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ALBANY, NEW YORK

March 1, 1995

3:05 p.m.

REGULAR SESSION

LIEUTENANT-GOVERNOR BETSY McCAUGHEY, President

STEPHEN F. SLOAN, Secretary

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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.

1 Messages from the Governor.
2 Reports of standing committees.
3 Reports of select committees.
4 Communications and reports from
5 state officers.

6 Motions and resolutions.

7 Senator Bruno, are you ready for
8 the calendar?

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

12 THE PRESIDENT: The Secretary
13 will read, please.

14 THE SECRETARY: Calendar Number
15 32, by Senator Velella, Senate 22-A, an act to
16 amend the Insurance Law, in relation to the
17 reduction of homeowners insurance.

18 THE PRESIDENT: Read the last
19 section, please.

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

22 THE PRESIDENT: Call the roll,
23 please.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 33.

3 THE PRESIDENT: The bill is
4 passed.

5 THE SECRETARY: Calendar Number
6 45, by Senator Stafford, Senate 626, an act
7 relating to state aid to the North Warren
8 Central School District.

9 THE PRESIDENT: Read the last
10 section, please.

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

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

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

18 THE PRESIDENT: Call the roll,
19 please.

20 (The Secretary called the roll.)

21 THE PRESIDENT: The results.

22 THE SECRETARY: Ayes 33.

23 THE PRESIDENT: The bill is

1 passed.

2 THE SECRETARY: Calendar Number
3 61, by Senator Kuhl, Senate 658-A, an act to
4 amend the Agriculture -

5 THE PRESIDENT: Lay it aside,
6 please.

7 THE SECRETARY: Calendar Number
8 82, by Senator Goodman, Senate 908, an act to
9 amend the General Business Law, in relation to
10 the civil penalty for certain unlawful acts.

11 THE PRESIDENT: Read the last
12 section, please.

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

15 THE PRESIDENT: Call the roll,
16 please.

17 (The Secretary called the roll.)

18 THE PRESIDENT: Results.

19 THE SECRETARY: Ayes 33.

20 THE PRESIDENT: The bill is
21 passed.

22 THE SECRETARY: Calendar Number
23 83, by Senator Farley, Senate 1278, an act to

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

4 THE PRESIDENT: Read the last
5 section.

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

8 THE PRESIDENT: Call the roll,
9 please.

10 (The Secretary called the roll.)

11 THE PRESIDENT: The results.

12 THE SECRETARY: Ayes 33.

13 THE PRESIDENT: The bill is
14 passed.

15 THE SECRETARY: Calendar Number
16 88, by Senator Cook, Senate 1303, an act to
17 amend the Education Law, in relation to
18 definition of non-residents of a district.

19 THE PRESIDENT: Read the last
20 section, please.

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

1 THE PRESIDENT: Call the roll,
2 please.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 33.

5 THE PRESIDENT: The bill is
6 passed.

7 THE SECRETARY: Calendar Number
8 104, by Senator LaValle, Senate 1918, an act to
9 amend the Education Law and the Public Officers
10 Law.

11 SENATOR PATERSON: Lay it aside,
12 please.

13 THE PRESIDENT: Lay it aside,
14 please.

15 THE SECRETARY: Calendar Number
16 105, by Senator LaValle -

17 SENATOR PATERSON: Lay it aside,
18 please.

19 THE PRESIDENT: Lay it aside,
20 please.

21 THE SECRETARY: Calendar Number
22 119, by Senator Skelos, Senate 1937-A, an act to
23 amend Chapter 879 of the Laws of 1936, providing

1 for an alternative form of government.

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

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

7 THE PRESIDENT: Call the roll.
8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 33.

10 THE PRESIDENT: The bill is
11 passed.

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

15 THE PRESIDENT: Read the last
16 section, please.

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

19 THE PRESIDENT: Call the roll.
20 (The Secretary called the roll.)

21 THE PRESIDENT: Results.

22 THE SECRETARY: Ayes 33.

23 THE PRESIDENT: The bill is

1 passed.

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

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

6 THE PRESIDENT: The Secretary
7 will read, please.

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

14 SENATOR PATERSON: Explanation,
15 please.

16 THE PRESIDENT: An explanation is
17 requested, Senator Kuhl.

18 SENATOR KUHL: Yes, Madam
19 President.

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

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

4 THE PRESIDENT: Senator Paterson.

5 SENATOR PATERSON: Would Senator
6 Kuhl yield for a question?

7 SENATOR KUHL: Absolutely.

8 THE PRESIDENT: Senator Kuhl.

9 SENATOR KUHL: Absolutely.

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

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

23 Essentially what that law did was

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

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

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

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

8 THE PRESIDENT: Senator Paterson.

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

13 Thank you.

14 THE PRESIDENT: Senator
15 Dollinger.

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

19 SENATOR KUHL: I would be happy
20 to yield.

21 THE PRESIDENT: Senator Kuhl.

22 SENATOR DOLLINGER: Thank you.

23 SENATOR KUHL: I would be happy

1 to yield.

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

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

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

10 SENATOR MARCHI: Madam -

11 THE PRESIDENT: Read the last
12 section, please.

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

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

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

3 THE PRESIDENT: Thank you.

4 Read the last section, please.

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

7 THE PRESIDENT: Call the roll,
8 please.

9 (The Secretary called the roll.)

10 THE PRESIDENT: Results.

11 SENATOR SEWARD: Madam President.

12 THE PRESIDENT: Oh, Senator
13 Seward.

14 SENATOR SEWARD: Yes, Madam
15 President. Thank you.

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

1 fact, be affected by this legislation.

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

4 THE PRESIDENT: Thank you.
5 Continue.

6 SENATOR LEICHTER: Madam
7 President.

8 THE PRESIDENT: Senator Leichter.

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

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

1 somewhere somehow.

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

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

17 Madam President, I vote in the
18 negative.

19 THE PRESIDENT: Thank you.

20 Senator Levy.

21 SENATOR LEVY: Thank you.

22 THE PRESIDENT: Results, please.

23 THE SECRETARY: Those recorded in

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

4 THE PRESIDENT: The bill is
5 passed.

6 THE SECRETARY: Calendar Number
7 104, by Senator LaValle, Senate Print 1918, an
8 act to amend the Education Law and the Public
9 Officers Law, in relation to the Board of
10 Regents.

11 THE PRESIDENT: Read the last
12 section.

13 SENATOR PATERSON: Explanation.

14 SENATOR LAVALLE: Mr. President,
15 for purposes -- because both Calendar 104 and
16 105 have been laid aside, for purposes of
17 debate, discussion, explanation, I would like to
18 merge those two, Calendar Number 104 and 105,
19 for debate purposes.

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

23 As I have said before, the Board

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

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

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

23 Prior to that point in time,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Thank you.

18 THE PRESIDENT: Senator
19 Dollinger.

20 SENATOR DOLLINGER: Would the
21 Senator yield to a question?

22 SENATOR LAVALLE: Yes.

23 SENATOR DOLLINGER: First of all,

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

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

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

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

16 THE PRESIDENT: Senator LaValle.

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

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

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

9 SENATOR DOLLINGER: Again through
10 you, Madam President.

11 THE PRESIDENT: Yes, Senator
12 Dollinger.

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

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

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

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

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

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

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

11 Thank you.

12 SENATOR LAVALLE: Thank you very
13 much.

14 THE PRESIDENT: Senator Paterson.

15 SENATOR PATERSON: Thank you,
16 Madam President.

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

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

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

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

23 THE PRESIDENT: Senator LaValle.

1 SENATOR LAVALLE: Thank you,
2 Senator Paterson.

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

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

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

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

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

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

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

16 THE PRESIDENT: Senator Paterson.

17 SENATOR PATERSON: Thank you,
18 Madam President.

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

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

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

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

1 THE PRESIDENT: Senator
2 Oppenheimer.

3 SENATOR OPPENHEIMER: Thank you.
4 Actually, the question that I was
5 going to ask has been raised by Senator
6 Paterson, and I do believe that the bill is a
7 good bill and I think it's a reform bill that -
8 that will -- will help the Regents.

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

14 THE PRESIDENT: Senator LaValle.

15 SENATOR LAVALLE: Thank you very
16 much, Senator Oppenheimer.

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

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

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

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

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

3 SENATOR OPPENHEIMER: Thank you.

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

10 THE PRESIDENT: Senator
11 Dollinger.

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

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

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

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

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

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

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

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

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

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

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

1 I think the very provision that's
2 been discussed is the critical piece that
3 actually makes it work. I'm not afraid to make
4 it a part of the governor's accountability for
5 the education of the future of this state.

6 That's why I was concerned about removal because
7 the worst thing you would want is the next
8 governor or, for that matter, even this governor
9 having a meeting with a Chancellor that was not
10 appointed by him in which he says, "I want us to
11 turn on a dime because that's what the voters
12 want in this state", and have the Chancellor
13 then say to him, "Well, I have a two-year term
14 as Chancellor and I don't have to listen to you
15 because I'm going to go back to the Board of
16 Regents and do what they tell me, instead of
17 what you tell me." And I think that creates the
18 tension, the frustration that we've had in the
19 past. It's not good for the voters. It's not
20 good for the state. It's not good for the
21 concept of political accountability that this
22 bill has in it.

23 ACTING PRESIDENT HOLLAND:

1 Senator Jones.

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

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

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

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

12 ACTING PRESIDENT HOLLAND:

13 Senator Libous.

14 SENATOR LIBOUS: Thank you, Mr.
15 President.

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

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

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

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

1 doors makes an awful lot of sense.

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

14 ACTING PRESIDENT HOLLAND: Read
15 the last section.

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

18 ACTING PRESIDENT HOLLAND: Call
19 the roll.

20 (The Secretary called the roll.)

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

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

4 ACTING PRESIDENT HOLLAND: The
5 bill is passed.
6 Senator Oppenheimer.

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

10 ACTING PRESIDENT HOLLAND:
11 Without objection.

12 The Secretary will read.

13 THE SECRETARY: Calendar Number
14 105, by Senator LaValle, Senate Print 2178, an
15 act to amend the Education Law, in relation to
16 the Board of Regents of the University of the
17 state of New York.

18 ACTING PRESIDENT HOLLAND: Read
19 the last section.

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

22 ACTING PRESIDENT HOLLAND: Call
23 the roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT HOLLAND:

3 Results.

4 THE SECRETARY: Ayes 50.

5 ACTING PRESIDENT HOLLAND: The
6 bill is passed.

7 Senator Skelos.

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

11 ACTING PRESIDENT HOLLAND: The
12 Secretary will read.

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

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

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

23 Senate Print 1632, by Senator

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

3 Senator Maltese, from the
4 Committee on Elections reports:

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

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

14 All bills reported directly to
15 third reading.

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

19 Senator Skelos.

20 SENATOR SKELOS: Yes, Mr.
21 President.

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

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

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

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

11 ACTING PRESIDENT HOLLAND: Filed
12 in the Journal, please.

13 Senator Skelos, Senator Leichter
14 has a motion.

15 Senator Leichter.

16 SENATOR LEICHTER: Thank you, Mr.
17 President.

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

23 Thank you.

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

4 Senator Skelos.

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

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

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

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

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