ALBANY, NEW YORK

March 27, 1995

3:02 p.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. Ask members to find their places. I'd ask the members and the staff together with all members in the gallery, our visitors, to rise and join with me in saying the Pledge of Allegiance to the American flag.

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

We're very pleased today to be joined by the Reverend Fagans, the Pastor of the First Presbyterian Church of Troy.

Reverend Fagans.

REVEREND ERIC FAGANS: Thank you.

Let us pray.

Creator God, saints tell us that You made us for Yourself with hearts restless till they find their rest in You. Such sentiments are rarely felt within these walls, and even though we aren't a religious body and though we may refer to ourselves and one another with less than religious terminology at times,

yet, today, we ask You to generate within us something of this restlessness, this essence, this distant drum beat and high calling, for we know without a soaring vision we shall be held down by lesser desires.

Reconciling God, we are being challenged to work miracles this week. So far no quick solutions have come to the complex issues which confront us and the equally intricate entanglements of mind and conscience. You invite us to build bridges to span yawning chasms, but we are having difficulty reaching bedrock. Grant us Your grace that we might penetrate to the stones of indifference and the clay-like mire of strong-held opinions and the swift flowing currents of demonstrations to find that solid substance upon which we can build. Give us hard hats not harsh language, cable fashioning equipment not weak single strands that, together, we may reach across this abyss.

Finally, God of New Life, we feel a bit like Gulliver tied down by the Lilliputians, strong leaders held captive by the

forces and figures beyond our control; yet we feel a new wind blowing, a new hope perking, a new beat pounding within our hearts, sweeping across this body. You have called us. Now work through us, honestly struggling, not waiting for another, but initiating the process, bringing forth from the confusion and the strenuous quality of debate and rigorous work of compromise something of ecstatic beauty fit for such a time as this.

These things we pray in the name of the Christ.

Amen.

ACTING PRESIDENT KUHL: Thank you, Reverend Fagans.

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 26. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Saturday, March 25, 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 DiCarlo.

SENATOR DiCARLO: Mr. President. On behalf of Senator Larkin, on page 24, I offer the following amendments to Calendar Number 198, Senate Print 2655, and ask that said bill retain its place on Third Reading Calendar.

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

The chair recognizes Senator DiCarlo.

SENATOR DiCARLO: Also, Mr.

President, on behalf of Senator Nozzolio, on page 8, I offer the following amendments to Calendar Number 51, Senate Print 16, 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.

The chair recognizes Senator Sears for a motion.

SENATOR SEARS: Mr. President. On page 18, I offer the following amendments to Calendar Number 230, Senate Print number 210B, and ask that said bill retain its place on the Third Reading Calendar.

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

Chair recognizes Senator Hannon for a motion.

SENATOR HANNON: Mr. President.

On page 23, Calendar Number 185, Print 3323, I first of all would like to remove the star, which is a sponsor star, and I would like to offer up the following amendments and move their adoption.

ACTING PRESIDENT KUHL: Amendments are received and adopted and a sponsor star is removed.

Chair recognizes Senator Hannon for another motion.

SENATOR HANNON: Mr. President. Also, on behalf of Senator Lack, on page 10, Calendar Number 110, Print 2135, I offer up the following amendments and move their adoption.

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

Senator Bruno, that brings us to the calendar.

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

ACTING PRESIDENT KUHL: The

Secretary will read the noncontroversial calendar.

THE SECRETARY: On page 12, Calendar Number 143, by Senator Saland, Senate Print 2119.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 154, by Senator Spano, Senate Print 1045A, an act to amend the Civil Service Law, in relation to disciplinary action.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

157, by Senator Trunzo, Senate Print 2223, an act to amend the Retirement and Social Security Law, in relation to allowing participating employers in the New York State and Local Employees Retirement system.

ACTING PRESIDENT KUHL: The bill is laid aside.

THE SECRETARY: Calendar Number 178, by Senator Lack, Senate Print 1298, an act to amend the Real Property Law, in relation to allowing an assessment of mortgage in lieu of a certificate of discharge.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 208, by Senator Marchi, Senate Print 2495, an act to amend Chapter 395 of the Laws of 1978, relating to moratoriums on the issuance of certificates of environmental safety.

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 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 209, by Senator Johnson, Senate Print 2724, an act to amend the Environmental Conservation Law, in relation to limiting access to commercial fisheries and marine waters and declaring a temporary moratorium.

ACTING PRESIDENT KUHL: Secretary will 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 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 216, by Senator Hoblock, Senate Print 3354, an act to amend the Public Officers Law, in relation to activities by former state officers and employees.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the noncontroversial calendar. What is your pleasure?

SENATOR BRUNO: Will you recognize Senator Goodman.

ACTING PRESIDENT KUHL: The chair recognizes Senator Goodman.

SENATOR GOODMAN: Please record

me in the negative on Calendar 154.

ACTING PRESIDENT KUHL: Without objection, Senator Goodman will be recorded in the negative on Calendar Number 154.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we at this time take up the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar.

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

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

SENATOR SALAND: Mr. President. This bill is a bill which was introduced at the behest of the Committee on Children and the Law of the Association of the Bar of the City of New York, who believed that there were a number of impediments to bona fide research projects being

able to access certain social service information, social service information with respect to either foster care or preventive services.

This bill attempts to establish a procedure to permit that and goes about establishing an advisory panel which will be comprised of advocates, research personnel, and determines what their charge shall be in the course of creating this mechanism. It attempts to balance the need for privacy with the genuine need to research for purposes of determining not only effectiveness of programs but also to compile some type of statistical data as well.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you very much, Mr. President. First of all, Mr. President, I would like to thank Senator Saland for his patience on this particular piece of legislation. He has had it before the house previously, and I just want to know if he will yield to this one question?

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

SENATOR SALAND: Certainly, Mr. President.

ACTING PRESIDENT KUHL: Senator is happy to yield.

SENATOR PATERSON: Can you document for us, Senator Saland, briefly, what some of the protections are built into this legislation that will make sure that the privacy of individuals who happen to be eligible for different types of social service will be reflected in the research and that the information will not get into what would be hands that might be detrimental to those who have a right to a certain privacy on this issue?

SENATOR SALAND: There is nothing in this bill that amends any existing provisions of the law with respect to penalties for violating the confidentiality or the privacy that is imposed by law. So to the extent that there is currently a penalty that penalty exists

and will continue to exist.

The language in this bill in the several sections that it amends talks in terms of permitting research -- I'm sorry - permitting access for purposes of bona fide research projects. Identifying information shall not be made available unless it is absolutely essential.

And that "absolutely essential" is not unlike the language contained in the existing Social Service Law in one particular section. I believe it's found in one of the subsections of Section 422 of the Social Service Law. There is no intent here to permit or encourage wholesale and indiscriminate access to information.

This is limited basically to research performed by so-called bona fide researchers, and the format will, again, be determined by the panel, the Child Welfare Research Advisory Panel, which will basically set out the mode by which this information shall become available; and if you look at page 2 of

the bill, it sets forth those who shall comprise that panel, and I believe it's done in a rather equitable way and a way which is intended to demonstrate balance.

It talks in terms of the panel shall also include but not be limited to representatives of the following categories: Agencies providing child welfare services including child protective services, foster care, preventive services and adoption services; advocates for and recipients of services to children and families; and social science and child research professionals.

So I think the effort here has been to certainly try and create a balanced mechanism that recognizes not only the importance of privacy but the importance of research, research which basically will, I think, help us here in this body to determine the efficacy of the various programs that, as I understand it, have not had some type of bona fide research -- and I use that in the sense in which it's set forth in this bill -- probably

since sometime in the early '70s.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT KUHL: Explanation satisfactory?

Senator Galiber.

SENATOR GALIBER: Senator, I, too, particularly want to thank you because I'm moving a little slower than I usually do this year, and thanks for your courtesy.

SENATOR SALAND: But I'm sure in not too -- in not too short order, you will be moving as rapidly as before.

SENATOR GALIBER: Senator, there are some troubling portions of this bill.

ACTING PRESIDENT KUHL: Senator Galiber, excuse me. Are you asking Senator Saland to yield?

SENATOR GALIBER: I'm sorry, Mr. President. Yes.

ACTING PRESIDENT KUHL: Senator Saland, do you yield?

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator

yields.

Senator Galiber.

SENATOR GALIBER: Thank you, Mr. President.

This business of research troubles me a little bit. It seems to be a little broad, and there are those of us who have been concerned about confidentiality and the real need in terms of releasing this kind of information and how it would be used. My understanding of the bill, which doesn't make it so, of course, is that even the news media can get this information under special circumstances. That troubles me.

Just as I have often said on the floor that Orwell was correct in predicting in 1984 what we would have; and 1984 passed, and no one said anything about it. We have children now who are getting Social Security numbers before they are born almost.

Therefore, I would like you to comment on the research portion of it: The idea of how far do we take this and balance it out

with constitutional rights, the question of privacy and whether the need for it outweighs the potential damage it will do in the future having this information fall into the wrong hands.

We have a situation today. We hear about the super highway; and if we adopt this super highway, everybody's phone will be tapped. Big corporations are going to foreign markets to avoid that possibility.

So those of us who are sensitive -- this is not to suggest, Senator, that you are not sensitive in this area. You come with good faith and good purpose behind this. I just throw up a flag of warning because in the last fifteen years or so, we have trampled on so many basic rights, and we're giving out information where we should not. It doesn't go with the democracy that this country represents.

So I would like you, if you will, to elaborate a bit on what would the research - what purpose would it serve? What kind of research? And, secondly, I'm always a little

nervous when bills pass where confidentiality is involved and the news media under certain circumstances has access to it.

SENATOR SALAND: Mr. President.

Senator, my understanding is that the language in this bill parallels language that's existing currently in federal regulation. I don't think that there is anything in this bill that is either by the nature of the language in this bill or by my intent as the sponsor of the bill intended to give carte blanche to anybody under the guise of a research project to have indiscriminate access to any and all records.

I would continue to point to the language in the bill that says there must be a bona fide research project that is the purpose of the inquiry. Identifying information shall not be available, however, unless it's absolutely essential to the research purpose and the Department gives prior approval. There is a screening mechanism that exists. There is, as you're probably aware, currently a consent order

-- the bill memo makes reference to it -- that limits access to information. This bill would propose to basically modify that particular consent order or stipulation, and the court -- I believe in this particular case it's a federal court -- would certainly have to rule on whether this proposal comported with the stipulation and, in turn, permitted a modification of that stipulation. I don't view this as being invasive. I don't view this as a tool by which the media shall have access because I don't view the media regardless of what they do in the form of investigative journalism as really being part of what would be deemed a bona fide research proposal or project.

SENATOR GALIBER: Thank you.

Mr. President, would the Senator yield for just one more question?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator

yields, Senator Galiber.

SENATOR GALIBER: Give me an example or two of what a bona fide research group would be. What would they be doing?

SENATOR SALAND: I would think that a bona fide research group might if it wanted to look into issues of preventive care, if it wanted to look into issues of adoption services, if it wanted to take a look at issues dealing with abuse or neglect. Certainly someone with an academic background who wanted to do some type of a statistical analysis, say, in the instance of preventive services dealing with either foster care or perhaps as a precursor to an adoption placement, may want to do an analysis of programs and determine which of the programs have, in effect, had the best results. That type of research has been wanting in this state probably for the better part of a couple of decades now. Whether that's a reflection of the consent order that was entered somewhere back around 1980 or 1982, I couldn't tell you, but that type of research certainly

has not been shown to be on the cutting edge anywhere within recent memory in this state.

ACTING PRESIDENT KUHL: Explanation satisfactory, Senator Galiber?

SENATOR GALIBER: Yes, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 120th day after it shall have become a law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Senator Galiber to explain his vote.

SENATOR GALIBER: Yes, very briefly. I missed a point, Senator, before, when I talked about -- it came to mind -- bona fide group. There was a bona fide group of persons who injected a number of people with

syphilis some years ago and didn't tell them about it. That was an example of a bona fide group also.

I vote no.

ACTING PRESIDENT KUHL: Senator Paterson to explain his vote.

SENATOR PATERSON: Mr. President. I agree with Senator Galiber or "Gal-eh-bear" if you are a Caribbean. He makes a really important point that I think we all need to consider; and that is, any kind of research of any information derived from services that come from the public domain have got to be scrupulously careful to protect the privacy of the recipient or the client. In this particular case, there is a great deal of reform in the social service area. Much of it is merited; but at the same time, we have to understand that it is not open season on individuals who due to their unfortunate status in life depend on government very much for their survival. Their reality should not become the source of inquiry or curiosity on the part of

individuals who are just trying to use it to advance an agenda.

I vote no, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson in the negative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 143 are Senators Galiber, Gold, Mendez and Paterson, also Senator Smith. Ayes 46. Nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 157, by Senator Trunzo, Senate Bill 2223, an act to amend the Retirement and Social Security Law, in relation to allowing participating employers in the New York State and Local Employees Retirement System.

SENATOR PATERSON: Explanation.

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

SENATOR TRUNZO: Mr. President. This bill would allow part-time elected

officials to receive retirement service credit based on time actually spent on official business. The governing body of a participating employer that has a part-time elected official would be allowed to have retirement system service credit calculated on the basis of daily time records maintained by the elected officer.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President. Would you be so kind as to recognize Senator Jones who has a couple of questions for the Senator.

ACTING PRESIDENT KUHL: Senator Jones.

SENATOR JONES: Would Senator Trunzo yield to a question?

ACTING PRESIDENT KUHL: Senator Trunzo, do you yield to a couple of questions from Senator Jones?

SENATOR TRUNZO: Yes.

SENATOR JONES: Senator Trunzo, could you give me an example of who these people

might be that would fall under this category? Are we talking about like town board members?

SENATOR TRUNZO: Yes, elected officials who work for the town, especially some of these small towns where they're making five or six or seven thousand dollars, and their pension credit is prorated as strictly part time, and he doesn't get his full credit, and yet he may be out working on official business more than 40 hours a week; and, therefore, he would get this full credit for retirement purposes.

SENATOR JONES: Would the Senator yield to another question?

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR JONES: Would it be correct to say most of these people, though, would have a full-time job doing something else and this is like an evening -- at least that's

the way it is with the town boards back our way.

SENATOR TRUNZO: Yes, but they have to be out on official business on the off hours to justify that they are really in a sense working full time, and the Comptroller -- this bill was negotiated out with the Comptroller, Association of Towns and Counties and stuff, to justify this position where a part-time elected official can at least prove and his records would be audited to make sure that he did put in the number of hours so they can prorate him up to whatever scale, even to the full amount of credit, for pension purposes.

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

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR JONES: Do you have an idea, Senator, what -- I guess, first of all, who would be paying the bill? I assume it's

local government. Do you have any idea what kind of a fiscal implication it would have on small towns?

SENATOR TRUNZO: The fiscal implication would be spread out to all employers of the system, so nobody would be hit individually.

SENATOR JONES: That doesn't make sense to me.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of January.

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 157 are Senators Dollinger and Jones. Ayes 50. Nays 2. Also Senator Leichter. Ayes 49. Nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 178, by Senator Lack, Senate Bill Number 1298, an act to amend the Real Property Tax Law.

SENATOR BRUNO: Lay it aside for the day at the request of the sponsor.

ACTING PRESIDENT KUHL: Lay the bill aside for the day at the request of the sponsor.

Senator Bruno, that completes the controversial calendar.

Chair will recognize Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President. There will be an immediate Democratic conference after we adjourn.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Minority Democratic Conference in the Minority Conference Room immediately following adjournment.

Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, I

believe there are some committee assignments at the desk. I would ask that they be read at this time.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Senator Bruno hands up the following committee changes:

Committee on Aging, delete Senator Marino, add Senator Maziarz.

Committee on Children and Families, delete Senator Marino, add Senator Marcellino.

Senate Committee on Cities, delete Senator Velella, add Senator Spano.

Committee on Civil Service and Pensions, delete Senator Farley, add Senator Marcellino.

Committee on Codes, delete Senator Tully, add Senator Hoblock.

Committee on Commerce, delete Senator Johnson, add Senator Maziarz.

Consumer Protection, delete Senator Marino, add Senator Marcellino.

Crime Victims and Corrections, delete Senator Larkin, add Senator Maziarz.

Committee on Education, delete Senator Skelos, add Senator Marcellino.

Committee on Energy, delete Senator Volker, add Senator Maziarz.

Committee on Housing, delete Senator Marino and Farley, add Senator Maziarz and Senator Libous.

Committee on Labor, delete Senator Farley, add Senator Marcellino.

Committee on Social Services, delete Senator Marino, add Senator Marcellino.

Committee on Tourism, delete Senator Kuhl, add Senator Maziarz.

ACTING PRESIDENT KUHL: The changes will be filed in the Journal.

Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President. Are there any additional housekeeping tasks at the desk?

ACTING PRESIDENT KUHL: Secretary informs me there is nothing at the desk at this

time, Senator Bruno.

SENATOR BRUNO: Then, Mr. President, there being no further business to come before the Senate, I move that we adjourn until 2:00, not 3:00, p.m. tomorrow.

Thank you.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow at 2:00 p.m.

(Whereupon, at 3:32 p.m., Senate adjourned.)