ALBANY, NEW YORK

March 1, 1995

3:05 p.m.

REGULAR SESSION

LIEUTENANT-GOVERNOR BETSY McCAUGHEY, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join me in the Pledge of Allegiance.

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

Let us bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Tuesday, February 28th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair. The prayer by the Reverend Peter Young of Bolton Landing. The Journal of Monday, February 28th, was read and approved. On motion, the Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno, are you ready for the calendar?

SENATOR BRUNO: Madam President, we are now ready for the non-controversial calendar.

THE PRESIDENT: The Secretary will read, please.

THE SECRETARY: Calendar Number 32, by Senator Velella, Senate 22-A, an act to amend the Insurance Law, in relation to the reduction of homeowners insurance.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of January.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 45, by Senator Stafford, Senate 626, an act relating to state aid to the North Warren Central School District.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: There is a local fiscal impact note at the desk. Read the last section of that, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: The results.

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 61, by Senator Kuhl, Senate 658-A, an act to amend the Agriculture -

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 82, by Senator Goodman, Senate 908, an act to amend the General Business Law, in relation to the civil penalty for certain unlawful acts.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 83, by Senator Farley, Senate 1278, an act to

amend the Real Property Tax Law, in relation to the exemption from taxation for persons 65 years of age or over.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: The results.

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Cook, Senate 1303, an act to amend the Education Law, in relation to definition of non-residents of a district.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of September.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator LaValle, Senate 1918, an act to amend the Education Law and the Public Officers Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 105, by Senator LaValle -

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 119, by Senator Skelos, Senate 1937-A, an act to amend Chapter 879 of the Laws of 1936, providing

for an alternative form of government.

THE PRESIDENT: There is a home rule message at the desk. Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar 133, by Senator LaValle, Senate 2322, an act to amend the Environmental Conservation Law.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is

passed.

Senator Bruno, that completes the non-controversial reading of the calendar.

SENATOR BRUNO: Madam President, can we now take up the controversial calendar?

THE PRESIDENT: The Secretary will read, please.

THE SECRETARY: On page number 5, Calendar Number 61, by Senator Kuhl, Senate Print 658-A, an act to amend the Agriculture and Markets Law and the Environmental Conservation Law, in relation to the siting of solid waste management.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: An explanation is requested, Senator Kuhl.

SENATOR KUHL: Yes, Madam President.

This is an outstanding piece of legislation. It's not only supported by myself but also Senators Babbush, Hoffmann, Stachowski and Waldon. This is a -- bill would essentially

prohibit the use of eminent domain proceedings in the siting of a landfill site in an agricultural district area.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Would Senator Kuhl yield for a question?

SENATOR KUHL: Absolutely.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Absolutely.

SENATOR PATERSON: Senator Kuhl, my question just simply is, do you think that we have the right to restrict one quarter of the land from being used as a landfill when actually DEC has their own regulations on this?

SENATOR KUHL: Senator Paterson, this state back in about 1971 adopted a - essentially a premise that said, we thought the occupation of agriculture was a very important occupation in this state, and that we needed to do everything that we possibly could to try to help that industry in the state, and we created what was called the Ag' Districts Law.

Essentially what that law did was

that it set out agricultural production property as being assessed on a different value, a different way, to try to allow that industry to thrive and not to threaten it with over taxation, over-regulation.

What we have found in the course of 20-some-odd years now having utilized that law is that agriculture is still under a great deal of threat in this state, and there is what we call a critical mass in many of the upstate communities, the "critical mass" being the consolidation of various pieces of property that are committed to agricultural use and if, in fact, you start to allow that to be diluted, you disrupt what is called the "critical mass" and you allow for essentially the erosion of this industry, and it breaks down the very fabric with which many of our communities in the upstate area are held together.

This bill essentially says that we think agriculture is so important that we will not allow a municipality to come into an agricultural area and say, "We're going to site

a land recovery or a solid waste facility", I should say, "in a particular area." This does not preclude the voluntary agreement between a landowner and a municipality to sell. What it does do is preclude the involuntary taking of a farmer's land for solid waste recovery facilities.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I just had a concern that the bill was mandating local governments which is something that we often try to avoid, but the answer was quite satisfactory.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Would the sponsor yield to just one quick question? Senator, are you familiar with the -

SENATOR KUHL: I would be happy to yield.

THE PRESIDENT: Senator Kuhl.

SENATOR DOLLINGER: Thank you.

SENATOR KUHL: I would be happy

to yield.

SENATOR DOLLINGER: Through you, Madam President. Are you familiar with the circumstances of the Monroe County siting of the solid waste landfill in the town of Riga?

SENATOR KUHL: No, I'm not, Senator.

SENATOR DOLLINGER: Okay. Thank you. I've gotten the answer I need.

SENATOR MARCHI: Madam -

THE PRESIDENT: Read the last section, please.

Oh, I'm sorry, Senator Marchi. I didn't see you.

SENATOR MARCHI: Madam President, had I been as prescient as Senator Kuhl back in the '60s, I guess -- I had a thriving farming community, but we didn't engage in these notions, and today we have the dubious distinction of being the host to over one half of all the solid waste in the state of New York being dumped on that land, so I congratulate the Senator and apologize to the people of Staten

Island and my colleagues that I didn't have his prescience at that time.

THE PRESIDENT: Thank you.

Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Results.

SENATOR SEWARD: Madam President.

THE PRESIDENT: Oh, Senator Seward.

SENATOR SEWARD: Yes, Madam President. Thank you.

To explain my vote. I certainly congratulate Senator Kuhl on this legislation and support it in concept wholeheartedly. However, I have a couple of local situations where solid waste authorities have actually expended some monies and wish to keep the option open to site a landfill, at least the option open to site a landfill in an area that may, in

fact, be affected by this legislation.

So in their name, I would like to be recorded in the negative on this bill.

THE PRESIDENT: Thank you.

Continue.

SENATOR LEICHTER: Madam President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Yeah. I also would like to congratulate Senator Kuhl for the many good things he does, but not necessarily this bill.

The problem with this bill is that to make a blanket prohibition on landfills in agricultural areas is -- it's sort of like trying to wish landfills away, trying to wish solid waste away. I mean, Senator Marchi's right, it would be wonderful if we didn't have any solid waste, but you want to put in a bill prohibiting the creation of any solid waste, well, maybe we'll consider it, but the fact is that we're a society that obviously creates an awful lot of garbage. It has to be disposed of

somewhere somehow.

Now, there may be appropriate places, inappropriate places, but to have a blanket prohibition against all agricultural land, I don't think it makes sense. I think you're going to hamstring your communities. I can also think of maybe certain areas of the state where you wouldn't want to have it, you might say in scenic areas; you might not want to have it in certain suburban areas; maybe it shouldn't be in urban areas like Senator Marchi's.

The fact of the matter is that we need places to dispose of our solid waste, and to do it in this blanket fashion by legislation, I think, is a mistake.

Madam President, I vote in the negative.

THE PRESIDENT: Thank you.

Senator Levy.

SENATOR LEVY: Thank you.

THE PRESIDENT: Results, please.

THE SECRETARY: Those recorded in

the negative on Senate Print 658-A are Senators Holland, Leichter, Levy and Seward. Aye... also Senator Abate. Ayes 35, nays 5.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator LaValle, Senate Print 1918, an act to amend the Education Law and the Public Officers Law, in relation to the Board of Regents.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Explanation.

SENATOR LAVALLE: Mr. President, for purposes -- because both Calendar 104 and 105 have been laid aside, for purposes of debate, discussion, explanation, I would like to merge those two, Calendar Number 104 and 105, for debate purposes.

This year we will be considering four appointments to the Board of Regents or one quarter of the membership of that board.

As I have said before, the Board

of Regents is one of the oldest institutions created by our state Constitution and has existed for certainly more than 200 years and it's had over the course many, many distinguished citizens of our state serve on that board.

I have had probably a very rare privilege to have served in the capacity as the Executive Director of our Senate Education Committee, and a member of this body and served in the capacity where I have sponsored much legislation and been part of many of the deliberations for more than a period of 20 years.

I mention that because, in 1972, as the Director of the Senate Education Committee, we began a process for the first time in selecting Regents where members, prospective candidates, had to come before the Senate Education Committee where the members, for the first time, actually asked questions of the Regents.

Prior to that point in time,

members were selected or anointed in some sort of mysterious way, and so we began a process where the committees actually were open. We had open committee meetings. I know Senator Marchi and Senator Present and others remember a time when the committee meetings were not open, where lobbyists and other interested onlookers could take place, but certainly for the Board of Regents they never came before the body. They may have met privately with the Majority Leader and the Speaker, but those meetings were out - out of reach of anyone who really was interested in these matters.

Since the early '70s, the process has evolved and, as a matter of fact, a member of our body, Senator Stavisky, in his role as Chairman of the Assembly Education Committee, said that we should advertise and provide for some notice for the citizenry of our state who were interested in serving on the Board of Regents to allow -- be allowed to apply and come before the respective committees, the Senate Education and Higher Education Committees and

the Assembly Education and Higher Education Committees, and that worked a little better for some time. We had notification and we had interest in committee meetings.

Now, I mention all this for the record because, in more recent years, this - what turned out with good intentions has turned out to provide almost a circus-like atmosphere and one that has not provided for either the candidate who is interested in a seat on the Board of Regents or the members an opportunity to provide for a civil process to ensure that we are getting the best and brightest to serve on the policy-making board for our education system as well as for the professions and higher education. The reach of the Regents is enormous, and I will talk about that also in a minute.

The time period that we select the Regents begins in the month of March when we are doing the state budget. So while we are undertaking an enormous task on restructuring the way we deliver services to the citizens of

New York State, we are considering one quarter of the Board of Regents and some 71 individuals have applied at a time when we're doing the budget, we're trying to pick Regents, and I would dare say that peoples' heads -- we, as Legislators, are organized; state of the state, the budget process, something in between as we move towards closure and then the end of the session, but one of the busiest times in our lives, as Legislators, we are selecting four very important people that will control the destiny of the children of our state, as well as the quality of education, expenditures of education, and on, and on, and on.

And so, last year for the first time, I had provided a reform, a package of proposals to reform the process in the way we select Regents, the time that we select those Regents and how they actually perform their duties, and I would just like to -- in our joint session -- and I'm not going to read the whole thing, but just before I get into some of the specific provisions of the bill, I just wanted

to read briefly what I talked about a year ago in joint session.

"I am disappointed with the course of the board and its administrative arm, the state Education Department, that both the Department and the Chancellor have taken during the last two years that the Chancellor has served. I believe that as Chancellor he should be held to a higher standard as his term ends and he seeks to continue to serve the board.

"As Chancellor, he is Chairman of the board and, as we all know in the corporate world, the Chairman of the board is held responsible for the failure of the corporation. If the corporation is failing in its mission, it's up to the Chairman of the board to put it back on course. If he fails to do so, he should step down," and indeed, this year, we have seen that the Chancellor, Chancellor Carballada, has indicated that he is -- he is stepping down.

"In the case of Board of Regents, all we have seen is continued deterioration in the quality of leadership. The

board has awesome -- awesome responsibility for all educational policy in our great state from kindergarten programs to the highest professional degree and beyond. Instead of focusing on relevant education issues and setting sound educational policy, the board has drifted, spending an inordinate amount of time on too many extraneous issues. It has spent a disproportionate amount of time on an enormous concept called 'The New Compact for Learning.' The compact has taken on a life of its own. I'm afraid it has devoured both the process and its designers. For the Board of Regents and the Department of Education, the compact, I predict, will ultimately be the monster -- be what the monster was to Dr. Frankenstein'.

Little did I realize a year ago when I talked about the process and the Chancellor who has stepped down, the new compact for learning did devour its creator in that the Commissioner of Education has said he has stepped down. I believe our new Governor has sent a very strong message to the Department and

to the Regents that we need to put the house in order so that it works properly for all of the citizens and certainly for the children of this state.

The one unfortunate thing when I finished reading -- and many of you will remember who were part of this body last year, Assemblyman Angelo DelToro who was the Chair of the Assembly Education Committee, rose and said, "Senator LaValle, you're right, we need reform, and I will tell you one thing. I will work with you on reforms because we need to reform the process and what the Board of Regents does." As we all know, it is unfortunate that Assemblyman DelToro was not here to be able to be part of that reform movement.

Specifically, on the bill, and to show you how outdated so much that we have in law, today, the quorum requirements that were put in place in 1947 still exist and six members of the Board of Regents could select under our present law a Chancellor of the Board of Regents. And so simple things like that, many

of you -- and I have said this before, if you called to find a transcript, we do not have in law or it would seem to be common sense that the Board of Regents would have a transcript of their proceedings. They do not. And so we talk about simple things like you should have a transcript and it should be available under our freedom of information laws for all the citizens to find out what was the discussion; what was the debate on any particular issue.

Governor Pataki, in his state-of-the-state message, said that the Board of Regents was not connected, and the thought occurred that, how do we better connect the Board of Regents? How do we create a process that would allow all the educational stakeholders to have early on input into the process, so from the bottom to the top, and so in this legislation, we create an Educational Advisory Committee in each judicial district. We allow for the appointment in each judicial district of all the stakeholders, the PTA -- the PTAs, the teachers, the administrators, the

board members, and then we also give a little over when we have language in here that says, "and from time to time, whatever other group is involved in the education-making process should be put on this board", but we do one other thing. We give each member of this body and of the Assembly an appointment, one appointment on this advisory committee so that indeed we can ensure that all of the interest within the judicial district, within our own Senate districts or Assembly districts, would be able to give input into the process from the ground up.

We also say that this body will meet twice a year, will hold public meetings, and at the end it will issue a report to the body as a whole of the Board of Regents and will also report to this Legislature as to its findings in terms of the important issues that are in each judicial district.

We have -- and provide for a more reasonable, sane process in how candidates get to the Legislature. We mirror the process, the

commission that we use for the selection of Court of Appeals judges. We have a blue ribbon commission. We have appointments by the Majority Leader and the Minority Leader, the Speaker and the Minority Leader, 12 members, to give us recommendations to consider peoples' qualifications, their temperment, their experience, and they will make those recommendations to the Legislature and we would hold public hearings.

We will not lead on and bring 71 people to the city of Albany, but we will allow for people to give -- to go before a commission that will meet on a regular basis throughout the year for those people who want to serve on the Board of Regents.

We deal with -- and Senator Stavisky and I have debated in years gone by - the issue of conflict. I had legislation on how we deal with people who have jobs as part of the University of the state of New York who may be a professor at an independent college or a State University or City University, and what we allow

the blue ribbon commission to do is look at the board and say, "Are we too top heavy", and maybe as we screen candidates, we should keep in the back of our mind that we need to have greater balance in terms of other kinds of people, maybe other than educators or other than lawyers, in making the appointments on the board. And so we dealt with that very controversial provision by allowing for a wider berth and people on a commission to use good judgment on how we would deal with future problems.

We all know -- we knew it a year ago, we knew it maybe two years ago that the state Education Department was in disarray, probably one of the leading education depart ments in this nation. People looked at it as a lighthouse across this land, and over the years, unfortunately, I, in my role from Executive Director of the Senate Education Committee to member of the Education Committee, to Chairman of the Higher Education Committee, before my eyes, watched a department disintegrate, and so we say it's a time to reorganize; it's a time to

have a management study of our state Education Department, allow the Speaker and the Majority Leader to move forward.

It could actually be done without impaneling the study, but I think it's important that we study the -- how the Department should be reorganized, and the issue that I have raised over and over again, Are we asking our boards of -- our Board of Regents to do too much, to oversee the professions, to oversee the museum, to oversee the archives, to oversee elementary and secondary education and higher education? Can they do all of that as volunteers in a sense?

My answer is, I honestly believe that what we asked them to do is too much, and we need to narrow their focus. We need to better organize the state Education Department.

We allow for the removal of members. You may not realize it, but you cannot -- there is not a process to remove members of the Board of Regents for either misconduct or malversation, corruption in office. There is no

process. We provide for what, I believe, in a thoughtful, constitutional, due process procedure to deal with Regents who, for misconduct or for malversation in office, be removed.

We have a -- in law, that the Chancellor -- that the Education Department submit to us an annual education plan. For most of us, we look at it, we say "Great." For those of us that are on the Education Committee, we give it a more thoughtful look, but we do not have a process where the Chancellor and the commissioner come across the street to defend that annual education report, and so what we put in law is to have them come before the Education Committees to defend their annual report.

And lastly, we allow for the Governor, among the members of the Board of Regents, to select the Chancellor and the Vice-Chancellor of the Board of Regents. This legislation has had input from a number of individuals, my staff, senior staff here in the Senate, Senator Bruno's staff, and I believe

this is a good bill, but I believe that the time has come for sure to change the way we select the Regents.

It's crazy to do it during the budgetary time. It's crazy to bring 71 people up here and have members of the Legislature during the budget process to screen them, and there are provisions in law that are archaic and need to be repealed. As we are considering restructuring our government, the time has come to restructure the way we select Regents, what they do, and how we interact and how the Governor interacts in this process, I believe - and the citizens locally through the advisory committee.

And so the first bill, Calendar Number 104, relates to the reform. Calendar Number 105 simply says, Let's put this process off. Let's put it off until May, and when we consider the Regents, if we pass the first bill, their terms should expire at the time that the local school board membership expires, that's June the 30th, and when the Regent takes office,

it should be at the same time that the local school board members take office, and that is July the 1st, the beginning of the new school year.

So today, my colleagues, I have talked about from beginning to end, both small and major and substantive reasons why we should make this change, why we should enact this legislation, and it should be done now before - and this is very critical -- before we select one quarter of the Board of Regents. We should be selecting one quarter of the Board of Regents through a process that is a decent and honorable process, and those four members should be serving on a board with a new vision and a new hope for our state.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Would the Senator yield to a question?

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: First of all,

Senator, let me commend you. I was both pleased and gratified with your comments on the floor, because I think you adequately summarized both the need for changes in the Board of Regents and how this bill works, and there are lots of good things about it.

I hadn't read the bill before this morning, and I guess it's really a shame that we've come so far that we have to, by law, order the members of the Board of Regents in each of our districts to hold a public hearing to find out what's going on. I don't know that in my district there's ever been a hearing held by the Board of Regents. I don't know that they've ever reached out for public input - that may be the case, but I certainly don't know about it. So there are lots of good things in this.

I just want to raise one issue by question. What is the provision for the removal of the Chancellor and the Vice-Chancellor by the Governor? The reason why I ask is, as you may know, there had been instances in this state in

which appointed members of the Board of Education have had disputes with your appointing authority, and the appointing authority hasn't had the power to remove them when they disagree. Is there any provision -- I know you have a provision for the removal of the members upon malfeasance, but what happens if the Governor of this state selects a Chancellor and after a year or two, that Chancellor disagrees with the Governor over policy or what happens if a Governor selects a Chancellor to serve during the period of time he's on the Board of Regents and the Governor changes? Does the new Governor have the opportunity to then alter the selection and reselect his own choice?

THE PRESIDENT: Senator LaValle.

SENATOR LAVALLE: There is no provision now because right now the Board of Regents selects its own Chancellor and Vice-Chancellor. That term is for three years so it allows for a more periodic review of the Chancellor. Right now the members serve five-year terms. We just changed it under

Senator -- a law sponsored by Senator Levy to reduce the term from seven years to five years.

The issue of if the Governor - it allows the Governor to appoint under this - this change, the Chancellor and the Vice-Chancellor, but again, does not spell out the removal of those individuals, is that right?

SENATOR DOLLINGER: Again through you, Madam President.

THE PRESIDENT: Yes, Senator Dollinger.

SENATOR DOLLINGER: Well, I should do this on the bill and not do it as a question. I simply want to suggest that the issue of the removal of the Chancellor by the Governor is something that should perhaps also have another look.

I'm going to vote in favor of this bill because it does lots of good things but, for example, Governor Pataki, who took office on January 1st, could theoretically have faced two years of Chancellor Carballada who

comes from my part of the district, my part of the state, and he could have significant policy disputes with the Chancellor who sits in the office and not have the ability to remove him from the chancellorship, and that's my question.

If -- I understand that one of the goals of that provision is give the Governor of the state greater power over the educational needs of the state and the perspective about what's needed to solve educational problems. This bill moves in that direction. I think it's a good direction to go in. I simply would want to avoid the problem of a Governor who is at war with the Chancellor because the Chancellor is in the holdover period of his term and the Governor doesn't have the ability to replace him. He has to wait two years into his term before he can actually make the appointment. That's just something in reading the bill that, I think, might be worth looking at.

SENATOR LAVALLE: I appreciate that, Senator Dollinger, and we'll look at that

more close -- I think there are ways that we can achieve that, but maybe we want to take a closer look at that.

SENATOR DOLLINGER: It might be easier if there were a chapter amendment or something simply saying he serves at the pleasure of the Governor to allow the Governor to continue to exercise the control that the Governor -- that is at least as envisioned by this bill.

Thank you.

SENATOR LAVALLE: Thank you very much.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

Senator LaValle, there are a lot of obsequious statements made in this chamber from time to time, and I don't know how sincere they are, but this really is an excellent piece of legislation.

I'm particularly impressed with the openness of the proceedings, the account

ability of the members, the idea you have to, under the Freedom of Information Act, make the transcripts available, and the fact that we're now going to start documenting the proceedings that we haven't done in the past.

There are really some excellent points. The seasonableness of the selection, doing it in May rather than in March during the budget period, coordinating the appointments with the school board elections; all of this is excellent. My question is just on the form and the value of having the governor -- and I'm not talking about Governor Pataki, I mean the institution of governor selecting the Chancellor and selecting the Vice-Chancellor, where the members of the Board of Regents come together and, through their own discourse, that the one deemed to be most dynamic becomes the chair is more, in my opinion, of a democratic process, and I just wondered why you wanted to have the governor make that selection, if you would yield for a question.

THE PRESIDENT: Senator LaValle.

SENATOR LAVALLE: Thank you, Senator Paterson.

And, once again, it's really an excellent point that you have raised. As we know, the need for input by the governor did not arrive with the election of George Pataki. Governor Mario Cuomo for many, many years was very, very frustrated. The Governor and I spoke many times of how we could build a better synergy between the executive branch, the legislative branch in interacting with the Board of Regents.

What we do by this process is we -- really legitimizes what happens very often in the real world, and I mention that because we all come from a political world, and I think we are not naive as to what actually happens in processes. The governor, whether it be Mario Cuomo or George Pataki or Governor McCaughey, whoever, doesn't take place in isolation. They have conversations. There are budgets. The governor can do many things to jostle and get a Chancellor, a Vice-Chancellor to do or not do

something, and that record is very clear. We could talk about a number of things that happen in terms of alterations to the master plan in years gone by and other kinds of things.

So this kind of approach really says, let's put it above board. Let's get it out in the open. Let's really codify what is happening. Let's remove the frustration by the governors, present and future, and really say - give them some sort of input into the -- what happens on the Board of Regents, what happens in the Department and build that better synergy between the Legislature, the executive and what is actually happening by the Chancellor and the Board of Regents and its commissioner, and I think it allows for a more open dialogue because, if a governor -- and that's why I read those remarks about the chairman of the board - if the governor selects the Chancellor, and things are going all right, people are going to go to Governor Pataki and say, "Governor, you appointed this Chancellor, look what's happening." And that really goes to Senator

Dollinger's point, have we clearly provided that executive the opportunity to turn on a dime if his choice is not -- is not doing the job?

So I think we really have put this out into the open. We really have said we recognize what really happens behind the scenes and we've said okay to the governor. "You want some imput?" With that input is responsibility in who you choose, because if they're not doing a good job, we in this Legislature are going to raise how the Chancellor and the Chancellor's commissioner are doing -- are failing us.

I hope I answered your question, Senator Paterson. I tried to the best of my ability.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I disagree with Senator LaValle. I think that accountability has to be widened in this state. It's very easy often to go to the person that's in charge and saddle them with all of the responsibility, but it's going to take

more than just an individual, even if that individual is a governor, and I think that it puts more accountability on those of us who are legislators to make sure that we are appointing the right individuals to the Board of Regents.

I am, however, going to vote for this bill. I think there is so much over whelming detail of good government in this particular bill. I think it is so carefully crafted that this one disagreement that I have will not stand in the way.

I thought, Senator LaValle, you were particularly gracious in mentioning the work of the late Assemblyman Angelo DelToro who worked and understood the need for change, that the Board of Regents and the New York State Department of Education definitely need some restructuring. I think it's really an excellent bill. Senator Leichter thinks it's an excellent bill, and I'm very proud of Senator LaValle. He and I attended the same high school. I think he was a junior when I came in, and I'm very proud of him and very happy to vote for the bill.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

Actually, the question that I was going to ask has been raised by Senator Paterson, and I do believe that the bill is a good bill and I think it's a reform bill that - that will -- will help the Regents.

My question now would be, do you believe that -- and this is only a belief. You can't say with a surety that this reform measure will stave off the movement to abolish the Board of Regents.

THE PRESIDENT: Senator LaValle.

SENATOR LAVALLE: Thank you very much, Senator Oppenheimer.

To actually make it -- make a point here, Senator Libous has introduced and, as we all know, Governor Pataki has indicated that the Board of Regents should be abolished. Senator Libous and I have taken what we call a dual approach to this by beginning a process for the abolishment of the Board of Regents that

takes, as we all know, a considerable period of time. The earliest that this would be placed before the voters would be in November of 1997. So really we would be talking about a new change with the board abolished in the year 1998.

The feeling is that this bill is substantial enough and should allow for the dynamics to change to save this board. Last year's remarks, I talked about the fact that we should not be cavalier in abolishing one of the oldest institutions in our state. On the other hand, we know in this chamber that very little has changed in one year. The hope is that with a serious move to abolish the board with a reform measure in place or measures in place that, indeed, the system would work so that this Legislature would never get to the point where it would consider a second passage to bring it before the voters.

So that's why Senator Libous and I have chosen a dual track, and I think the Governor, in a sense, by his very forceful public position has given a lot of credibility

to, "You better shape up or you will be eliminated."

SENATOR OPPENHEIMER: Thank you.

I think this bill would certainly help in that direction to shape up and to offer more freedom of information to all of us and more accountability for them, and I certainly, as a strong supporter of the Board of Regents, hope this is successful.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I rise -- I just want to reiterate. My question raised the issue of the governor's control of the board, and I just want to really add to Senator LaValle's observations about what the change means.

From my point of view, I am one of those who comes to this chamber with a great frustration of oftentimes dealing with appointed authorities who have tremendous political power, and when my constituents come to me and say, "You were elected to represent us. We want

this to change," and then I stand up and say, "Well, gee, it's the airport authority. I don't have any political power over them. I've given them -- we, in Monroe County, gave them the authority to run the entire airport. We don't have any authority over them. We don't control their budget. They raise their own fees. I'm helpless to help you. I can write a letter and they might or might not decide to respond."

I've heard Senator Levy talk about the MTA and its power. I've heard people talk about the Port Authority. I've heard people talk about IDAs that have tremendous power that elected officials who are accountable directly to the public every two years do not have authority over.

What I think the major problem with the Board of Regents is, and it's highlighted by the frustration that Senator LaValle talked about between executives elected on the second floor and the Chancellor and the Board of Regents across the way, if you don't

have the political power to bring them to rein, you're in a position where you can't control what they do and, quite frankly, you also have the great political out.

Sure, the education system, as Senator LaValle -- is in trouble and this state is undergoing great changes, but a governor can sit on the second floor under the current environment and say, "It's the Board of Regents. I don't have the power to appoint them. The Legislature appoints them. They elect their own Chancellor. I don't have any control over it. Education is out of my hands."

This bill, as I understand what Senator LaValle is saying, is that if it passes, if it become law -- becomes law, if we elect the four members of the board, if there's a new Chancellor selected by the governor on the second floor, he will be directly responsible for education in this state, and when there are complaints that are raised about education in this state, I for one will be someone who says, "Governor Pataki isn't doing the job. The

Chancellor he appointed isn't doing the job." The same will be true if it's a Democratic governor.

I think what we're talking about here is the important concept of political accountability, and I don't believe that we should take that accountability given to us by the voters and turn it over to an appointed board that we don't -- we lose control over. That's the critical part of this.

I know Senator Paterson and others on my side may be troubled by that concept, but I, for one, think we're central izing in the hands of elected officials, people who are directly accountable to the voters, the future of education in this state. Are we, quote, "politicizing" education a little more than we are? Perhaps, but that's where the ultimate accountability rests anyway, and that's why I don't like the concept of the appointed authority that diverts the political accountability away from elected officials, and that's why I think this is a good bill.

I think the very provision that's been discussed is the critical piece that actually makes it work. I'm not afraid to make it a part of the governor's accountability for the education of the future of this state. That's why I was concerned about removal because the worst thing you would want is the next governor or, for that matter, even this governor having a meeting with a Chancellor that was not appointed by him in which he says, "I want us to turn on a dime because that's what the voters want in this state", and have the Chancellor then say to him, "Well, I have a two-year term as Chancellor and I don't have to listen to you because I'm going to go back to the Board of Regents and do what they tell me, instead of what you tell me." And I think that creates the tension, the frustration that we've had in the past. It's not good for the voters. It's not good for the state. It's not good for the concept of political accountability that this bill has in it.

ACTING PRESIDENT HOLLAND:

Senator Jones.

SENATOR JONES: Yes, on the bill. As most of you know, I have been a part of both worlds. I live my whole life in the world of education and now living my life in the so-called world of politics, and I certainly want to say, Senator LaValle, I'm thrilled with the open meetings and having the Regents meet with the Legislators. I know, unless it's time to be reappointed, most of us never do hear from them, and certainly, I'm very supportive of all those things.

However, that being said, having lived in both worlds, I have to disagree with my colleague. I get very concerned about moving it any further into the world of politics. For some reason, education has become the whipping boy of every politician, whether it be at our own city level or county level, education has truly become everybody's whipping boy, and I'm not for a minute saying that that means it's perfect and the system doesn't need changing, it clearly does, but I get very worried when I hear

every single person on the outside of education saying this is bad and that's bad, and these are people who really have not be intricately involved with it.

So I'm willing to think about it. I'm willing to talk further about it. I know it's a one-house bill, and I certainly will support it, but I have to be honest and say, I have a lot of reservations in making the governor the person who is going to appoint the Chancellor and Vice-Chancellor.

ACTING PRESIDENT HOLLAND: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I want to also stand and just support my colleague, Senator LaValle. This process has been one that he has spoken on time and time again over the years and, of course, I have been quite vocal in talking about the abolishment of the Regents themselves, because I do believe that it's time that we take a very serious look in the state education system, and

I'm not going to stand before you and bore you with details as to why I think that needs to be changed.

I think the process -- the bills that are on the floor today make an awful lot of sense, and to Senator Dollinger's one comment about the political process, I think that's always a concern that we all have, Mr. Presi dent. I know that many of my constituents, both who are in education and who are not in education, question the selection of Regents. Quite frankly, it is in my opinion right now the process is more political than it would be if each individual was selected by the Governor and just picked and chose and put on the board. I think the process in putting two houses together -- obviously there's a dominance of one party, and that process to me is extremely political.

I think what -- Senator LaValle's approach here is a wise one. I think setting up the commission and also setting up public hearings and making some of the information that the board has often discussed behind closed

doors makes an awful lot of sense.

So I would hope that my colleagues take serious consideration in looking over this legislation. It does make sense. It is, as we've said before, a two-pronged approach. I still have some very strong feelings myself of abolishing the board and maybe that's something that we can discuss at another day in this chamber, but for the most part, I think changing the approach as to how we look at the set-up makes an awful lot of sense, and I applaud my colleague for bringing the legislation to the floor.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT HOLLAND: Senator Oppenheimer, to explain your vote? Results, please.

THE SECRETARY: Those recorded in the negative on Calendar 104, Senator Connor. Ayes 49, nays 1.

ACTING PRESIDENT HOLLAND: The bill is passed.

Senator Oppenheimer.

SENATOR OPPENHEIMER: With unanimous consent, I would like to be recorded in the negative on Calendar Number 61.

ACTING PRESIDENT HOLLAND: Without objection.

The Secretary will read.

THE SECRETARY: Calendar Number 105, by Senator LaValle, Senate Print 2178, an act to amend the Education Law, in relation to the Board of Regents of the University of the state of New York.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT HOLLAND: Results.

THE SECRETARY: Ayes 50.

ACTING PRESIDENT HOLLAND: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could at this time return to reports of standing committees.

ACTING PRESIDENT HOLLAND: The Secretary will read.

THE SECRETARY: Senator Farley, from the Committee on Banks, reports the following bills:

Senate Print 90, by Senator Farley, an act to amend the Banking Law, in relation to the licensing of money transmitters.

Senate Print 1379, by Senator Farley, an act to amend the Banking Law and the Criminal Procedure Law, in relation to the regulation of licensed transmitters of money.

Senate Print 1632, by Senator

Farley, an act to amend the Banking Law, in relation to banking records.

Senator Maltese, from the Committee on Elections reports:

Senate Print 494, by Senator Maltese, an act to amend the Election Law and the Education Law, in relation to sample ballots.

Senate Print 1861, by Senator Farley, an act to amend the Election Law and the State Finance Law, in relation to requiring proposition authorizing the creation of a state debt.

All bills reported directly to third reading.

ACTING PRESIDENT HOLLAND: Without objection, all bills directly to third reading.

Senator Skelos.

SENATOR SKELOS: Yes, Mr. President.

On behalf of Senator Bruno, I offer up the following notice and ask that it be

read and filed with the Journal Clerk -- in the Journal, not the clerk.

THE SECRETARY: Senator Bruno hands up the following Majority Leadership notice and asks that it be read and filed in the Journal:

The appointment of Senator Joseph R. Holland as Chairman of the Majority Steering Committee to fill the vacancy created by the departure of Senator John B. Daly.

ACTING PRESIDENT HOLLAND: Filed in the Journal, please.

Senator Skelos, Senator Leichter has a motion.

Senator Leichter.

SENATOR LEICHTER: Thank you, Mr. President.

On behalf of Senator Mendez, I move that the following bill be discharged from their respective committees and be recommitted with instructions to strike the enacting clause. That's Senate Number 2058.

Thank you.

ACTING PRESIDENT HOLLAND: Yes, sir. The bills will be recommitted with the enacting clauses stricken.

Senator Skelos.

SENATOR SKELOS: Mr. President, first, I would remind the members that next week is a four-day week, not five but four, and that there will be a Majority Conference at 2:00 p.m. sharp on Monday.

Mr. President, there being no further business, I move we adjourn until Monday, March 6th, 1995 at 3:00 p.m. sharp, intervening days to be legislative days.

ACTING PRESIDENT HOLLAND: Without objection, the Senate stands adjourned.

(Whereupon, at 12:01 p.m., the Senate adjourned.)