ALBANY, NEW YORK

March 15, 1995

11:02 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: Senate will come to order. Members please find their chairs; the staff their seats. Ask all the members in the gallery to rise and join us in the Pledge of Allegiance to the flag.

(Whereupon, the Senate and those present joined in the Pledge of Allegiance to the Flag.)

In the absence of clergy, may we all bow our heads in a moment of silence.

(Whereupon, there was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 14. The Senate met pursuant to adjournment. Senator Kuhl in the chair. Prayer by Father Peter Young. The Journal of Monday, March 13, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Rath.

SENATOR RATH: I have a motion. On page 12, I offer the following amendments to Calendar Number 10, Senate Print number 185, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Cook.

SENATOR COOK: Mr. President. Resolution Number 526 has already been passed by the Senate; but, with unanimous consent, I would like to request that that resolution be read at

this time, please.

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

THE SECRETARY: Senate Resolution Number 526, by Senator Cook and others, commending the New York State Association for Continuing Community Education and the 1995 Students of the Year.

Whereas, the Legislature of the State of New York is pleased to welcome the New York Association for Continuing Community Education and proud to commend the 1959 Students of the Year for their outstanding work as adult learners.

These students are honored recipients of the Student of the Year Award who have been selected to receive this esteemed distinction because of their demonstrated outstanding perseverance and dedication.

The 1995 Students of the Year worked hard and overcame many challenges; and in doing so, developed within themselves a strong sense of independence, self-esteem and

self-sufficiency which can never be taken away.

The 1995 Students of the Year have confirmed through their earnest commitment and will to succeed that they will be looked upon as positive role models not only to adult learners but to their community.

The Legislature of the State of New York also pays tribute to the teachers, coordinators, administrators, and trainers of these students for their selfless dedication to the students who worked so hard, brought hope into lives of many accomplishments.

The Legislature of the State of New York also honors the board members for their guidance of the New York Association for Continuing Community Education, for their continuing dedication to education in New York, and to all the individuals on the Award State Committee who worked diligently in order to insure these students receive the recognition they deserve.

Resolved, that this Legislative Body pause in its deliberations to commend the

New York Association for Continuing Community Education and the 1995 Students of the Year for their remarkable accomplishments; and

Resolved, that copies of this resolution, suitably engrossed, be transmitted to each of the Students of Year and Board President Gary Brady and Awards Day Chairman Lin Wischhusen.

ACTING PRESIDENT KUHL: Chair recognizes Senator Cook.

SENATOR COOK: Mr. President. There is not a great deal that I can add to what the resolution has said.

We are honored today to have with us the Students of the Year, who are seated in the gallery, and I would simply ask that you would recognize them and welcome them to this Senate chamber and join personally in congratulating them for the fine accomplishments that they have made. It has indeed been a great personal effort and a great personal dedication on their part that brings them to this point, and we join in celebrating this occasion with

them.

ACTING PRESIDENT KUHL: On behalf of Senator Bruno and Senator Cook and all of the members of the chamber, we welcome these outstanding students to the chamber, congratulate you on your achievements, and thank you for sharing just a small part of your life with us.

Thank you and welcome to the chamber.

(Applause.)

Senator Bruno, we have some substitutions at the desk if you would like to take care of those now.

SENATOR BRUNO: Without objection.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Senator DeFrancisco moves to discharge from the Committee on Tourism Recreation and Sports Development Assembly Bill Number 917, identical with Calendar Number 206.

Also, Senator DeFrancisco from the Committee on Local Government moves to discharge Assembly Bill 1983A and substitute it for identical Calendar Bill Number 213.

ACTING PRESIDENT KUHL: Substitutions are ordered.

Senator Bruno, are we ready for the calendar?

SENATOR BRUNO: Mr. President. Can we now take up the noncontroversial calendar?

ACTING PRESIDENT KUHL: Secretary will read the noncontroversial calendar.

THE SECRETARY: On page 16, Calendar Number 143, by Senator Saland, Senate Bill Number 2119, an act to amend the Social Services Law, in relation to bona fide research projects.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 145, by Senator Goodman, Senate Bill Number 927,

an act to amend the Arts and Cultural Affairs Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 148, by Senator Goodman, Senate Bill 1921, an act to amend the Alcoholic Beverage Control Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 153, by Senator Farley, Senate Bill Number 1861, an act to amend the Election Law and the State Finance Law.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 159, by Senator Rath, Senate Bill Number 900, an act to amend the State Administrative Procedure Act.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of October.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 160, by Senator Rath, Senate Bill Number 901, an act to amend the State Administrative Procedure Act.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of October.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the noncontroversial calendar.

SENATOR BRUNO: Mr. President. Can we now take up the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar.

THE SECRETARY: On page number 16, Calendar Number 143, by Senator Saland, Senate Print 2119, an act to amend the Social Services Law, in relation to bona fide research projects.

SENATOR BRUNO: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 145, by Senator Goodman, Senate Print 927, an act to amend the Arts and Cultural Affairs Law, in relation to the sale of consigned works.

ACTING PRESIDENT KUHL: Senator Goodman, an explanation has been asked for by Senator Paterson.

SENATOR GOODMAN: Mr. President. This is a classic case of a tax being imposed administratively by virtue of a new interpretation of the Tax Law being imposed by an administrative agency, in this case Taxation and Finance. This bill seeks to eliminate an administratively imposed tax on art galleries in New York, most of them situated in New York City.

The taxes on the sale of art works to out-of-state buyers, the Department made the tax liability for such sales greater than that for other consignment sales such as that for books, newspapers, and dealers and recordings.

To remedy this, the bill amends

the Arts and Cultural Affairs Law and to assure that the sale of consigned work is deemed revenue from the sale of tangible goods and not from the provision. Should this bill not pass, it would impose an enormous tax burden upon art dealers in the City of New York; and there's a view that in a number of crucial instances, they would actually leave New York State and New York City in order to avoid this punitive tax.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President. Would Senator Goodman yield for a question?

ACTING PRESIDENT KUHL: Senator Goodman, would you yield to a question from Senator Paterson?

SENATOR GOODMAN: Just one moment, Senator.

SENATOR PATERSON: Actually, I think this is a bill that demonstrates the perspicacious nature of Senator Goodman's thinking, and I agree with it completely. I

just have this one question, Senator Goodman.

The revenues that are derived from the sale of consigned artwork, obviously this has negatively impacted on the art dealer; and what this legislation seeks to do is to alleviate that, and we appreciate it.

The question is, is there any fiscal impact that you know of as a result of this legislation?

SENATOR GOODMAN: We believe that the fiscal impact will be minimal and that, if it occurs at all, it will not occur for some period of time into the future.

SENATOR PATERSON: Mr. President. Thank Senator Goodman, and that ends my questioning, and we may read the last section.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to one other question?

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

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Thank you Senator, through you, Mr. President. Is the impact of this proposed change any broader than simply to restore the pre-matter of Andre Emick Gallery interpretation of this section of the Arts and Cultural Affairs Law?

SENATOR GOODMAN: To restore the status quo ante.

SENATOR DOLLINGER: Okay. There is no broadening of the Tax Law treatment of these sales -

SENATOR GOODMAN: That is correct.

SENATOR DOLLINGER: -- prior to this interpretation?

SENATOR GOODMAN: That is correct.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 148, by Senator Goodman, an act to amend the Alcoholic Beverage Control Law, in relation to the information required in license or permit applications.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Goodman, an explanation has been asked for by Senator Paterson.

SENATOR GOODMAN: Mr. President. This bill eventuated from a series of investigations held by the Senate Investigations Committee several years ago which indicated that one of the very serious areas for potential corruption in the State Liquor Authority rested

in the fact that there were inordinate delays in the granting of liquor licenses to applicants. By virtue of these delays in certain instances that we exposed in some investigative hearings, there was undue influence exercised in trying to expedite applications, and this became a very serious economic problem for the applicant who would be investing in a substantial restaurant with a liquor-related bar, a liquor-serving bar, and the entire restaurant operation could not properly open unless and until a license were granted. As a result, severe economic hardship was imposed upon the applicants and they, in turn, were frequently -- or were from time to time finding it necessary to resort to the retention of attorneys, especially to expedite their applications and, indeed, something much more serious, which appeared to be undo influence upon the State Liquor Authority itself.

So these delays struck us as being something that should be changed and reformed, and the result was that we came up

with this bill, which would, first, impose strict limits on the amount of time that the SLA may take to act upon an application and, second, by standardizing the information on applications that applicants are required to submit, it would expedite the process.

With respect to time limits, the bill provides that, in general, the SLA must act upon a completed application within 60 days. If it fails to do this, the applicant may send a notice to the State Liquor Authority; and if the Authority does not respond within five days after receiving the notice, the application will be deemed approved. In other words, it is requiring the State Liquor Authority to act within a reasonably prompt time frame so that we put an end to the difficulties we experienced, as I have described them.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President. Would Senator Goodman yield for a question?

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: First of all, Senator Goodman, is it 60 days or 45 days?

SENATOR GOODMAN: I am informed, at least the material that I have before me - well, let's see. That's very interesting that you raise that, Senator. I see that I have a contradiction in my memos. Let me try to clarify that for you forthwith.

I'm advised that through an inadvertence this memo that I have before me is in error, it related to a prior bill, and that it is in fact 45 days. You are correct, Senator.

SENATOR PATERSON: Thank you, Senator Goodman. I think you are certainly alleviating a problem that exists in terms of those establishments that are seeking a license. What I am afraid is that we may be

creating another problem which are establishments that are operating with licenses that have actually not met the threshold test for which we would grant approval.

Right now, around the state, after our budget cutbacks, we are going to have only 29 inspectors. So I think that a patron in a bar is more likely to run into a state Senator than they are to run into an inspector; and, therefore, Senator Goodman, I must ask you, do you think that to some extent that this legislation is overreaching when it comes to the public good and it comes to the service that the public demands of government and the regulations that are imposed on establishments that sell liquor; that because of our own administrative problems that may be enhanced by the fact that we budget for 1995-96 a cutback that is going to limit the Authority and also the ability of the State Liquor Authority; that as a result of that, we may be creating an encumbrance on the consumer by going into establishments that really are licensed when they have not actually

met the threshold test for which we would grant approval?

SENATOR GOODMAN: Senator, I must respectfully differ from your view of the matter. I think that the greatest threat is precisely the one that I have described, namely, that the foot-dragging, which this agency is notoriously guilty of having foisted upon its applicants over many a year, results in the types of very serious problems that I have indicated which are both economic and potentially breeding corruption; and I think this bill strikes a reasonable ground in approaching that problem by requiring prompt and expeditious examination of the licensee and by allowing, in effect, the elapse of the 45-day period, an automatic instatement of the applicant if circumstances are such that the agency has, once again, been guilty of foot dragging. Should circumstances arise after that period and after the granting of the license, in relatively rare cases where the applicant is subsequently found to be an inappropriate

applicant, the license can, of course, be revoked and the public thus protected.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President, and through you, I think that Senator Goodman is trying to alleviate a very serious problem, and he explained very well what has happened and the undue pressure that has often been placed on the State Liquor Authority as a result of foot-dragging on the part of the agency.

If I accept that, Senator Goodman, then my question to you, if you would yield for a question?

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: I would just like to know in the cases of licenses that are granted, in a sense, by default in your

legislation, how are we going to check at a later date to make sure that we are not licensing establishments, for instance, that are going to have fire hazards or situations that could create a great tragedy? I understand what you are trying to alleviate. What I am trying to suggest is that we don't want to create a greater problem by alleviating the one that you described.

SENATOR GOODMAN: I think I understand the thrust of your concern, Senator, but let me say that actually the coming on to the scene of computerization will actually facilitate the SLA's capacity to make judgments that are appropriate in terms of the background of the applicant.

As to the premises itself, these are matters which relate not to the SLA but, rather, to the fire department in the case of fitness to open an establishment which sells liquor in regard to its fire safety and the like. I think the new technology actually makes the 45-day limit more reasonable rather than

less; and I simply would point out that periodic inspections are required of any premises by the fire department to try to assure that there are not safety hazards of the type that concern you.

I sincerely believe that the public interest taken as a whole is well served by the bill, and I would urge you to give it your support.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes. Would Senator Goodman yield to a question?

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: It's my

understanding of the bill that there would be automatic approval after 45 days; and that if the applicant objected and requested an understanding of the status of the application, within five days of receipt of that letter if there was no decision made, there would be automatic approval. Is that correct? Is that a fair statement?

SENATOR GOODMAN: Yes, after the 45 days, as I indicated, earlier, the applicant may file a document with the SLA indicating the desire to have the license activated; and in failure of the SLA to respond to that, it does then become effective.

SENATOR ABATE: And would that be the case, would there be automatic approval if the applicant himself or herself caused the delay in the decision-making of the SLA because of nonresponsiveness, failure to produce certain documents? I do not see anywhere in the bill that would cause an exception to this automatic approval if, in fact, the applicant is the cause of the delay.

SENATOR GOODMAN: No, Senator, that is not my understanding of the way the bill is structured. It certainly would not apply to applicants who had been uncooperative or unresponsive in the application process.

SENATOR ABATE: But since the -

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

SENATOR GOODMAN: Yes, I do.

SENATOR ABATE: Yes, thank you, Senator.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: But since the bill is silent on that issue, wouldn't it be appropriate to include that language to insure that recalcitrant or nonresponsive and non cooperative applicants would not get a free ride here and get automatic approval? And would you consider amending the bill to include that?

SENATOR GOODMAN: Senator, as I've indicated, that would not be necessary because the procedure which exists for the

approval of applications involves an application and responsiveness to the questions raised in the application, and it would simply not -- the bill would not apply in a situation where there were insufficient information indicated or where the information was deemed to be inaccurate or untrue.

SENATOR ABATE: It is your understanding the bill would not apply in those situations?

SENATOR GOODMAN: That's correct.

SENATOR ABATE: Would Senator Goodman yield to another question?

SENATOR GOODMAN: Yes, of course.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: What would happen in terms -- if a community objected, and there are very complex issues around the 200-foot rule and the 500-foot rule, and the community suggests that it's not within the public interest to have a liquor license granted in a particular site, and the SLA wanted to go

forward with hearings and there were new issues raised, what would happen if those issues raised were not exhausted, reviewed, debated? Wouldn't that force the State Liquor Authority to reach a decision without a full review of the process and short circuit the community's ability to debate the issue?

SENATOR GOODMAN: Well, if the community were raising questions as to legality of the placement of the particular establishment with respect to limitations as to number of feet away from a church or the like, that would automatically negate the 45-day period because, as in the case of any number of other disqualifying circumstances, the license could not be granted because of the violation of the state law and the regulations appertaining thereto.

SENATOR ABATE: Would there be an -

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

SENATOR ABATE: Yes, I'm sorry.

SENATOR GOODMAN: Yes, I do, Senator.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: But there is no direct language in the bill that says that when a community objects and requests a hearing that the time period would stop.

SENATOR GOODMAN: If the community's objection relates to some illegality or some violation of the license provisions and that's something with which the SLA agrees, then the SLA, of course, has the right to deny the application.

SENATOR ABATE: But they may not deal with it in 45 days, necessarily.

SENATOR GOODMAN: It's my judgment -- and I don't know whether you would agree or not, but our experience suggests to us that 45 days should definitely be sufficient to enable that type of illegality to be brought to the attention of the SLA and for it to respond.

What we're simply trying to do,

Senator, and I think it's very much in keeping with the current trend of thinking, which is to get government out of the way of small business; and in a situation of this sort, it is our belief that a month and a half is more than sufficient to permit these matters to be examined and to be ruled upon by the SLA.

Unfortunately, the consequence of failing to do this promptly is the precise consequence which the investigations of our committee revealed were very, very serious and detrimental to society; namely, corruption, economic disadvantage to a whole host of legitimate applicants, and the like, and we believe that this approach is one which will produce much better results.

SENATOR ABATE: On the bill.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: Yes, Senator Goodman, I applaud your efforts and attention to the State Liquor Authority over the course of a number of years, and I agree with you there's a

need to improve on the process, the timeliness of the process and on a whole host of issues to reform that agency, and it's also in the interests of applicants as well as communities to insure that those reforms occur.

Unfortunately, I believe the 45 days plus the five-day rule is unrealistic at the same time when there are proposed cuts to SLA; and I, as recently as two weeks ago, met with the chairperson and some of the staff to talk about the impact of those cuts. I believe that the way these procedures stand would leave some communities at a disadvantage when on the rare occasion there is an applicant that is not a good neighbor in terms of their current plans or has not been a good neighbor in the past in terms of past establishments.

So I can not -- although I support the spirit of this bill, I can not support the detail of the bill because I think it's unrealistic; and in the short term, it will shortchange communities and lessen their voice in terms of objecting to inappropriate

licensing.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Goodman will yield for a question?

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Goodman, I thought that Senator Abate offered us a kind of solution which, if I understood correctly, she was asking that we amend the bill and perhaps change the nature of the type of license we would grant. We really want to support your bill, Senator. We think you are addressing something that you have raised which maybe is not known by all but certainly has been a real problem for small businesses, and that is the foot-dragging of the agency, the prolonged time that it takes to grant the license, and

this leads to some of the very negative aspects of government that we would like to really move away from as a result of your bill.

But what Senator Abate was, I think, suggesting was that if the period elapsed -- and we all agree that it is a seasonable period, that that the license should be granted in that particular time. But if the period elapses and the agency does not act on it, why are we giving the business owner who may not have conformed with the standards that we as public policy would like to impose -- we just automatically give them a license because one of our agencies is acting in a substandard way. Why would we not grant a temporary license so that the business can go on and can sell alcohol but still impose on the agency the duty of finally approving the license under whatever the standards are that we think that the business should comply?

SENATOR GOODMAN: Senator, in effect, any license granted to an establishment to sell liquor is a temporary license.

Revocation is always a possibility. And, for example, in my home district, there are instances in which we have the noisy bar syndrome. Especially on weekend evenings in the summer, people descend on bars and there's all sorts of rowdy behavior and tumult and commotion; and in those circumstances, the aroused community has mobilized both the police and the SLA, and licenses have been revoked.

There are a whole host of reasons why licenses can be revoked, and I think the very thought that you posit is one which is covered by the way -- the practical manner in which the law is now applied.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Through you, to Senator Goodman. There is a difference between a license that is issued that we then have the right to revoke -- because the agency grants the license, so the establishment has a licensing authority as long as it's provided by

the agency. But what we're saying is a temporary license, the definition of that would be that you can actually sell alcohol, but we as a government are still going to confer on you a final decision as to whether or not you deserve to be doing it.

In other words, if the license just goes into effect and there's no action taken other than the fact that the agency didn't take an action, I think that that would actually stimulate exactly the kind of thing that goes on now. The agency knows that if they don't do anything, the establishment gets the license, and then the agency really doesn't have any authority and no one will really conduct the proper investigating.

What we're suggesting is that we still cause the agency to actually take some kind of action. Senator Stachowski talked privately to me, and we were talking about the fact that they're closing down all the regional offices. There will only be an office in New York City. So if the agency has been dragging

its feet to this point and we now have budget cutbacks, even to the extent that if they try to improve their work on this particular issue that they still may be limited through lesser resources.

What we are suggesting to you, Senator Goodman, is that there is a real problem with small establishments getting licenses without any action on the part of the state agency, without any approving authority, and then leaving to consumer complaint or some other avenue the revocation of that license if some problem should arise.

SENATOR GOODMAN: Senator, first let me say -

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: -- that although your notion is commendable in theory, to grant a temporary license, the fact of the matter is that continues the very problem which we are trying to solve; namely, that for many groups seeking a license the granting of a temporary

license does not permit bank loans to go forward, because the bank loan, often, for the capital improvements and the interior decoration and the like of the bar/restaurant is contingent upon the granting of the license. The temporary license would not solve that problem. It would not trigger the ability of the local establishment to obtain the bank financing, which is almost invariably a part of the establishment of any such arrangement.

I think that -- again, I would stress to you that what we're trying to do is to set up a system where the preponderance of activity will be covered, and I don't think it's quite appropriate to suggest that the SLA is allowing this to automatically occur without surveillance. It has a staff.

One of the basic functions of the SLA is to review license applications; and if there is anything which its budget should be devoted to, it is that area; so that you have a staff of bureaucrats whose specific function is to review the background, credentials, financial

fitness, appropriateness of neighborhood placement, and the like, of any applicant; and to suggest that this is just going to go forward willy-nilly without any supervision is simply not accurate and not what would occur.

There is a 45-day period within which this agency, which has staff to cover this particular function, can do its thing and can determine whether the license should be granted. So it's by no means just throwing this open to the wind of circumstance. This is something which continues to be supervised but in a way that is crisp, attentive to the needs of the industry and something that will be a particular boon of the small business person.

ACTING PRESIDENT KUHL: The chair recognizes Senator Markowitz.

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

I know you have had a lot of legislation that you have introduced in the past, and this is one of those that I think that you are a good person who cares, as you have

demonstrated here for many, many years; that this is a bill, I think, that needs a little more work.

Senator, I think it needs a bit more work. There is a difference here between establishments, small businesses in Manhattan compared to what we face in Brooklyn, for instance. There is no question about it. Areas like Senator DiCarlo's in Bay Ridge would have a different set of circumstances than the areas that I serve in Central Brooklyn.

I can see wanting to expedite restaurant licenses for liquor because I think that that's what you will find generally has the least opposition in the boroughs beyond Manhattan. In Manhattan, many of the restaurants that I frequent that have waited for liquor licenses, they have also complained to me. As you know, I am in your district quite often, and not because Manhattan has better restaurants than Brooklyn, that's for sure, but because you have some unique restaurants in your district, and I know that some of your residents

complain when restaurants have outside cafes, garden spots next to the restaurant and people are eating outdoors and they are annoying those whose apartments overlook the courtyard area of some of your restaurants.

In Brooklyn, my concern is bars and social clubs that are seeking to have liquor licenses that directly impact the quality of life in our neighborhood. We have too many of these, in my opinion, and I know that the community has the same feeling; and that is, that we want to do whatever we can to limit the number of liquor establishments in our area.

Now, in Manhattan, as you know, you can have six restaurants on a block, both sides of the block for most of the areas. As you know, in our area it's quite different.

Secondly, I have had many cases in front of the State Liquor Authority in terms of bringing to their attention trying to expedite restaurants -- restaurants that need liquor licenses, and it is true that they have dragged their feet. I really don't understand

the procedures up there, Senator Goodman. I think they need an overhaul.

Our new governor has said "Let's make agencies user friendly." I think here's an example. The State Liquor Authority needs a complete overhaul in terms of how they are structured, how they review their work, how they expedite cases, how they make decisions. I have not been happy with them whether it was under Carey, Cuomo or under Pataki, I think that maybe that's something that our committee, Senator Goodman, that we can focus in on.

Yield on this bill because it raises too many questions that I think don't really come to the conclusions that we want. I applaud your efforts. I know that restaurant owners contact me and they want their licenses expedited, and I agree that in most cases I would like to see that granted.

What I am concerned about are the others that come in asking for licenses, the liquor stores that want to open up, the social clubs that are seeking licenses; and so I think

we ought to tread very, very lightly on this, Senator. And, perhaps -- I would love to offer my assistance to work with you and your very capable staff in coming up with a piece of legislation that meets your objectives of helping the industry and at the same time will not be a detriment to the quality of community life that I know you care about and I care about.

Thank you, Senator.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Will Senator Goodman yield to a question?

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

The Senator yields.

SENATOR DOLLINGER: I have some recollection that in the process of the SLA considering applications that they give notices to local governments and to local police departments about prospective applicants as well prospective locations of restaurant

establishments that will be serving alcohol. Is that the case?

SENATOR GOODMAN: Would you state that again, that they give notice?

SENATOR DOLLINGER: Notice to local communities, to town boards and to town clerks and to town police departments of applications that have been filed in that community so as to allow the local officials and the local police departments to give input to the SLA regarding both any information they may have about the applicant as well as any information they might have about the actual location of the proposed establishment.

SENATOR GOODMAN: Senator, I do not recall that that is a requirement of the SLA.

While I'm on my feet, I wonder if you would allow me in responding partly to your question, partly to some others that have been raised, one additional piece of information which you should have.

SENATOR DOLLINGER: That's fine.

SENATOR GOODMAN: That is that under the section that we have been discussing, the Authority would have to notify the applicant, as I said earlier, within 45 days that the application is approved or denied or - and here's what I failed to mention earlier and wish to add at this moment -- or that the application is not complete, indicating the respects in which the application is incomplete. In the event of an incomplete application, final action must be taken within 60 days of the original receipt of the application not including the period during which the authority waits for the applicant to supply the additional information.

I simply wanted to have it clear. That was the result of that confusion initially on the 60 versus 45.

SENATOR DOLLINGER: I appreciate that, Senator.

SENATOR GOODMAN: Now, as to your question, I don't know the answer, Senator.

SENATOR DOLLINGER: My

understanding is that the SLA does that as a matter of course; that they circulate that information to local communities.

My question again, if Senator Goodman will yield just to another, Mr. President?

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

SENATOR GOODMAN: Yes.

SENATOR DOLLINGER: Does the time that the local government or local police department or local planning board is considering those issues in a report to the SLA, is that time charged against the 45-day period or the time period in here under which the SLA has to act? Because certainly the SLA would not have that information to act in that period of time.

SENATOR GOODMAN: That was subsumed in the question that was raised by Senator Abate, and I indicated that that 45- and 60-day limitation would include the opportunity for communities to respond and to communicate

concerns to the SLA based upon their local reaction to the proposal.

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: So under this bill, the applications would be complete by the applicant, but the SLA's process which requires information from local government may not be complete?

My point is, Senator, isn't there a possibility that the person who gets punished here is the SLA because its waiting for local government to respond?

SENATOR GOODMAN: Senator, first of all, as I have said, I'm not clear on the premise of your question, so I can not comment on that directly, but I can only say to you that a 45-day period plus an additional 15 days if an

application is incomplete is, in our judgment, more than sufficient to enable the SLA to reach a judgment as to whether the license should be granted.

I would also add, merely for your information in case you may not recall it, the Senate has passed this legislation both in 1993 and 1994.

SENATOR DOLLINGER: I think with yes votes from me, but I never looked at it as carefully as we're looking at it today, which is probably a good thing.

SENATOR GOODMAN: Right.

SENATOR DOLLINGER: Just one other question, Mr. President.

SENATOR GOODMAN: Yes.

SENATOR DOLLINGER: Then I want to be heard on the bill.

SENATOR GOODMAN: Yes, I will yield.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: The bill

provides that if the time period expires, it says, "The application shall be deemed granted subject to any applicable standard terms or conditions." What does that mean to the applicant, that once the period is expired, he or she can begin to sell alcohol immediately?

SENATOR GOODMAN: What line are you on in the bill, if you'd be so kind?

SENATOR DOLLINGER: Page 3, Senator, line 18 and 19. It says after everything happens, "The application shall be deemed granted subject to any applicable standard terms or conditions." If the SLA hasn't issued a decision, how do we know what the standard ap' terms and conditions are?

For example, I think Senator Markowitz talked about limiting time or limiting hours of operation or limiting outside operation or limiting the ability to sell on a porch, or the ability to sell on a courtyard outside the facility. Those, it would seem to me, would be standard terms and conditions; yet if there is no decision rendered by the SLA, then the

applicant can be free to say, "There is no opinion from the SLA. I can sell it under any terms and conditions I want."

How do you impose those terms and conditions without a decision?

SENATOR GOODMAN: The bill starting on line 16 of page 3 reads, "That if within five calendar days after the receipt of such notice the Authority fails to mail a decision, the application shall be deemed granted subject to any applicable standard terms or conditions." That's boiler plate which obviously relates to the standard terms and conditions of the granting of a license, the whole series of strictures that relate to the applicant -- he must not have prior record of felony arrest; he must not be in a financially embarrassed condition, et cetera, et cetera.

SENATOR DOLLINGER: But just so I understand, Mr. President, the types of terms and conditions that Senator Markowitz talked about, about restricting outside noise or where you could sell it on the premises or whether you

can sell it on the second floor or the first floor, those kinds of things, there would be no such restrictions when the license is granted pursuant to the automatic license granting under this. Those conditions wouldn't be applied.

Could the SLA ever impose those?

SENATOR GOODMAN: The SLA is regulated by a strict set of conditions under which it may or may not grant a license and all this is saying is that 45 -- maybe let's take a half step back and look at this in a broader context.

What we're saying is there is no reason on earth why the conditions which the Investigations Committee unearthed should be allowed to continue, which were essentially that the SLA, often capriciously, delayed the granting of licenses and that an individual inspector could actually harass an applicant by raising innumerable questions and getting answers to them and then raising additional questions and, in effect, holding a hand out to grease the palm of the process so that it could

be expedited and thus avoid further protracted delay.

This situation reeks. It's one that is essentially by its very design rife with potential for corruption, and I don't know exactly whether you or your colleagues have given any thought to what you think would be a reasonable time. After considerable thought, we felt that a month and a half plus an extra 15 days grace plus the five-day period for response in the event that an applicant has not heard was more than sufficient for an adequate, prudent review of the application; and in the event in a very rare instance it was not sufficient and a license were granted and the particular establishment were not functioning appropriately, the license could be revoked in a flash. I think we have a safety net surrounding the whole process which grants the public the protection that it needs while at the same time preventing the obvious corruption which relates innumerable delays.

SENATOR DOLLINGER: Again,

through you, Mr. President. I don't think anybody -

ACTING PRESIDENT KUHL: Senator Goodman, do you yield to Senator Dollinger.

SENATOR GOODMAN: I will yield in perpetuity, and I'm available without renewal of that license on each occasion.

SENATOR DOLLINGER: I think Senator Markowitz said it very well. I think we all agree that you have pinpointed the problem correctly, that is the fact that these delays can take so long does create a tremendous potential for corruption. "I'll grease the skids for $100 or $1,000 or whatever the cost is," that's where the corruption comes in, and I clearly want to get at that problem.

My concern is whether the automatic granting of the license -- the question is what terms and conditions could it be subject to? It seems to me the way this read is that the kinds of restrictions that an SLA would impose about time and place and location and where you can sell and what you can sell

would not be permissible under this language, and so you can get a license in which you could operate any place you wanted to without any restriction.

Then the difficulty comes in, under what standards -- and again through you, Mr. President, so I understand as well, if Senator Goodman would yield?

Under what standards -- once the license is automatically granted, how would it be revoked? How do we avoid the problem you talk about?

SENATOR GOODMAN: Senator, I am not a liquor law lawyer, and I suspect from the tenor of these questions that you may not have had extensive experience in this area yourself.

SENATOR DOLLINGER: No, I - certainly not.

SENATOR GOODMAN: But I do know this much, and that is that there is a very specific set of rules and administrative regulations as well as the actual State Liquor law which prescribes in exquisite and, in some

cases, agonizing detail the conditions under which a liquor license may be granted.

On another occasion, I might argue to you that this whole framework is a throwback to the days of prohibition and there is a ludicrously overdetailed and absurdly restrictive series of regulations that relate to this whole matter, but that's neither here nor there today. For example, should we have to get special license to sell liquor in grocery stores? Many states do it. In my opinion, a free market approach to this would not restrict that; but, as I say, that's for another day.

But there are very specific prescriptions as to the conditions under which licenses can be granted. I do not have the McKinney's with me to read those excerpts to you, but if you take a moment to do a little research on your own, you will satisfy yourself. I am confident that this is not an area which has not been looked at previously in the law.

SENATOR DOLLINGER: Again, on the

bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I appreciate Senator Goodman's -- both his industry and analyzing the problem because I think the problem is properly analyzed.

I think -- and this is where I agree with Senator Markowitz. I think that the difficulty created in this bill -- and perhaps in the last two years I haven't done enough diligent work to detect it, but it was done this year, and it seems to me it creates a couple problems. One is if you provide the automatic delivery of a license, the SLA may lose its ability to put reasonable terms and conditions that are not standard terms and conditions but, nonetheless, may be acceptable in trying to balance the community interest, the local public interest, and the interest of the licensee. Those kinds of restrictions which may not be part of the standard terms, nonetheless, the SLA would want to impose. If they've automatically

got to grant it, they're not going to be able to do that.

Then what are their options? Their options are to revoke the license and try to impose them, or to try to impose them, I assume, outside a license proceeding, which may be very difficult to do.

SENATOR GOODMAN: Would Senator yield to me now for just a moment?

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

SENATOR DOLLINGER: I'd be glad to.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOODMAN: Senator, I must confess I don't follow your logic at all. You are implying that for some reason which eludes me that there are not rules and regulations which relate to the granting of a liquor license. There are extensively detailed rules and regulations which apply to the granting of a liquor license, and all of those things come

into play during the period in which the SLA decides whether or not to grant the license.

Your sense that you convey of it being completely unregulated is simply not in accordance with the facts.

SENATOR DOLLINGER: No, I'm - I'm -- I'm not trying to convey that sense, Senator. What I'm trying to suggest is that my understanding of the SLA process is that they can impose site-specific restrictions on sales in particular locations. They may decide that in Brooklyn in Senator Markowitz' district they are not going to allow outside service of alcohol.

SENATOR GOODMAN: No. Forgive me, Senator. May I ask you to yield for a moment?

SENATOR DOLLINGER: Be glad to.

SENATOR GOODMAN: This agency does not have the right as you put it to apply site-specific regulations which it invents to tailormake to cut the cloth to fit each case. There are standard regulations which apply to

everybody, and they in their approach to this administratively apply them.

The problem is that in doing so they often get so bogged down and we have repeated instances of the bogging down because of the unbelievable one, two, two-and-a-half year delays in the granting of a liquor license. These are not small delays. These are egregious delays which we've ferreted out, and also the attending circumstances of the fact that there have been efforts to unduly and improperly influence the deliberation; and the sheer dragging out of all of this is the very thing that gives rise to these improprieties and acts of potential corruption.

I'm using the word potential carefully; but, frankly, we know that there are great difficulties which we unearthed, and this will stop it.

But they have regulations which apply to all not situation specific.

SENATOR DOLLINGER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I want to get us out of the bog, as well, Senator, and I'm trying to figure out whether this bill gets us out of the bog so we're not bogged down.

But from my point of view, I think that term needs greater definition. I'd also point out that because there's going to be an automatic license granted at the end of 45 days, I foresee that we will end up in a ton of litigation between applicants and the State Liquor Authority because the 45-day period is missed, and you're going to end up with litigation over who sent what when, when things were received.

As a lawyer who looks at this, whenever you look at time limits like statute of limitations or automatic granting upon a particular day, this paragraph is going to be the source of just a ton of what I believe will be needless litigation, and I think the 45-day period is perhaps a little too concise to

accomplish this. I'm afraid that you will end up depriving the SLA of the ability to impose conditions that would restrict licenses in some instances, and I think you may create just a ton of litigation.

I applaud the effort. I see the problem. I think you're working in the right area. I guess I agree with Senator Markowitz that this particular section on page 3 needs a little bit more work to fine tune it to make sure it does what the sponsor sees the need to do and which the statute should be designed to expressly accomplish.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on this bill?

Senator Stachowski.

SENATOR STACHOWSKI: Would Senator Goodman yield to one question, please?

ACTING PRESIDENT KUHL: Senator Goodman, do you yield to Senator Stachowski.

The Senator yields.

SENATOR STACHOWSKI: I didn't

plan to be in the debate, but when I heard Senator Goodman outline the situation that brings up the corruption that he talks about and that he is trying to eliminate, the thought occurred to me that if that corruption should be in the New York City area, then why did we eliminate the regional offices and keep the New York City office intact and not just do it the opposite way where they didn't seem to have that problem upstate and leave one of those offices intact and maybe put more manpower there and send them into New York to do the job instead of doing it the other way around?

SENATOR GOODMAN: Senator, I don't know whether you were a Senator at the time. You may recall that we actually held public hearings in Buffalo for the purpose of examining some very serious problems that you had up here in precisely this area; and, in fact, we found some of the corruption indications in Buffalo to be equally if not more serious than some that we ferreted out in New York. We worked with your local police. They

had been doing some clandestine videotaping of certain establishments in one of your so-called tenderloin areas where there are just all sorts of problems, and I assure you this is a statewide matter and not one that applies solely to the New York.

As to the question of the ABC boards versus the SLA, just to remind our colleagues, there is a two-tiered arrangement that exists under the law today, and it is one which has -- is a classic example of redundancy in government. There is no need to have two tiers in the judgment of the Governor in his latest budget bill on the subject, and in the judgment of the Investigations Committee for the past five or six years. The fact of the matter is that the SLA has more than appropriate equipment; and if you conceptualize it to match, in effect, the approach which we have taken in virtually every other major department of government where you have one head and a series of arms that reach out in the localities emanating from the head without a separate

juridical framework of regulatory agencies at a lower level of the superstructure, the whole thing would work much better.

We're dealing really with a -- I think one of the significant areas in which we intend to remold our government in a way that will eliminate a whole lot things not just corruption but terrific duplication, inappropriateness of commissioners functioning to try to dilute the authority of the chairman. We want a strong agency head -- and, again, we're wandering a little bit afield; I'll wrap it up quickly -- a strong agency head with an agency that functions effectively and efficiently through its local offices but not through redundant structures of the type that the ABC represents.

SENATOR STACHOWSKI: On the bill.

ACTING PRESIDENT KUHL: Senator Stachowski on the bill.

SENATOR STACHOWSKI: Just to clarify a point, and I didn't confuse the SLA and the ABC and the hearings are all going to be

out of New York City traveling show now.

But the other point is that, Senator Goodman, I remember the hearings that you -- and that those were more dealing with unlicensed establishments in a certain area of the city of Buffalo that was a major problem rather than in getting the licenses and delaying the process.

So I still had that question. I suppose that was an answer, I thank you for it, but I still share Senator Paterson's concerns on the 45 days.

ACTING PRESIDENT KUHL: The chair recognizes Senator Onorato.

SENATOR ONORATO: Senator Goodman, would you yield to a question?

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

The Senator yields.

SENATOR ONORATO; I'm in favor of this bill, the entire concept, because I too am constantly asked why does it take so long to get a liquor license not only in restaurants but in

local grocery stores that want to sell beer or wine or anything like that.

But under this automatic granting of the license on the 45 or the 60 days, is there a provision that automatically during that period if it's granted that the State Liquor Authority has the right to revoke it without further litigation? Because once you grant somebody something that they are licensed to operate, they feel free that they can operate in any way that they feel and that they may now have a new right to start a court action or an Article 78, whatever you want to call it, that I have been granted this license and I think that the SLA is acting in a capricious manner and I want a temporary stay of that order. Can we have something in there that would make it that the license is granted until further inspection warrants the automatic revocation of the license?

SENATOR GOODMAN: Senator, I see what you are driving at, but my response would be that anyone can bring an Article 78

proceeding at any time. That's an ingenious invention which you lawyers developed to protect the rights and also the legal fees of a vast array of attorneys who are prepared at any time to unleash their Article 78 shotguns.

But the fact is, whether you grant a license and indicate -- you can not bar suits. An Article 78 proceeding can be brought under any circumstances as I am advised, so that I don't believe that your commendable objective of minimizing litigation can realistically be achieved by such language.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 148 are Senators

Abate, Dollinger, Kruger, Markowitz, Montgomery, Onorato, Paterson and Smith. Ayes 41. Nays 8.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Also Senator Stachowski. Ayes 40. Nays 9.

ACTING PRESIDENT KUHL: Senator Larkin.

SENATOR LARKIN: Mr. President. Would you lay aside Calendar 143 for the day at the request of the sponsor.

ACTING PRESIDENT KUHL: Calendar 143 is laid aside for the day.

Senator Larkin, there is no housekeeping at the desk. What's your pleasure?

SENATOR LARKIN: Mr. President. There being no further business, I move we adjourn until Monday, March the 20th, at 3:00 p.m. sharp, intervening days to be legislative days.

ACTING PRESIDENT KUHL: Senate stands adjourned, without objection, until

Monday, 3:00 p.m.

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