bruno, an act to amend the Tax Law. All bills reported directly to third reading.

ACTING PRESIDENT SKELOS: With no objection, all bills ordered to third reading.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT SKELOS: Mr. President.

SENATOR PRESENT: Mr. President, let's start a non-controversial calendar on Calendar Number 3, Supplemental Calendar Number

3.

ACTING PRESIDENT SKELOS: The Secretary will read.

THE SECRETARY: Supplemental Calendar Number 3, Calendar Number 1676, by Senator Spano, Senate Bill Number 4554-A, Local Finance Law.

ACTING PRESIDENT SKELOS: The bill is high. Lay it aside.

THE SECRETARY: Calendar Number 1677, by Senator Saland -

SENATOR PRESENT: Lay it aside, please.

ACTING PRESIDENT SKELOS: Lay the bill aside.

THE SECRETARY: Calendar Number 1678, by Senator Skelos, Senate Bill Number 8755, an act to amend the General Municipal Law.

ACTING PRESIDENT SKELOS: Last section.

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

ACTING PRESIDENT SKELOS: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1679, Senator Sears moves to it discharge the Committee on Rules from Assembly Bill Number 11803-B and substitute it for the identical Third Reading 1679.

ACTING PRESIDENT SKELOS: Substitution is ordered. Last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1680, Senator Pataki moves to discharge the Committee on Rules from Assembly Bill Number

8905 and substitute it for the identical Third Reading 1608.

ACTING PRESIDENT SKELOS: The substitution is ordered. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1681, by Senator Trunzo, Senate Bill Number 8809, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT SKELOS: Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1684, Senator Nozzolio moves to discharge the Committee on Rules from Assembly Bill Number 12221 and substitute it for the identical Third Reading 1684.

ACTING PRESIDENT SKELOS: The substitution is ordered. Last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1685, Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 12230 and substitute it for the identical Third Reading 1685.

ACTING PRESIDENT SKELOS: The substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, is there a message at the desk for 1685?

ACTING PRESIDENT SKELOS: There is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT SKELOS: All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

SENATOR GOLD: Last section.

THE PRESIDENT: Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

SENATOR COOK: Mr. President.

ACTING PRESIDENT SKELOS: Senator Cook.

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

ACTING PRESIDENT SKELOS: Senator Cook, to explain his vote.

SENATOR COOK: Mr. President, I want to make it clear that I'm not voting against this bill with the intent of being opposed to resolving the problems relative to Kiryas Joel, but I am procedurally concerned about the methodology that's been established.

The ability of villages to create school districts is a precedent that I'm very concerned about. Although this bill is written very tightly to try to avoid having other people follow that precedent, I am not totally comfortable with that -- that it will be for foreclosed, and for that reason, I'm voting in the negative.

ACTING PRESIDENT SKELOS: Senator Cook in the negative. Results? Were there any

other negatives?

THE SECRETARY: Those recorded in the negative on Calendar 1685 are Senators cook, Daly, DeFrancisco, Dollinger, Galiber, Jones and Wright. Ayes 56, nays 7.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1686, Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 12229 and substitute it for the identical Third Reading 1686.

ACTING PRESIDENT SKELOS: The substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity at the desk for 1686?

ACTING PRESIDENT SKELOS: There is.

SENATOR PRESENT: I move that we accept it.

ACTING PRESIDENT SKELOS: All in

favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1687, Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 12210 and substitute it for the identical Third Reading 1687.

ACTING PRESIDENT SKELOS: The substitution is ordered.

SENATOR PRESENT: Mr. President, is there a message for Calendar 1687 at the

desk?

ACTING PRESIDENT SKELOS: There is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT SKELOS: All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays 1, Senator LaValle recorded in the negative.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1688, Senator Holland moves to discharge the

Committee on Rules from Assembly Bill Number 12234 and substitute it for the identical Third Reading 1688.

ACTING PRESIDENT SKELOS: The substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity on 1688 at the desk?

ACTING PRESIDENT SKELOS: There is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT SKELOS: All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. Read the last section.

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

ACTING PRESIDENT SKELOS: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1689, Senator Skelos moves to discharge the Committee on Rules from Assembly Bill Number 12242 and substitute it for the identical Third Reading 1689.

ACTING PRESIDENT SKELOS: The substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity on 1689 at the desk?

ACTING PRESIDENT SKELOS: Yes, there is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT SKELOS: All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1690, by Senator Libous moves to discharge the Committee on Rules from Assembly Bill Number 12243 and substitute it for the identical Third Reading 1690.

ACTING PRESIDENT SKELOS: The substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity on 1690 at the desk?

ACTING PRESIDENT SKELOS: Yes, there is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT SKELOS: All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1691, Senator Holland moves to discharge the Committee on Rules from Assembly Bill Number 12244 and substitute it for the identical Third

Reading 1691.

ACTING PRESIDENT SKELOS: The substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, is there a message of necessity on 1691 at the desk?

ACTING PRESIDENT SKELOS: Yes, there is.

SENATOR PRESENT: I move that we accept that message.

ACTING PRESIDENT SKELOS: All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1694, Senator Hoffmann moves to discharge the Committee on Rules from Assembly Bill Number 12073 and substitute it for the identical Third Reading 1694.

ACTING PRESIDENT SKELOS: Home rule message is at the desk. Read the last section -- I'm sorry, the substitution is ordered. Home rule message is at the desk. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1695, Senator Hoffmann moves to discharge the

Committee on Rules from Assembly Bill Number 12120 and substitute it for the identical Third Reading 1695.

ACTING PRESIDENT SKELOS: The substitution is ordered. There's a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 1696, by Senator Bruno, Senate Bill Number 8767, an act to amend the Tax Law.

ACTING PRESIDENT SKELOS: Last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 167...

ACTING PRESIDENT SKELOS: Senator DiCarlo.

SENATOR DiCARLO: Mr. President, I would like to be recorded in the negative on Calendar Number 1684, please.

ACTING PRESIDENT SKELOS: Without objection, Senator DiCarlo in the negative. I'm sorry.

Senator Galiber.

SENATOR GALIBER: Mr. President, may I have unanimous consent to be recorded in negative on Bill 1473?

ACTING PRESIDENT SKELOS: Without objection.

Senator Maltese.

SENATOR MALTESE: Mr. President, I ask unanimous consent to be recorded in the

negative on Calendar Number 1684.

ACTING PRESIDENT SKELOS: Without objection.

Senator Present.

SENATOR PRESENT: Call up Calendar 1410.

ACTING PRESIDENT SKELOS: On the regular calendar, Calendar Number 1410, page 22.

THE SECRETARY: Page 22, Calendar Number 1410, by the Assembly Committee on Rules, Assembly Bill Number 12153, Retirement and Social Security Law.

ACTING PRESIDENT SKELOS: Last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays 4, Senators Cook, Kuhl, Saland and Wright recorded in the negative; also, Senator Seward in the negative.

ACTING PRESIDENT SKELOS: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, while we're waiting, on behalf of Senator Marino, I wish to call up his bill, Print 3827 recalled from the Assembly which is now at the desk.

ACTING PRESIDENT SKELOS: The Secretary will read.

THE SECRETARY: By Senator Marino, Senate Bill Number 3827, an act to amend the General Municipal Law.

SENATOR PRESENT: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT SKELOS: Call the roll on reconsideration.

(The Secretary called the roll in reconsideration.)

THE SECRETARY: Ayes 60.

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

ACTING PRESIDENT SKELOS: The amendments are received.

SENATOR GOLD: Mr. President, Senator -

ACTING PRESIDENT SKELOS: Senator Santiago.

SENATOR SANTIAGO: Mr. President, I would like to be excused from voting on Calendars 1689, 1690 and 1691.

ACTING PRESIDENT SKELOS: Without objection.

ACTING PRESIDENT SKELOS: Senator Present.

SENATOR PRESENT: Mr. President, call up Calendar 1666 on Calendar Number 2.

ACTING PRESIDENT SKELOS: The Secretary will read Calendar Number 1666.

THE SECRETARY: Calendar Number 1666 on Supplemental Calendar Number 2, substituted earlier by the Assembly Committee on Rules, Assembly Bill Number 11762-A.

ACTING PRESIDENT SKELOS: Senator Present.

SENATOR PRESENT: Is there a message of necessity on 1666?

ACTING PRESIDENT SKELOS: There is.

SENATOR PRESENT: I move that we accept that message.

ACTING PRESIDENT SKELOS: All in favor say aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SKELOS: Senator

Gold.

SENATOR GOLD: Thank you, sir.

On behalf of Senator Espada, with regard to Calendar Number 1689, 1690 and 1691, I ask unanimous consent that he be excused from voting on those three bills.

ACTING PRESIDENT SKELOS: Could you just repeat the -

SENATOR GOLD: Yes, Calendars 1689, 1690 and 1691.

ACTING PRESIDENT SKELOS: Without objection.

SENATOR PRESENT: Mr. President. I understand that there should be some substitutions at the desk and we could take up with those.

ACTING PRESIDENT SKELOS: Secretary will read.

THE SECRETARY: On the regular Calendar Number 552. Senator Tully moves to discharge the Committee on Rules from Assembly Bill Number 12248 and substitute it for the identical Calendar Number 552.

ACTING PRESIDENT SKELOS: Substitution ordered. Lay it aside.

THE SECRETARY: Calendar Number 646. Senator DeFrancisco moves to discharge the Committee on Rules from Assembly Bill Number 2817C and substitute it for the identical 646.

ACTING PRESIDENT SKELOS: Substitution ordered. Lay it aside.

THE SECRETARY: Senator Johnson moves to discharge the Committee on Rules from Assembly Bill Number 11933A and substitute it for the identical Third Reading 941.

ACTING PRESIDENT SKELOS: Substitution ordered. Lay it aside.

THE SECRETARY: Calendar Number 1629. Senator Volker moves to discharge the Committee on Rules from Assembly Bill Number 8001A and substitute it for the identical Third Reading 1629.

ACTING PRESIDENT SKELOS: Substitution ordered. Lay it aside.

THE SECRETARY: That's it.

ACTING PRESIDENT SKELOS: Senator

Present.

SENATOR PRESENT: I understand there is a further substitution at the desk.

ACTING PRESIDENT SKELOS: There is. Secretary will read. Can we have some order please.

THE SECRETARY: On calendar Supplemental Calendar Number 3, Calendar Number 1683. Senator Present moves to discharge the Committee on Rules from Assembly bill number 12223 and substitute it for the identical Calendar Number 1683.

ACTING PRESIDENT SKELOS: Substitution ordered.

SENATOR PRESENT: Mr. President. May we have that bill called at this time.

THE SECRETARY: We're checking on a message. I don't have it yet.

(Whereupon, there was a pause in the proceedings.)

SENATOR PRESENT: Call up Calendar 1683. I believe the message is at the desk.

ACTING PRESIDENT SKELOS: Order please.

THE SECRETARY: Calendar 1683 on Supplemental Calendar Number 3, substituted earlier, Assembly Bill Number 12223, by the Committee on Rules, an act to amend the Public Health Law.

ACTING PRESIDENT SKELOS: Senator Present.

SENATOR PRESENT: Mr. President. Is there a message of necessity at the desk?

ACTING PRESIDENT SKELOS: There is.

SENATOR PRESENT: I move that we accept it.

ACTING PRESIDENT SKELOS: All those in favor, aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

SENATOR DOLLINGER: Point of order. What number are we on?

ACTING PRESIDENT SKELOS: We're on Supplemental Calendar Number 3, page 1, Calendar Number 1683.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT SKELOS: Read the last section.

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

ACTING PRESIDENT SKELOS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT SKELOS: The bill is passed.

SENATOR PRESENT: Mr. President. I think we got to go back to that at ease stage again. The Senate will stand at ease.

ACTING PRESIDENT SKELOS: The Senate will stand at ease.

(Whereupon, at 3:45 a.m., Senate was at ease.)

(Whereupon, at 4:15 a.m., Senate reconvened, Senator Farley was in the chair.)

SENATOR PRESENT: Mr. President. Will you recognize Senator Libous.

ACTING PRESIDENT FARLEY: Senator Libous.

SENATOR LIBOUS: Mr. President. I have a privileged resolution that I would like to offer up and ask that the title be read please.

ACTING PRESIDENT FARLEY: Senator Libous' resolution.

THE SECRETARY: Legislative resolution by Senators Libous and Nozzolio calling for increased public accessibility to legislative information via computer networks.

ACTING PRESIDENT FARLEY: Would you like to speak on the resolution?

SENATOR LIBOUS: If I may, sir.

ACTING PRESIDENT FARLEY: You certainly may.

SENATOR LIBOUS: Thank you, Mr. President here we are at 4:15 a.m., and we are offering up a resolution to open up government.

Basically what this resolution does is it says that the Senate and Assembly together have worked out an agreement to put information online on computer line through the Internet system so that citizens of New York State have access to its government, and they can sit home at their computer terminal and through Internet be able to get information on resolutions that are being offered in the Senate, legislation, the status of bills.

Mr. President. There's a lot of noise here.

ACTING PRESIDENT FARLEY: Yes, your point is well-taken. Please hold down the conversations, if you would please so we can hear Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President, because that is a very historic moment for the State Senate.

Other information that would be

made available, obviously, is home rule messages and Consolidated Laws, Selected Unconsolidated Laws, the Constitution of the State of New York. All this information is going to be made available right at the computer terminal through their own fingertips, and they can get this information.

The importance of this resolution is that this is one of the first times that we are making state government, the bills that we pass here in the Legislature, open and accessible to the people of this state.

And Internet is a system that many people are on and has worked out very well as other systems have, such as Compuserve and those others.

So, Mr. President, this resolution is going to bring openness and accessibility of the State Senate, of government, to the people of New York State, and I ask for its adoption.

ACTING PRESIDENT FARLEY: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President. On the resolution.

Mr. President. My colleagues.

ACTING PRESIDENT FARLEY: Yes, please speak on it.

SENATOR NOZZOLIO: The hour is late. I will condense my comments to echo those of Senator Libous, who himself is to be congratulated for his efforts in putting together a team that pushed placement of legislative records, as described, into the fast lane of the information highway.

We have now citizens who will be able to access the proceedings of this house and the Assembly and will have a better grasp of those issues debated before our state representatives.

Our democracy is strengthened when people have easy access to information about the operations of state government. That's the sum and substance of this resolution.

I thank Senator Libous and Senator Marino for helping to put it into

fruition, and I move the resolution.

ACTING PRESIDENT FARLEY: On the resolution.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. On the resolution.

I commend both Senator Libous and Senator Nozzolio for pushing this idea forward. I think it's a good one. I think it will continue one of the trends that we have already produced some historic pieces of legislation in opening up the voting process. We will open up additional information.

I have only two cautions about the resolution. I think there's one other detail that should be included in the directive in the resolution, and that is, to include the votes of members of both houses on bills that appear before them. I noticed in my brief reading of it that that wasn't included.

And the other thing, my concern is that the interactive nature of this tool if it becomes harnessed that we simply extend the ability to harness that system to both sides of the aisle so we don't run into a problem where some day Senator Dollinger says, "I've got to go into the computer banks to find out whether the Majority is using this tool for something other than entirely a government purpose," and we appoint a task force to go and figure out whether it is being used for some other than purely government purpose.

If we can avoid that and simply make the availability of this system which I think holds great promise for our ability to communicate with our constituents and to react to our constituents and gain information and data from them that may influence the choices and make better choices in this room, it just seems to me that we ought to do that for everybody in this state and make sure that the system and its benefits are available to us all.

ACTING PRESIDENT FARLEY: Senator

Gold.

SENATOR GOLD: Mr. President. Firstly, I know that this came over here and we have been reading it very quickly and, Senator Dollinger, I think that your suggestion on the voter information is a good one, but I think that is in here. There is one line that says voter information for final passage on bills. So I think that that is in. But in all fairness, at 20 after 4:00, you get it in a minute, it could have been missed.

My comment is really a simple one, and I'm not going to start a fight at this time of night. Actually, to tell you the truth, after a long night I found it funny more than anything. We have been fighting this year led by the -- our chairman, Senator Leichter and by Senator Dollinger and Jones and Hoffmann and others to open up information about the Legislature. And it's funny, I guess, if you look for a dictionary definition of information, information I guess can be anything. I don't think the public cry for information was really

daily bills and the text of bills. If this is supposed to be the answer to opening up our books and records and telling taxpayers where we are spending their money and telling taxpayers what we're doing with mailings and telling taxpayers how we're staffing and how we're running the offices, I think it's laughable.

I'll support it because it can't do any harm. It's chicken soup. But if anybody is up at 20 after 4:00 o'clock in the morning and wants to play with their computer, they can now read the Constitution of the State of New York, which I'm sure they all will do rather than watching cable television.

ACTING PRESIDENT FARLEY: Senator Nozzolio.

SENATOR NOZZOLIO: If I may, Mr. President, on the resolution in response to my colleague Gold's comments, Manny, I hope that your cynicism is stretched by the hour and not by the fact. You can brag all you want about how you fight for reform. Well, you do it your way and we can do it our way, and our way has

produced a result here. And whether or not you wish to acknowledge that result is your right, but to denigrate the information that we're talking about in saying -- we're not saying it's the only step. We're saying it's the first step. And that for you to belittle it in that manner, I think bespeaks not really of an analysis but much for the fatigue that I'm sure we all are exhibiting tonight. I think if you looked at it after some rest, you'd realize that it was a good first step.

SENATOR GOLD: Senator yield to a question?

ACTING PRESIDENT FARLEY: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Certainly.

SENATOR GOLD: Senator Nozzolio, for openers, can you tell us how much this is going to cost to have this all set up.

SENATOR NOZZOLIO: The answer is that it's already set up, that the cost to the taxpayers will be virtually nil, that the information is already available. It's in our

computers now, that that information has been placed there as a result of budgets past that have put it into computer-access form, and that it will cost the user no more than the cost of a phone call, and in many cases can be accessed through library systems and the like.

SENATOR GOLD: Will Senator yield to one more question?

SENATOR NOZZOLIO: One more question, yes.

SENATOR GOLD: Okay. Senator, the first item here of information, daily bill and resolution introduction. Now, that information is already available to the public on an ongoing basis, isn't that true.

SENATOR NOZZOLIO: For $200 an hour, Senator, yes, it is available. It is available to the lobbyists who wish to pay for it. It's not available to the citizens who don't have that type of funds and who can't afford that type of information. So, yes, Senator, it is available; but because of this resolution, it's going to be available not just

to the lobbyists, not just to the professionals but to the average citizen.

SENATOR GOLD: Senator, it says here the text of bills. Aren't the text of bills available to every citizen just by walking up to the window of the document room?

SENATOR NOZZOLIO: Is that a question, Senator?

SENATOR GOLD: Yes.

SENATOR NOZZOLIO: Would you repeat it?

SENATOR GOLD: I will be glad to. It says "B. The text of bills and resolutions in the current session." Aren't those available to any member of the public just by walking up to the window in the document room?

SENATOR NOZZOLIO: Certainly, Senator. However, my constituency lives two and a half hours away, on a fast ride, from the documents room. Yours probably does, too. Now that ride is less than two and a half minutes to the most available computer as the result of

this resolution.

SENATOR GOLD: Thank you very much.

Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: I think that Senator Nozzolio missed the point entirely, and the point is very simply that we are not opposed to the concept of making information generally available for those of our constituents who want to see the text and do it through a computer network. In my humble opinion, sir, that is going to be a miniscule number of people.

Most people that I know of rely upon the Gus Blivens of the world to write and tell them what's going on in Albany, what the bills are about. And, certainly, Mr. Bliven has complete access to the document room and to the other information.

But for the sake of argument, if those very distinguished people in Syracuse want to know what you're doing with their money, this

doesn't help too much. And certainly Mr. Bliven and others know that that is the real information and that is the real openness that we have been seeking in this legislative process.

There is nothing in your computer information, Senator, that's going to give any new light on what is happening within the Legislature. Yes, if there is a student or someone around the state that wants to get some specific text, it certainly does make it easier. Everybody does not have their own set of Consolidated Laws and a Constitution in the house, and I think that that is all very good, and I'm glad we're doing that.

But let's not tell the people this is a reform package; this is opening up information. The information that should be opened up is information available to the public and to the press so they can scrutinize what we do, and this doesn't even begin to touch it.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator

Leichter.

SENATOR LEICHTER: Mr. President. I'm sorry I missed the beginning of this interesting thing. Senator Nozzolio, I was going to ask you to yield.

SENATOR NOZZOLIO: I'm sorry you missed the beginning, too.

SENATOR LEICHTER: Excuse me?

SENATOR NOZZOLIO: Senator Libous.

SENATOR LEICHTER: Would you be kind enough to yield.

SENATOR LIBOUS: I'm the sponsor.

ACTING PRESIDENT FARLEY: Senator Libous is the sponsor of the resolution.

SENATOR LEICHTER: Oh, I'm sorry. I apologize.

SENATOR LIBOUS: I would be more than happy to, though, yes, sir.

SENATOR LEICHTER: He thinks he ought to apologize. No, no.

But I'm sorry I missed the beginning of this because this -- and, you know,

I understand the best things are left for last, so we had to wait the whole session to get this really break-through proposal.

But as I look through this information you want to make available, Senator, I wanted to ask you, would we also be willing to make available to the public how much each member is mailing out and the cost of that and what public money is going into that? How about putting that onto the computer?

SENATOR LIBOUS: Senator, the resolution is quite explanatory. This was worked out between both houses, and basically the information that is on here is basically the same information that is offered in the state of California and some of the other states that are presently on the Internet system. And at least for the present time, this resolution is going to deal with opening up this portion of information in state government to people, taxpayers, people at home who have Internet on their home computer.

SENATOR LEICHTER: Senator, if

you will continue to yield.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: How about giving people -- a lot of this information, as Senator Gold properly pointed out, is available not only by going to the desk, there is a 1-800 number, and you can call and you can get that. I think the public would like to know how their money is being spent.

Wouldn't it be wonderful, you go to a computer and however that works -- I'm computer illiterate, so I don't know and I'm imagining, and I guess you press "Libous," L-i-b-o-u-s, and you say "mailings," and it flashes out "840,000 pieces of mail" or something like that, and somebody would see. I mean isn't that something we ought to let the taxpayers know about? Wouldn't that be useful? I mean to let them know on Consolidated Laws, you know, that's...

ACTING PRESIDENT FARLEY: Senator Libous.

SENATOR LIBOUS: Let me reiterate what's in this resolution. There are about 15,000 Internet users in the United States, several thousand in the State of New York. They are not able to be here tonight in Albany at 4:30 a.m., but maybe tomorrow morning they would like to see exactly what we passed, how we voted on what we passed, and they can do that through their computer access network through Internet. They can't do that right now. They don't have access to that right now. But this will allow that when we go online January 1 of 1995.

So that kind of information, Mr. President, to me is very important to the taxpayers, and I know that Senator Leichter would like to go on and provide all kinds of information. But, Senator, I see this as a major first step. We have many folks supporting this and the Internet system is going to provide this information, and I think that it's a very historic step for New York State.

SENATOR LEICHTER: Well, Senator, let me just -

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: On the resolution.

ACTING PRESIDENT FARLEY: On the resolution. I, frankly, don't think it is a very significant step. What people are always interested in how is my money being spent. That's what we ought to tell them. They would love to know, Senator, and I can see them running to their computers.

I don't believe if this system were in place that tomorrow morning people would be lining up at the library at 9:00 o'clock, "Gee, I would like to know what the Legislature was doing," and maybe it's just as well if they saw what we did.

But, Senator, I would suspect there would be quite a lot of users if they knew they could get the information as to how their money is being spent. I think that would be meaningful, and that's what we've asked you people.

So to come and forward and say "This is open government," this isn't open government. Open government is giving people information that is important to them, that discloses vital activities of government -- and nothing is more vital than how money is being spent -- and, indeed, information that you try to keep secret from the public, from other members of the Legislature, and so on.

So when you do that, Senator, that would be something worth doing on the eve of July 4th, because that would really be an Independence Day act.

Thank you.

SENATOR LIBOUS: Mr. President. In the spirit of open government, I would like to open this up to anyone who would like to be a co-sponsor on this resolution.

ACTING PRESIDENT FARLEY: Let's adopt the resolution. The resolution is open to anyone. It's up to the leaders how they wanted that to be. Approach the desk if you want to be on the resolution.

On the resolution, all those in favor, aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

Sounds like it's been adopted.

Senator Present.

SENATOR PRESENT: Mr. President. Can we take up Calendar 392 on our first calendar.

ACTING PRESIDENT FARLEY: 392 on Calendar Number 1.

THE SECRETARY: On page 6 of the regular calendar, Calendar Number 392, by Member of the Assembly Weisenberg, Assembly Bill Number 9806A, Criminal Procedure Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: Oh, no, wait a minute.

ACTING PRESIDENT FARLEY: All right.

SENATOR GOLD: Yes, all right.

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 3. Senators Galiber, Gold and Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Can we take up Calendar 600 in our first calendar.

ACTING PRESIDENT FARLEY: 600. Secretary will read it.

THE SECRETARY: Calendar Number -- on page 9, Calendar Number 600, by the Assembly Committee on Rules, Assembly Bill Number 12112, an act to amend the Insurance Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: 646.

ACTING PRESIDENT FARLEY: 646.

THE SECRETARY: Calendar Number 646, substituted earlier, by Member of the Assembly Robach, Assembly Bill Number 2817C, an act to amend the Penal Law and the General Municipal Law in relation to raffles.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Is there a message of necessity at the desk?

ACTING PRESIDENT FARLEY: There is.

SENATOR PRESENT: I move we

accept the message.

ACTING PRESIDENT FARLEY: All in favor of accepting the message of necessity, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator DeFrancisco.

SENATOR DeFRANCISCO: Earlier this year or late last year -- I've lost track of time at this moment, but there was a raffle that was to be held for the -- a raffle of a car in Syracuse by Vera House, a group that raises money to assist battered women, much the same as many of these raffles have been going on throughout the state over the years, and what happened was someone complained to the Attorney General's office and the raffle had to be called back and the money had to be returned.

In doing research, I found that this has happened in other areas of the state, and there were many bills that were floating around over time. What I did was put together all of the bills on this subject and ran them by the Racing and Wagering Board, as well as the Attorney General, to make sure that they complied with all laws and that there would be reporting requirements that would assure that there would be no criminal activity involved in it, and this is the product of the work, and I do have a letter of support from the Attorney General, and we did get the consent or at least the affirmance of the language from the Racing and Wagering Board, and it's a bill that we drafted, although the Assembly passed it before we did.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Senator, I'm trying to find a copy of the bill. I don't know whether it was distributed or what, but I can't

seem to find a copy. My notes indicate -- well, let me ask you. Under current law, what is the limit that you can have for a raffle prize?

SENATOR DeFRANCISCO: To answer your question, I believe it's in the black book has the bill in it. It's an early bill. It was out in one of the early calendars, I think.

I'm sorry. What was the question?

SENATOR GOLD: Under existing law, what is the maximum amount of a raffle prize?

SENATOR DeFRANCISCO: Under existing law, technically you can't do a raffle because it's been interpreted as a violation of the provision in the Constitution against lotteries. And although raffles take place all the time in church functions and not-for-profit organizations, technically, they are not legal.

The Attorney General's Office and the D.A.s offices for years have been winking at these things and haven't been enforcing them. And, quite frankly, when a student sells a

raffle ticket or one of you had purchased a raffle ticket both individuals would have been technically violating the law.

SENATOR GOLD: Senator, my understanding is that in order to have any kind of gambling in this state, we have to have it by constitutional fiat. Isn't that true?

SENATOR DeFRANCISCO: Well, I don't know if it's a fiat.

SENATOR GOLD: I mean the Constitution, as I understand it, bars gambling except as specifically set forth. And my question is does the Constitution allow raffles?

SENATOR DeFRANCISCO: Well, the constitution prohibits lotteries, and that was one of the legal issues that we had to overcome, whether or not there is a difference between raffles and lotteries. And that's precisely why we sought and obtained, which is sort of unusual, a letter of support from the Attorney General's Office indicating that they have reviewed the bill and that they believe that it

it follows -- that it is sufficient and does not require a constitutional amendment.

SENATOR GOLD: Senator, the other question I have is, the raffle shall have no single prize -- let me see -- 50,000 except an organization -- single prize up to 100,000.

We are talking about authorizing $100,000 raffles?

SENATOR DeFRANCISCO: My original bill was $25,000 to take into accounts the raffles of vehicles -

SENATOR GOLD: Of cars.

SENATOR DeFRANCISCO: -- which occurs all the time.

SENATOR GOLD: Yes.

SENATOR DeFRANCISCO: Unfor tunately that wasn't the final version after negotiating it with the Assembly. They wanted a higher prize, and that's where it got to the $50,000, and the aggregate of $100,000 for the entire year. There are reporting requirements similar to the reporting requirements that are now in effect for Bingos or other activities

that are currently legal and operating in the State of New York, and those reporting requirements were continued on with this particular bill.

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 56. Nays 4. Senators Cook, Padavan, Pataki and Tully recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Calendar 644.

ACTING PRESIDENT FARLEY: 644. The Secretary will read.

THE SECRETARY: Calendar Number 644, by Member of the Assembly Weinstein, Assembly Bill Number 7151, Criminal Procedure

Law and the Family Court Act, on page 10 of the regular calendar.

SENATOR LEICHTER: 644.

ACTING PRESIDENT FARLEY: I'm sorry. 644 is not on -

SENATOR GOLD: Mr. President. Mr. President. I can be helpful. I can.

ACTING PRESIDENT FARLEY: Senator Gold, be helpful.

SENATOR GOLD: Yes. Mr. President. As we know, we have a calendar that's printed every day and then we get an active list from the Majority Leader. This bill was on the calendar, was not on the original active list.

But my notes indicate that there are memos in support and also a memorandum in opposition, and I would ask that the bill be held temporarily so we can get our file on this and see what those memorandums are.

ACTING PRESIDENT FARLEY: Senator Levy, what's your pleasure?

SENATOR LEVY: Would you like me

to explain it in the meantime?

SENATOR GOLD: No, I would like to read the memos myself.

SENATOR PRESENT: Lay it aside temporarily.

Calendar 813.

ACTING PRESIDENT FARLEY: 813. Secretary will read it.

THE SECRETARY: On page 14, Calendar Number 813, by Member of the Assembly John, Assembly Bill Number 10571A, an act to amend the County 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: Those recorded in the negative on Calendar Number 813 are Senators Cook, Farley, Kuhl, Nozzolio, Present, Saland and Wright. Ayes 53. Nays 7. Also Senator

Rath, also Senator Daly.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Ayes 51. Nays 9.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: Calendar 867.

ACTING PRESIDENT FARLEY: 867. Secretary will read it.

THE SECRETARY: Calendar Number 867, by Member of the Assembly Weinstein, Assembly Bill Number 2153A, Civil Service 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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: Calendar 941.

ACTING PRESIDENT FARLEY: 941. The Secretary will read that.

THE SECRETARY: Calendar Number 941, substituted earlier, by the Assembly Committee on Rules, Assembly Bill Number 11933A, Environmental Conservation Law.

SENATOR PRESENT: Is there a message of necessity at the desk?

ACTING PRESIDENT FARLEY: There is a message of necessity.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT FARLEY: All those in favor of accepting the message, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

SENATOR DOLLINGER: Mr. President. Can we have the calendar number, please. I apologize.

THE SECRETARY: Calendar Number

941, in the original calendar of the day, page 16.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: Calendar 1064.

ACTING PRESIDENT FARLEY: 1064.

THE SECRETARY: Calendar Number 1064, by Senator Rath, Senate Bill Number 6730A, an act to amend the Education 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 60.

ACTING PRESIDENT FARLEY: That bill is passed.

SENATOR PRESENT: Calendar 1629.

ACTING PRESIDENT FARLEY: 1629.

THE SECRETARY: Secretary will read.

THE SECRETARY: Supplemental Calendar Number 1, Calendar 1629, by the Assembly Committee on Rules, substituted earlier, Assembly Bill Number 8001A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: Return to Calendar 644.

ACTING PRESIDENT FARLEY: 644. That's the original calendar, regular calendar.

THE SECRETARY: On page 10 of the regular calendar, Calendar Number 644, by member of the Assembly Weinstein, Assembly Bill Number 7151, Criminal Procedure Law.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Would Senator Levy yield to a question?

SENATOR LEVY: Yes, certainly.

ACTING PRESIDENT FARLEY: Yes, he will.

SENATOR GOLD: Senator Levy, why don't you just in a sentence tell everybody what the bill is.

SENATOR LEVY: Yes. There is an omission in the law as it relates to orders of examination. Psychologists are permitted to succeed orders of examination in all instances

but are omitted in juvenile delinquency proceedings. This bill cures that omission.

SENATOR GOLD: All right. Put a different way, Senator, it's not that they were omitted. The answer is they are permitted where the people involved are adults. Is that correct.

SENATOR LEVY: Yes.

SENATOR GOLD: That's been in the law for about five years?

SENATOR LEVY: Yes.

SENATOR GOLD: And this would extend the law to people who are not adults?

SENATOR LEVY: Yes.

SENATOR GOLD: Thank you.

I would just like to point out that New York State Psychological Association supports this and DC 37 supports it, and the medical society has filed in opposition.

SENATOR LEVY: Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR DOLLINGER: Mr.

President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Levy yield just to one question, very simple, to make sure I understand it at this early hour. This would allow the psychologists to do it for children, to do the examination?

SENATOR LEVY: In juvenile delinquency proceedings, in JD proceedings.

SENATOR DOLLINGER: In juvenile delinquency proceedings.

SENATOR LEVY: Yes.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 644 are Senators Farley, Kuhl, Larkin, Nozzolio, Saland, Spano, Wright, also Senator Present. Ayes 52. Nays 8.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: Calendar 1028.

ACTING PRESIDENT FARLEY: 1028.

THE SECRETARY: Page 18 on the regular calendar of today, Calendar Number 1028, by Member of the Assembly Nolan, Assembly Bill Number 2235B, Public Authorities Law.

SENATOR LEVY: Last section.

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 60.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President. Can I have unanimous consent to be recorded in the negative on Calendar 644.

ACTING PRESIDENT FARLEY: 644, without objection.

Senator Present.

SENATOR PRESENT: Mr. President. There being no further business, I move that we adjourn until 5:00 a.m.

ACTING PRESIDENT FARLEY: Senate stands adjourned until 5:00 a.m. I adjourn the session.

(Whereupon, at 4:58 a.m., Senate adjourned.)