ALBANY, NEW YORK

April 3, 1995

3:00 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: The Senate will come to order. Ask the Senators to find their places. Ask everyone in the chamber to rise with me and repeat the Pledge of Allegiance to the Flag.

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

Once again we're very pleased to have the Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing with us to deliver the invocation.

Reverend Young.

REVEREND PETER YOUNG: Thank you, Senator.

Let us pray. Dear God, we pray for all New York State people, that their wealth and their power might become a force for peace rather than conflict, a source of hope rather than discontent, an age into friendship rather than enmity. May the actions of all of those in the Senate be an example for this sharing of Your love. We ask You this now and forever.

Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, April 2nd. The Senate met pursuant to adjournment, Senator Hoblock in the Chair. The Journal of Saturday, April 1st, was read and approved. On motion, the 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 Bruno, we have a substitution at the desk if you would like to take that at this time.

SENATOR BRUNO: Please make the

substitution, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Senator Saland moves to discharge from the Committee on Rules, Assembly Bill Number 6084-C and substitute it for the identical Calendar Number 352.

ACTING PRESIDENT KUHL: The substitution is ordered.

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President, can we at this time take up the non controversial calendar?

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

THE SECRETARY: Calendar Number 60, by Senator Levy, Senate Print 773, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 124, by Senator Levy, Senate Print Number 972, an act in relation to requiring the Department of Motor Vehicles to include certain information.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 184, by Senator Velella, Senate Print 2704-A, an act to amend the Public Health Law, in relation to the disclosure of confidential HIV-related information.

SENATOR BRUNO: Lay it aside for

the day at the request of the sponsor.

ACTING PRESIDENT KUHL: Lay it aside for the day.

THE SECRETARY: Calendar Number 185, by Senator Hannon, Senate Print 3323-A, an act to amend Chapter 426 of the Laws of 1983 amending the Public Health Law.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 230, by Senator Sears, Senate Print 210-C, an act to amend the Penal Law, in relation to indecent material.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 235, by Senator Johnson, Senate Print 1728, an act to amend the Penal Law, in relation to chemical agents and chemical agent weapons.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 257, by Senator Skelos, Senate Bill 519, an act to amend the Executive Law, in relation to the powers and duties of the Crime Victims Board.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 258, by Senator Saland, Senate Bill 2110, an act to amend the Executive Law and the Social Services Law, in relation to making reports of child abuse available to probation services.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Nozzolio, Senate Print 2818, an act to amend the Correction Law, in relation to charging taxes on sales.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 352, substituted earlier today by Member of the Assembly Schimminger, Assembly Print 6084-C, an

act to amend the Finance Law, the Banking Law and Chapter 705 of the Laws of 1993.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 353, by the Committee on Rules, Senate Print 3955 -

SENATOR PATERSON: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

Senator Bruno, that completes the non-controversial calendar.

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

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar.

THE SECRETARY: On page number 8, Calendar Number 60, by Senator Levy, Senate Print 773, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

SENATOR PATERSON: Explanation.

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

SENATOR LEVY: Senator Paterson, for the past four or five years, this bill has been before this house, and I'm very, very disappointed that the Assembly has not moved forward to pass this bill and to make it the law of the state of New York.

What this bill does, and what it really tries to address is if you or I own a dog or a cat, and it's a pedigree, and our dog or cat is stolen, that would be a felony because the pet is a pedigree. For people that love their dogs or love their cats, and for most people that own -- own those types of pets, the pet is a member of their family. If the pet is not a pedigree and the pet is stolen, the dog or cat, then it wouldn't be a felony.

This bill addresses that problem. And let me say to you that, since we've had this bill before this house this past

summer on Long Island and here upstate, there were petnapping rings that were stealing dogs and cats that weren't pedigrees. If this bill had been in place when the perpetrators were apprehended they would appropriately be charged with a felony.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Would Senator Levy yield for a question?

ACTING PRESIDENT KUHL: Senator Levy, do you yield for a question by Senator Paterson?

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: First of all, Senator Levy, I appreciate that you continue to bring the bill before the house and you believe that it should be a law in spite of whatever the Assembly has done. Sometimes I think that

Senators and Assembly members are criticized for doing that, and I think that's perfectly understandable.

My question relates to the bill itself. Do you have any statistics from the Department of Criminal Justice Services or the FBI that would enlighten me as to how serious a problem this might be?

SENATOR LEVY: Yes. Before I first introduced this bill, there was a study that was done by a member of the police department in the city of Rochester on petnapping rings, and that probably goes back more than five or six years ago where there were rings operating, not only in this state, but other parts of the country that were stealing dogs -- dog meat is a delicacy in the Far East and that's what the pets were being used for.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Levy would continue to yield.

ACTING PRESIDENT KUHL: Senator

Levy, do you yield to another question?

SENATOR LEVY: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: I have two other questions, Senator Levy. The first one is do you think this legislation is out of line with a number of valuable properties that individuals might have, things that have a sensitive nature to -- to people and because of the fact that it has that high value, there's a tendency when it -- if it's stolen to want to specialize a law and attach it to the particular situation. Would making this crime of thievery of a pet take the value of a pet out of standard with what the other important items to other individuals?

SENATOR LEVY: Senator Paterson, let me answer the question the same way I've answered it each year that someone on your side of the aisle has raised that question during the debate.

Senator, if you or somebody else

feels that there is an object that you would like -- you would like to have defined in the Penal Law as a felony, you know the process as well as I do. If you choose to do so, you introduce a bill, and then if the appropriate committee that has jurisdiction over the bill agrees with you, it will come out here on to the floor and you and I will discuss it.

As it -- as it is as a matter of fact, Senator, today, if somebody steals a pedigree dog or a pedigree cat, that is a felony. And all we are trying to do with this piece of legislation is to equate the pedigree and non-pedigree pets so they are treated the same way.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Finally, through you, Mr. President, to Senator Levy.

ACTING PRESIDENT KUHL: Senator Levy, do you yield to one more question?

SENATOR LEVY: Certainly.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR PATERSON: My question, Senator Levy, is related to just the issue of an individual who might come in contact with an animal who might, for instance, think the animal is starving or something, who takes the animal into their possession not knowing that the animal belongs to someone else; don't they become liable under this statute?

SENATOR LEVY: Senator, you know that in any loss in a statute, there has to be a specific intent to steal, and unless the people are able to prove that beyond a reasonable doubt, there would be no violation of law.

SENATOR PATERSON: Thank you, Mr. President.

That satisfies my -

ACTING PRESIDENT KUHL: The Chair recognizes Senator Waldon.

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

Would the good Senator yield for just a couple of brief questions?

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: The Senator yields, Senator Waldon.

SENATOR WALDON: Senator, the information that you received from the Rochester study, did it cite the places where the dogs or cats were stolen from? By that, I mean, were they primarily stolen from the homes of the owners? Were they stolen on the street or from the pet shops; is there any information in that regard?

SENATOR LEVY: Senator, my recollection of the study was that it was not in that great detail.

SENATOR WALDON: May I again?

ACTING PRESIDENT KUHL: Senator Levy, do you yield?

SENATOR LEVY: Yes, certainly, Senator.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Is there any information in regard to situations where there

was not an indication of specific intent to steal the cat or dog but the possession of the cat or dog resulted in unlawful possession of stolen property?

SENATOR LEVY: Senator, this bill only deals with making the theft of the dog or cat where the value does not exceed $1,000 a felony. It does not deal with receiving stolen property.

SENATOR WALDON: I apologize, Mr. President.

I meant to state the study that you are aware of, did it have any information regarding stolen property?

SENATOR LEVY: Yes. What the study indicated was that the motivation for rings of persons that were stealing pets was for the purpose of shipping those pets to the Far East so that they could be utilized for food because dog meat is a delicacy, according to the study in the Far East.

SENATOR WALDON: Last question, Mr. President, if I may ask.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: I promise.

Is there any information in that study or other studies which identifies the ring or rings to the degree that the police now know who they are, where they are and can move against the ring itself?

SENATOR LEVY: Senator, this study was done six or seven or eight years ago and, to my knowledge, there has been no study that has been done since that date updating the information or that police officer who's now retired.

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

Thank you very much, Senator Levy.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of November.

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 60 are Senators Abate, Babbush, Mendez, Montgomery, Saland and Waldon. Ayes 47, nays 6.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue -

THE SECRETARY: Also, Senator Gold.

ACTING PRESIDENT KUHL: The Secretary will continue the controversial calendar.

THE SECRETARY: Calendar Number 185, by Senator Hannon, Senate Print 3323-A, an act to amend Chapter 426 of the Laws of 1983, amending the Public Health Law, relating to professional misconduct proceedings.

SENATOR PATERSON: Explanation.

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

SENATOR HANNON: Yes, Mr. President.

This is a three-year extension of the demonstration program for the Committee on Physicians Health of the Medical Society to allow impaired physicians who have not harmed patients to be able to obtain referrals for treatment and to allow for intervention in order to help physicians who are troubled. It's done through a mechanism that is not part of the disciplinary process.

There is currently also some mechanisms that are part of the disciplinary process. And for that reason, the study that's required for this additional period, once an investigation report as to the elements of duplication, any reasons to continue that.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President,

Senator Dollinger has an amendment that I believe is at the desk. I would ask, Mr. President, that you recognize him at this time.

SENATOR HANNON: Mr. President. Mr. President.

ACTING PRESIDENT KUHL: Senator Hannon.

SENATOR HANNON: I don't believe the amendment is in order. Doesn't it have to be served on the committee Chair before it's offered? It's already been offered so it's too late.

ACTING PRESIDENT KUHL: Senator Hannon, the amendment is just being handed up. The service is being attempted at this moment.

Senator Hannon, you have been served now, I understand, with the amendment?

SENATOR HANNON: I'll withdraw my objection. My point is one of a larger one than technicalities which is simply, if you really intend the amendment to serve a purpose to try to accomplish a change in the direction of the legislation, one ought to bring it forward so

that we can have time to do something about it and do something before we've already engaged in discussions with the other house and come to an agreement.

This bill is a three-year extension. It's been agreed to by the other house and it's necessary because the program needs to continue. This is the first day of business and -- of the new period of time that it's needed and if we don't do it today, it could lapse.

ACTING PRESIDENT KUHL: Senator Dollinger, the amendment is at the desk. Senator Paterson indicated you wanted to offer it up at this point. Is that the situation?

SENATOR DOLLINGER: Yes, Mr. President. I call it up; I would waive its reading and just ask for a brief explanation, an opportunity to -

ACTING PRESIDENT KUHL: The amendment is before the house. The reading is waived, and the Chair recognizes Senator Dollinger for the purpose of explaining the

amendment.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I want to address Senator Hannon's point about the amendment. I had suggested in committee when we did this that we might make an amendment to make this permanent.

Unfortunately, I didn't find that it was going to be on the active list until I got here at about noon today, and I would have done this in shorter order had I known that it was going to be on the active list today.

So I apologize to the chairman if it appears as though it's -- it's appearing on the docket without proper notice or without extensive discussion, but I did raise, I believe, the issue in committee that it might be subject to an amendment to make it permanent. This is a program that I know the chairman of the Health Committee supports. It's been around since 1983. It's one that seems to have had a great deal of success. We don't change the requirements that there be an evaluation of the

program. We'd simply under this amendment make it permanent and not have this go on as it has in the past on the basis of a renewal at some determinate period of a number of years.

I think this is a good program. I think it's worthy of becoming permanent, Mr. President.

ACTING PRESIDENT KUHL: The question is on the amendment.

Senator Hannon on the amendment.

SENATOR HANNON: Three things: Senator Dollinger, I know you're well inten tioned, but if you think back to the last committee, this was not the bill. We talked about rural health demonstration extension. We talked about school days clinic demonstration. Those are the ones we talked about for extensions, not this. When it comes to this, there is a good reason to continue this as a demonstration program.

Currently in the Department of Health as part of the disciplinary process, there are requirements of individuals who are

subject to that program to go through intervention and treatments.

This is non-disciplinary as a program. This takes -- tries to take it out and remove the disciplinary from the intervention so that we can go for a cure without mixing up the two. There is actually an overlap so that some individuals, because of the different way the statutes are constructed, are going through the disciplinary process and the supervision by DOH and they're going through this program. We want to figure out a way to disengage it and hopefully make this at some point, this program, permanent.

That's why I amended the bill to require that the study include the effects of such duplication so we might get a clearer picture, and I might remind you that a whole disciplinary process for physicians has recently been shifted to DOH from SED, so that is somewhat of a new process for them also. So that I would argue with you that there is a solid reason not to accept your amendment, to

continue forward with this demonstration program.

ACTING PRESIDENT KUHL: The question is on the amendment. All those in favor signfiy by saying aye.

(Response of "Aye".)

Opposed, nay.

(Response of "Nay".)

The amendment is lost.

On the bill, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 230, by Senator Sears, Senate Print 210-C, an

act to amend Penal Law, in relation to disseminating indecent material to minors through any computer communication system.

SENATOR PATERSON: Explanation.

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

SENATOR SEARS: Yes. Thank you very much, Mr. President.

The bill has two aims: To meet a deficiency in current law concerning contact between pedophiles and their youthful victims via computer modem or online service, and also to provide a prosecutorial tool and punishment sufficient to the crime.

Now, how does this bill accomplish these goals? By making it a Class E felony punishable by one to four years in prison for anyone to initiate or engage in sexually explicit communications with a minor via computer modem or online services and, by making it a Class D felony, punishable by one to seven years in prison for anyone to use these

communications to invite, induce or compel a minor into taking certain sexually explicit actions, such as the taking of photographs, and that's a brief explanation of the bill.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: There are, actually as Senator Sears pointed out, Mr. President, two sections of the bill and, first of all, I think that he really has filled a loophole in the law with this legislation by making it a crime to use the computer modem as a method in which pedophiles or law breakers can use, as Senator Mendez has pointed out many times, that procedure to induce minors into seeing sexually explicit material.

My question, if Senator Sears will yield for a question -

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

SENATOR SEARS: Yeah.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: My question relates to the dissemination label in the bill, being that you go on later in the bill to point out that, if you induce or engage a minor into this activity, it would seem to me that that would actually -- the definition of that would be more endangering the welfare of a child, and I just wondered why you still wrote the bill claiming that this crime is reached by the dissemination when you actually, very thoughtfully, have amended the bill to make it such now that there's an affirmative defense, that of lack of knowledge, where the disseminating party doesn't know that it's going to a minor. So, in other words, there has to be some intent, some active engagement. Once it becomes that, what I'm saying is isn't that endangering the welfare of a child?

SENATOR SEARS: It certainly is. That's -- the purpose of the bill is to tell these pedophiles that, if they're going to endanger the welfare of child, instead of being just a misdemeanor, which is the present law,

now we're going to make it a Class D and Class E felony for something more serious than that. So there's no question about it is for the purpose of stopping this endangering the welfare of a child.

SENATOR PATERSON: Thank you, Senator Sears.

On the bill.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: I actually agreed with the bill. I was just trying to point out that, I think that it should not have been in the dissemination section; I think it should have been in endangering the welfare of a child, but it's certainly needed legislation and we thank Senator Sears for introducing it.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 235, by Senator Johnson, Senate Print 1728, an act to amend the Penal Law, in relation to chemical agents and chemical agent weapons.

SENATOR PATERSON: Explanation.

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

SENATOR JOHNSON: Mr. President, this is a bill which we've had before us many times. It authorizes the possession of a state police approved chemical weapon for self-defense.

When I first wrote this bill up eight or nine years ago, we were one of three states which did not permit the possession of a chemical spray for self-defense. Since then, we have been stuck in this time warp where it's not

nice to defend yourself. Other states have seen the light and now every state and including the District of Columbia, permits people to possess mace or pepper spray or whatever is approved in their state, for self-defense.

It's kind of interesting, Mr. President, last year when we debated it, I read the story about this lady who was attacked in the parking lot, attempted to be attacked and raped, and how she defended herself with a can of mace and escaped and was not a victim.

That is impossible in this state. In this state you would be a victim or else you would be a law breaker carrying mace in violation of the law.

Now, any state which tells you you're not allowed to have anything to protect yourself that -- just like, "Well, it's that kind of a society and somebody's got to be a statistic and this might be your turn, but don't ever try to defend yourself." You're not allowed to have a handgun, obviously, or any other type of weapon so you can't even have a

can of spray to protect yourself. Any government which has that message is an immoral goverment which does not care for the -- for the safety and -- health and safety of their citizens, and I think it's a terrible message and it's time to turn that around, Mr. President.

So my bill says state police approved mace can be bought by anyone who meets a standard for buying a firearm, essentially; you're not a criminal; you're not a mental case, and so on, and so on, and it's about time that this happened, Mr. President, and the bill is before us and I would urge everyone to vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Johnson yield for a question?

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to a question?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR PATERSON: Senator Johnson, Mayor Giuliani of the city of New York is certainly a strong law enforcement advocate, former United States Attorney for the Southern District; he has a concern about this Legislation as do many others.

Just two weeks ago there was an incident in which 70 school children, teachers and the principal were taken to the hospital after mace was sprayed in a school in New York City.

Two weeks ago there was a similar incident in a New York City subway in which a number of individuals were injured by the effects of the use of a can of mace.

There is a warning that was issued in 1993 by the federal government to law enforcement authorities about the dangers of mace and this was a warning that was issued to law enforcement authorities who are already trained in the use of mace. And so as a self-defense weapon, I'm sure that it would be

effective.

My question, though, is would the congestion of a lot of our cities and the ability to use -- this sword cuts both ways. It can be used as a self-defense mechanism. It can also be used to promote violence and commit crimes, and my question to you, Senator Johnson, is given that fact, that we may just be in a sense sanctioning another violent weapon, do you think it's a good thing for us to be passing this bill?

SENATOR JOHNSON: The question is if we make it legal for people to purchase this, would that stop people who acquired it illegally who aren't qualified using it in the commission of a crime or worse, would that stop those people? The answer is no, Mr. President, it will not. It doesn't stop people who aren't entitled to have weapons, pistols, et cetera. People who don't have a license, it doesn't stop them from getting it. So people will have this and misuse it on occasion. We're not concerned about those people. That's a job for law

enforcement.

This bill says that, if you do have it and you use it illegally or you commit a crime with it or you attack a policeman with it, you get very serious penalties, including felony charges for misuse of it. So we are really protecting people against misuse by guaranteeing that those who misuse it will be penalized in strict accordance with the law, but what we're saying is there's a lot of innocent, honest people out there who have no other way to defend themselves.

You might be interested, Mr. President, to know that this is being bought all across the country now, as I said, and more than 50 percent of the people who buy this are ladies between of the age of 18 and 35. Three-quarters of the all the purchasers are ladies. A big majority of that -- of that cohort are professional women who decide that they're not going to take their chances in this society and they're going to have a way to defend themselves and they're buying it, legal

or illegal. We know that. All we're saying is let's make it legal. Why should a person be criminal because they have mace in their pocketbook.

And, Mr. President, I have heard of cases, and you have too, where people you know perhaps, or people have come to you said, "Gee, I had it in my pocketbook when the policeman stopped me. I gave him my license and he saw that and he said, 'You know, that's a violation of law. We're going to charge you for possessing.' I only want to have it to protect myself because, you know, it's kind of a violent society out there. 'Well, it's against the law When they change the law, you can have it.'"

Another person was going out to an airplane, got pulled aside because they found mace. "What are you going to do with this stuff?" "Well, I just have to protect myself." Oh, you're not allowed to protect yourself in the state of New York. Time to change that, Mr. President. That's all I can tell you.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Mr. President, I understand what Senator Johnson is saying. That wasn't really the question I was asking him. The issue that I'm addressing, Senator Johnson, is whether or not there are going to be more incidents of people using this item as a self-defense mechanism or whether there are going to be more incidents of people who now can openly carry the can of mace using it to commit violence on other people. That's what my question is.

ACTING PRESIDENT KUHL: Senator Johnson to respond.

SENATOR JOHNSON: Mr. President, the bill says there are penalties for misusing this, as you well know, and that any person who's going to purchase this must purchase it and swear that they haven't been convicted of any felony, that they don't have any dis abilities, that they don't have any mental problems. Essentially the same type of questions will be required to be answered by

people who buy this as people who buy rifles and shotguns right now except, of course, they wouldn't require a license for this.

Misuse of it is in the law. It's really addressed and, quite frankly, Mr. President, it's always easy to conjure up a boogie man somewhere who's going to do terrible things with the freedom that we give them in this country but, you know, it hasn't happened in the other states.

There's a glaring example of somebody who brought it to school; they thought it was fun, okay. People bring handguns to school every day in New York City, Mr. President. I'm not legalizing that and I'm not legalizing children -- these people, first of all, have to be over 18; they probably wouldn't even be in school -- to carry mace with them. We're not legalizing children, we're not legalizing criminals to carry it. We're just saying that the honest, self-respecting people in this state should be able to defend themselves in some non-lethal manner as you can

do in all the other states, and I haven't heard a good reason against it.

Giuliani's memo is the same memo that Dinkins said, "Congratulations". They think we should have fewer weapons on the street. So do I, Mr. President, but I think there should be fewer weapons, lethal or non-lethal, in the hands of criminals and more in the hands of honest people, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I think the confusion over the use of mace lies in the definition of it as a non-lethal weapon. It is a non-lethal weapon, but it still is a very serious, harmful weapon, and the fact that it is defined as a non-lethal weapon is what often leads us to believe that there would not be a use that could cause very serious damage to individuals, particularly individuals with serious upper respiratory problems as is the case with mace.

So what I'm trying to point out and just putting these issues out here is not the attempt to create a boogie man, because there is already widespread use of this by individuals who feel they need to protect themselves; they're not going to go as far as carrying a gun, which is a deadly weapon. They want to do something that will disarm an attacker to give them an opportunity to get away.

All I'm saying is because it is a product that can cause rather serious bodily harm, perhaps there should be some kind of training. In other words, if somebody want to use it, then we might have a registry and let them go through a brief training session since the law enforcement officials that use it right now are trained in how to administer mace and then, in my opinion, I wouldn't have any problem with it, and that's what I feel on the bill, Mr. President, but if Senator Johnson would yield to another question; I wonder how he feels about it.

ACTING PRESIDENT KUHL: Senator Johnson, would you yield to Senator Paterson?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields, Senator Paterson.

SENATOR PATERSON: That's my question, Senator Johnson. Would you support the mandatory training of individuals who would purchase the product?

SENATOR JOHNSON: Mr. President, our previous bill over the years had mandatory training. No other states require that. To my knowledge, presently, it seemed to be very cumbersome and interfered with an opportunity to buy it because people who couldn't take the training course, therefore, couldn't defend themselves. That was seen as a -- not necessarily helpful but really probably would inhibit most people who need it or feel they need it from getting the protection. So it isn't required, Mr. President.

All I would say is that we all

know the example of Bernie Goetz. We know the example of other people who have purchased weapons or had weapons illegally to carry with them when they go to the City because they felt threatened and they've used those guns on people who have threatened them. In fact, there was a case last year where one man shot a couple of hoodlums in a subway train and the police said, "Turn yourself in. We know you didn't do anything wrong. You tried to defend these people but come into the police station and we'll talk about it", and there was a hue and cry throughout the City, "Don't turn yourself in. Don't surrender. Don't tell the cops anything. You did the right thing." And I don't think they ever found that man.

Now, do we need that kind of thing? Do we need people carrying guns to defend themselves and other people when you can do it with a weapon which isn't serious? And you say people could get hurt with mace, but I'll tell you, if I'm going to get shot or I'm going to get maced, I would rather get maced if

it's all the same to you, Mr. Paterson - Senator Paterson. I think it's much safer than people resorting to illegal weapons and shooting bullets in crowded places.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Johnson.

I'll take that into consideration.

I think that -- on the bill, Mr. President. I think Senator Johnson has really addressed an issue that so often has been the case in public policy debates which is that there may be a law that prevents people from using something, but there is a human need and people are using it anyway.

Often there has been legislation that can't get out of committee in this chamber right now about some of those situations, but this is just as important as any of those, and there are people who honestly are not carrying the cans of mace to try to harm anyone. They

would use it in self-defense. I think Senator Johnson has addressed a serious issue.

All I'm saying about the issue is that this is still an extremely deadly weapon. It is not deadly in the sense that it can cause death, although it did in one case a few years ago, but it is one that can cause serious bodily harm.

As I pointed out earlier, two weeks ago, 70 people were sent to a hospital off of one spray of the substance, and if you look at the alternative that Senator Johnson once had in his legislation, I think that would be a better way to go, and that would be to follow the directive of the federal government in 1993 and to examine the fact that law enforcement authorities don't just pass out the cans of mace when you become a licensed law enforcement officer. What they do is they offer some kind of training, and that same training, as cumbersome as it might would, I think, not only allows for individuals to know how to use the can -- the can of mace without injuring the

wrong parties, but a point I really haven't heard addressed before, it might help people to learn how to use the device in order to actually sustain the disarming of their adversary which is something that is not automatically accomplished. Just by the fact that a woman is carrying a can in her pocketbook does not necessarily mean that because she's attacked in a frightening situation that she would necessarily know how to use it. So it not only might be a public safety benefit, but it also might be a valuable tool for an individual who might use the weapon in conflict to actually learn.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

You know, what so many of us often do, we send out a questionnaire on an issue. I sent out a question on mace -- the use of mace, and let me tell you, I have never

received such mail in my life, bushel baskets full of it, and almost exclusively from women who urge that we legalize mace.

I've never seen an issue that was so significant in my district, and I never expected anything like that, and within that mail, there was all kinds of people that were actually saying they were carrying it in their purse and they were going to continue to carry it in their purse whether it was legal or not.

I think this is a very popular issue, particularly among women, and I'm a sponsor of this bill and I'm pleased to support it and, I think, again, if anything was needed, it was to bring us in line with the rest of the nation and allow women in this state to carry mace and to be able to use it to protect themselves.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Volker.

Senator Gold, why do you rise? I have you on the list, Senator.

SENATOR GOLD: I was just

stretching my legs.

SENATOR VOLKER: Let me just say a couple of things. First of all, I don't know about this incident in New York City. I think I did read something about it. I suspect it wasn't mace at all, and I can assure anybody that -- and I've used mace in years past, and it takes a heck of a lot more than one little spray to deal with problems as apparently happened in the classroom.

The next thing is let me tell you about training of police officers for mace. Maybe they do some sort of training today. I went to the police academy and they handed you this canister and said, "You shoot it right at the dog or right at the person's eyes." That was the training. It was really huge training, I can tell you.

The truth is the interesting part of this bill is there was some opposition to it also because a lot of the stuff that's coming into this state, virtually all of which is illegal, is -- gets through individuals and

companies who do not want to deal with the State Police. They would much rather deal with some of the local people. For instance, they would probably much rather have the city of New York authorize it or whatever or some local agency.

There is an argument, in fact, that this bill, once it is passed and hopefully it will be this year that the Assembly will do it, will have an inhibiting factor as far as the various kinds of toxic materials that are being distributed around in the guise of mace because the State Police will set up the rules and regulations for this type of mace, so to speak, because a lot of the stuff that's being passed around as mace is not mace at all. It's pepper spray and various kinds of things.

I would remind everybody that a few years ago when this bill was on the floor, one of the co-sponsors of this bill, who is not here now, opened up her purse and pointed out that she had a canister of mace and a half a dozen staff people who were in the chamber here also pointed out that they had canisters of mace

that they carried. The problem here is we're being a little silly. A good deal, as we say, of the known world is using some sort of chemical agents in their possession. The problem with trying to do training is that you really don't need a lot of training to do -- to use these sort of things. If you get it from any kind of a reputable source, you get instructions on it, which is about the best you can probably hope for, but more that than, the interesting thing is, if Senator Johnson's bill passes, you would be able to have a better control over what kind of material is distributed in this state because, frankly, even -- even though it's going to legalize mace, it will not legalize some of the things that are being used today, some of which, by the way, are items that probably can do more damage really than mace because they're not the kind of proper things that should be used and it will actually serve, I think, not only to legalize the use of these -- these chemicals, but will also, in some cases, help to find the right kind of chemicals

that can be used by people who are seeking self-defense.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you.

I was going to ask Senator Farley a question. I know he had all of that mail. I was wondering how many of the -- he's opening the rest of it -- I was wondering how many of the people that wrote to him used the subways every day?

I really have a little bit of a problem with the concept of people running through our New York City subways with "legal", quotes-unquotes, mace, in their pockets, and the civil liability and the lawsuits that are going to come out of somebody saying that they were protecting their purse and this and that, and it wasn't their fault that the mace went by somebody's eye and ear and hit three ladies that were standing behind them.

I also wonder what kind of a protection it is when you have it in your purse

and somebody mugs you as they do, not by walking up to you with a sign from 300 feet away saying, "I'm coming to mug you", but from the rear and grab your pocketbook, break the strap and they're off and running, and I don't know how mace works when it's not in your hand and it's in the pocketbook and the fellow is running away with it.

And as far as the question of inhibition, Senator Volker made the comment that we're doing it anyway, and if we have a statute, that will inhibit, in some way, what gets sold and not sold.

Senator Volker, I could wager you, if that was legal, a dinner in the finest restaurants of New York, the loser pays, that if you come down to the city, we can walk around and within seven or eight minutes of any place you want to go, except if it's in the middle of the park, we can buy mace. I mean, they sell it out in the open right now. So why do you think that if we had a statute, and the statute said it's got to be approved by the State Police,

they're going to stop selling what they're selling now? They're selling it now and it's illegal. It can't be any more illegal than being illegal, and they're selling it, but I think that the arguments in favor of this bill really fall apart. The only thing you can say is that somebody wants it and, gee, if they want it and they're going to carry it, why don't we do it, which is an interesting philosophy, because I can tell you, there are things that you wouldn't put on the books that people want. There are things on the books that we've called illegal that everybody does, and it's such a terrible taboo that you won't even take it off the statues to make it legal but everybody is doing it anyway, and it's just not an answer. It's legislation that people want to do it.

The law enforcement community in New York City, as I understand it, says, "Don't do it." The mayor says, "Don't do it." And I don't see why we're rushing to do it. In upstate New York, if that is some kind of a problem -- if you can tell me that in upstate

New York there are instances every day where women are saving themselves because they -- they rip out that mace and are able to protect themselves, I might look at that, but it's all -- it's all a big myth. It really is a big myth.

On the one hand you're saying that everybody is carrying it, and I remember the Senator you're talking about and, since it is illegal in this state, we shouldn't mention Mary by name but -- I mean, I don't remember her saying, "I not only carry it, but I want to tell you on a Friday night and such and such and such, I took that out and it saved me." I don't know all the instances of people being saved. It's a myth.

It's the same myth, by the way, that the shotgun manufacturers use when they sell these shotguns with a little handle and they tell them how wonderful home protectors they are, and if I said would you support legislation that has people report when they use it so we can get all the statistics on all the

people that have saved their lives with it, they're opposed to that because it's a myth. It's a sales myth.

I think it's enough for me not being an enforcement professional that the mayor of my city who is, if nothing else, certainly someone with enforcement background, says it's the wrong way to go for the subways and the streets of my city.

ACTING PRESIDENT KUHL: The Chair recognizes Senator DiCarlo.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: After Senator DiCarlo.

ACTING PRESIDENT KUHL: Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President.

I would like to commend Senator Johnson for the bill of which I am a co-sponsor. I also happen to represent Brooklyn

and Staten Island, portions of both counties. I also happen to be a supporter of the mayor as I have always been, but we're not always right on every issue, and I disagree with my mayor on this issue about mace.

I stand in support of it and, as Senator Farley has said, I have gotten a lot of mail on this subject, and most of the mail I get on this subject comes from women from my district who want the right to carry mace to defend themselves, especially in New York City -- especially in New York City where the women find themselves more often than not the victims of crime and attacks.

Now, I don't see why there's such an argument about this, and it's said that we shouldn't allow them to carry it, especially on the subways in New York City, but the women in my district want the right to carry mace. The women in my district, by and large, are not the ones committing the crimes in New York City, and I support this legislation, not only for the women who want to carry it, but for the fathers

and the mothers who have daughters who have to go through some of our streets in New York City, and even if it just makes them feel safer, I support it.

So I support this legislation for the residents of my district who happen to live in New York City and I urge its passage.

Thank you.

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: Mr. President. Mr. President, I would like to correct a couple of misstatements that were made here, I'm sure innocently by people who are arguing on the other side of this issue.

I would like you to know that the New York City PBA supports this bill, Suffolk County Police Department, New York Federation of Police, New York State Association of Chiefs of Police, communications workers, teamsters union, SUNY Buffalo, public safety, New York City Transit PBA, International Chiefs of Police Association and the Police Conference of New

York which formerly opposed it has withdrawn their opposition and, in fact, Ed Guzdek, president of the Police Conference in New York in a statement here released to a newspaper on March 2nd, 1995 said his group, which represents 214 police unions, tried for years to block legislation. Opposition was finally withdrawn last year after amendments ensured that distribution of the sprays would be regulated and greater penalties would be imposed if used against an officer. So we really don't have a lot of opposition from the police, as far as I know.

We have very strong support from a lot of newspapers, including the New York Daily News, New York Newsday, Schenectady papers, other papers upstate and, of course, New York Post columnist Amy Pagnozzi, Ray Kerrison who said -- like anybody -- "Anybody who doesn't vote for this bill", they said "like are kind of slow to catch on what's going on in our society."

And a couple of other quotes in

this article were kind of interesting. This was a discussion, a young lady in the Academy of Self-defense in New Rochelle said that carrying it is illegal and she knows it but she said that doesn't worry her. "I would rather face the judge on that than be on a slab somewhere", she said.

Another kind of interesting quote from another person at that academy, Tommy May, the owner of the academy said that it's against the law. He said, "I've gotten my students mace and pepper spray for years." He said, "It's against the law but it's also against the law to get raped, robbed and attacked." So he felt that -- not to worry about it.

Mr. President, people are talking about illegal sprays being sold now. If this bill becomes law, there will be legal sprays which can be bought as opposed to there's no legal sprays now. These legal sprays will have the imprimatur of the State Police in coopera tion with the Department of Correctional Services, Department of Health, and they're

going to help develop standards of legal agents that are going to be bought in this state. Therefore, not only will we not worry because now they can enforce against illegal products, which right now obviously there's nothing else but illegal products out there.

The other argument, I think, would be that persons now say -- we said a lot of young professional women are buying it, other people, but there are a lot of people who are so law abiding that they wouldn't think to buy it because they know it's illegal and they're becoming then unable to get something to protect themselves because they're so law abiding and very likely to become a victim of a crime. If there's a legal product out there, that problem wouldn't exist.

You know, I -- I really tell everyone I've had this bill for a long time, and here's a letter, May 31st, 1989 sent to me by John J. Poklemba, Director of Criminal Justice Services for Mario Cuomo, and this got me so mad, I don't even like to mention it, but I have

to mention it again. One of the things he says here which turned me off, it should turn everybody off.

He says, "Furthermore, although these chemicals pose far less risk of serious injury than firearms, their inappropriate use can be quite hazardous to the user and on occasion cause physical injury to would-be assailants."

Okay. Give me a break.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yeah. Mr. President, I think Senators Gold and Paterson make some strong arguments, but I must tell you on balance, I agree with Senator Johnson.

I've come to the view that we're probably better off if we legalize and control mace than if we don't, and I know I used to argue against this bill a couple of years ago.

I've given it a lot of thought, and I think that maybe one of the reasons that people sort of instinctively may be against this bill as the mayor of New York is, is because I think we tend to analogize it too much to the use of handguns.

It really is a different substance, and I appreciate that there's a balancing involved. I also understand there's a certain risk of misuse, and when Senator Gold says somebody in the subway may use it inappropriately or use it maliciously and then claim he or she were defending themselves -- and there is that risk, but I think if you balance this against the many people, particularly women, who do feel a need to protect themselves and understanding and realizing that this is a non-lethal substance and, indeed, as Senator Johnson, I think, rightly points out, if it is under the supervision and control of the State Police, we will actually be able to avoid having the more dangerous type of chemical used. I assume the State Police will use the sort of

strength that will disable somebody without causing any physical harm.

So I think having in mind the fact, unfortunately, that in our society there is a need to protect oneself, and this is a way of doing it really in a non-lethal way, I'm going to support this bill.

Senator Johnson, your persuasion was very strong.

ACTING PRESIDENT KUHL: The Secretary will read the last question.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of November.

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 235 are Senators Abate, Connor, Gold, Smith and Senator Waldon. Ayes 52, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Galiber.

SENATOR GALIBER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 60, Bill 773?

ACTING PRESIDENT KUHL: Without objection, Senator Galiber will be recorded in the negative on Calendar Number 60.

Senator Leichter.

SENATOR LEICHTER: Mr. President, may I also have unanimous consent to be voted in the negative on Calendar Number 60?

ACTING PRESIDENT KUHL: Without objection, Senator Leichter will be recorded in the negative on Calendar Number 60.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 352, by Member of the Assembly Schimminger, substituted earlier today, Assembly Print 6084-C, an act to amend the State Finance Law, the Banking Law and Chapter 705 of the Laws of

1993.

SENATOR PATERSON: Explanation.

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

SENATOR PATERSON: Thank you, Mr. President.

Mr. President, this is a three-year extender of New York State's Link Deposit Program. It's been a very highly successful program, created some 8,000 jobs over the course of the past couple of years since its inception at a relatively nominal cost, some $750,000. That's arrived at basically by determining the difference between what the amount of the monies deposited by the state. To date it's been limited to commercial banks. The state agrees to take two or three points less, two or three percent less on its loans provided that the lender will use those dollars for economic development in the respective regions in which those banks are located.

As I said, the law to date has

been extremely successful. The legislation initially was introduced by Senator Bruno. Senator Farley and I have worked rather closely since last year on trying to expand this bill to include the thrifts. Thrifts are included in this bill for the first time. The bill basically is intended to deal with relatively small -- smaller loans and it's the type of program that will comport well with the existing commercials that are currently available in this program.

I believe that there is no opposition to this bill. It represents the culmination of a number of months of negotiations between ourselves, the Assembly and the Governor and, as part and parcel of those negotiations, I would like to thank my staff in the person of Darrin Ocke and Senator Farley's staff in the person of Peter Edman.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Yes, Mr. President. No, there's no opposition to this

bill, Senator Saland. I just had a question - in fact, I haven't opposed any of these bills that I have asked questions on today.

I'm just trying to stimulate discussion so that when I get paid this week, I can feel that I earned my salary.

Would Senator Saland yield for a question?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LIBOUS: Point of information.

ACTING PRESIDENT KUHL: The Chair doesn't recognize Senator Libous. (Laughter).

The Senator yields, Senator Paterson.

SENATOR PATERSON: Senator Saland, is there a turf battle between the savings banks and savings and loans and the

credit unions, because I noticed that, in trying to ameliorate the problem of -- there have already been 169 instances where the bill has proved very successful, but only six in New York City and only two in the North Country. I was wondering why you did not extend the legislation to include the credit unions?

SENATOR SALAND: Well, I wouldn't call it a turf battle. I would say that, given the nature of the loans that have been made under this program, you're basically talking about -- I won't call it definition, but by practice in the industry what are considered to be smaller loans. The cap, I believe, is $1.5 million. The commercial banking industry was very much involved, particularly the smaller independent banks, in putting this program together.

Well, with some of the things we've done in the banking industry over the course of the past decade or so, there certainly has been a greater access to these types of programs among thrifts, savings and loans, than

had previously existed, and we believe that this is certainly consistent with what we have been doing over the course of the past decade, and this is an expansion which, in some areas of our state, is particularly important because, particularly in upstate communities, there seems to be many of those communities in which the principal lender, the one providing commercial loans, are savings institutions and to date, credit unions really haven't been in the commercial loan business. They may make loans to some of their depositors that are in the nature of commercial loans but they're doing it generally on an individual basis.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator Saland.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: I think that if credit unions would expand the type of loan

service that would be extremely helpful in a lot of communities around the state, certainly in the one that I represent. Credit unions are extremely instrumental in issuing loans and if public monies were invested at a low rate of interest in those areas, it would be helpful. I hope in the future that that will be considered.

That concludes my remarks, Mr. President. You can yield to Senator Libous now if he'd like to talk. (Laughter).

ACTING PRESIDENT KUHL: He's on a long list.

Senator Galiber.

SENATOR GALIBER: Would the Senator yield for two just two questions?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GALIBER: One of Senator Paterson's -

SENATOR SALAND: Senator -- is that list so long that we might not get to Senator Libous, Mr. President?

SENATOR GALIBER: I will try to stop him another way. I'm not getting paid next week, okay? Maybe that'll stop him, but I'm not quite sure.

Senator, this has been an ongoing war, so to speak, quote "turf battle" or no, the commercials and the thrifts or the savings, and at one time we recall that they were interested in doing a little insurance and a little -- a couple of other things somewhere.

Could you tell me the economic value that you mentioned before -- and I'll tell you why before you answer the question. Those of us who have been around for a while can recall when the thrifts would show us on TV, a big safe, and the safe would open up and there was our community, and they were telling us what they were doing for our community and, as it developed in the community that I live in, it was doing absolutely nothing. So for that

reason, I would like you to tell me what they have been doing up to date from an economic standpoint, and I'm going to vote no on the bill, not because it doesn't have good merit. It's just by way of a small way of saying it's a negative vote because I think they can really do something in communities such as I represent and they can do it with the credit unions, and it's not a new thought because the credit unions for some time have been trying to get into the business of doing some of the things that the commercials and the thrifts are doing.

So if I can get an explanation for that, Senator, that's good.

SENATOR SALAND: Thank you, Senator.

And I would certainly be more than happy to delve into the issue of expansion of authority of commercial -- I'm sorry -- of credit unions, although I don't believe this is the forum for it, and I'm sure Senator Farley would be more than happy to discuss that with you at greater length, I'm sure within the

context of greater reforms, there will be consideration given to the interest of credit unions into expanding, in effect, their services.

What I mentioned in my earlier comments was that this program to date has proven to be a successful program. It is certainly one of those successful public/ private ventures where the state, through the medium of providing -- depositing monies in local banks, agreeing to accept less interest, two to three points less interest than they would receive as the then prevailing rate, provided those institutions will use those dollars for economic development programs has basically helped spawn jobs, has helped create economic development, and the figures I mentioned in my earlier comments were somewhere in the area of some 8,000 jobs over the two-year period, and the expense associated with it is approximately $750,000, which nets out to less than $90 a job, if you want to look at it that way. So it has been a successful program and,

as I mentioned again with -- with the backgrounds of the thrifts and dealing with the commercial loans and being, in effect - providing many of these same services under some of the very same responsibilities, being regulated like a bank, not as a credit union, we felt that this would be an appropriate expansion at this time.

SENATOR GALIBER: I'm sorry. Could I ask just one more?

ACTING PRESIDENT KUHL: Senator Saland, do you yield to one more question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GALIBER: Thank you, Mr. President.

Senator Paterson mentioned 169 as a figure. I'm not sure that's where -- we have proof that this has been working. Would that be a fair number?

SENATOR SALAND: I couldn't

verify. I would be more than happy to provide you with that information.

SENATOR GALIBER: Not really. 169- is irrelevant. The question I would like to ask is how many has the city of New York been the beneficiary? And I keep throwing these questions at you because we had the experience where we bailed the thrifts out some time ago, and they were in bad shape, one bank in the city of New York, Manhattan, and I think in Senator Paterson district's, Freedom National. They didn't see fit to save that one bank that we have in Senator Paterson's district, and I thought perhaps you could tell me whether this new concept is beneficial with the 8,000 jobs - I'm happy to see that -- whether there's been any primary beneficiary to the city of New York in general, to Manhattan and Bronx in particular.

SENATOR SALAND: I don't know if I could break it down for you by borough, Senator Galiber, but to date, it's been somewhat under-utilized in the City. Through December

30th of this past year, there had been some six of these link deposit loans produced in the City.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR FARLEY: Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Farley to explain his vote.

SENATOR FARLEY: Thank you, Mr. President.

I just want to applaud Senator Saland for working on this piece of legislation which I support and which I'm a sponsor of.

This does provide, Senator Galiber, some economic opportunity. I think

more will be done. It puts a very large part of the banking industry into this link deposit program to provide for some economic development and I think it's positive. It's an example of the banking industry working together, the thrift industry and the commercial bankers, historically -- and you have been here long enough to remember when they didn't go to the same party, but they are working together on this, I think to the benefit of all people in New York State.

Are credit unions part of this? No, they're not. There's problems with that. We're going to be working on that. Credit union powers are something that are going to have to be addressed, but there's a lot of factors that will go into that, but this is a good bill. I urge its passage and I'm pleased to support it.

ACTING PRESIDENT KUHL: Senator Farley in the affirmative. Announce the results.

THE SECRETARY: Ayes 56, nays 1. Senator Galiber recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair would note that completes the controversial calendar and also the Chair would note that it's been rather noisy in here today and I'm sure it's because of the buzz of all of you in welcoming our client, Howard Babbush, back to the chamber, and I would like to join in that.

Howard, we're glad that you've recovered well enough to be with us today. Nice to have you here.

(Applause.)

Senator Skelos.

SENATOR SKELOS: Yes. Mr. President, it's wonderful that we ended up in a timely fashion of the controversial calendar. That's the good news.

The not-so-good news is that we're -- there will be a meeting of the Finance Committee at 5:45 p.m. this evening, followed by a meeting of the Rules Committee in the Majority Conference Room and then there will be session

at 6:00 p.m. to take up the emergency pay bill and the social security payment bill at that time.

ACTING PRESIDENT KUHL: There will be an immediate -

SENATOR SKELOS: If Senator Stafford releases them -- okay.

ACTING PRESIDENT KUHL: The Acting Majority Leader has indicated there will be a Senate Finance Committee meeting at 5:45 in Room 332, the Majority Conference Room, to be followed immediately by a Rules Committee, and that the Senate will come to order again at 6:00 p.m. for the purpose of taking up two emergency pay bills.

SENATOR SKELOS: Yes. Now, is there any housekeeping at the time?

ACTING PRESIDENT KUHL: We have a substitution at the desk, Senator Skelos. Take that up at this time. Ask the Secretary to read.

THE SECRETARY: On page number 12, Senator Lack moves to discharge from the

Committee on Investigations, Assembly Print 3764 and substitute it for its identical bill, Calendar Number 147.

ACTING PRESIDENT KUHL: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping at this time? If not, the Senate will stand in recess until 6:00 p.m., Finance Committee meeting at 5:45, followed by Rules Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: The Senate stands in recess until 6:00 p.m.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Skelos.

SENATOR SKELOS: There's no Majority conference at this time, no Majority conference.

ACTING PRESIDENT KUHL: No Majority conference is scheduled at this time.

(Whereupon, at 4:14 p.m., the Senate recessed.)

(The Senate reconvened at 6:53 p.m.)

ACTING PRESIDENT KUHL: The Chair at this time would recognize Senator Skelos for an announcement.

SENATOR SKELOS: Yes, Mr. President. There will be an immediate conference of the Majority in Room 332 of the Capitol, and it's anticipated that the Senate will reconvene at approximately 8:00 p.m.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Majority Conference in the Majority Conference Room, Room 332. At this time, it's anticipated that the reconvening of the Senate will be at approx imately 8:00 p.m.

(Whereupon at 6:54 p.m., the Senate recessed.)

(The Senate reconvened at 8:15 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

The Chair recognizes Senator

Bruno.

SENATOR BRUNO: Mr. President, can we return to reports of standing committees? I believe there's a report from the Rules Committee at the desk.

ACTING PRESIDENT KUHL: There is a report at the desk, Senator Bruno. We will return to reports of standing committees; ask the Secretary to read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills directly to third reading: Senate Print 3957, Budget Bill, an act making an appropriation for the support of government.

Senate Bill 3958, by the Committee on Rules, an act making an appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, I move we adopt the report of the Rules Committee.

ACTING PRESIDENT KUHL: The motion is to adopt the report of the Rules

Committee. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, I offer up the following amendments to Calendar Number 360, Senate Print 3957-A, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Without objection, the amendments are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we call up Calendar Number 360 at this time?

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 360.

THE SECRETARY: Calendar Number

360, Budget Bill, Senate Print 3957-A, an act making an appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Bruno.

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

ACTING PRESIDENT KUHL: Senator Bruno, I am informed by the Secretary that there is a message of necessity and appropriation at the desk.

SENATOR BRUNO: I move we accept the message, Mr. President.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity and appropriation at the desk. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last

section.

SENATOR PATERSON: Explanation.

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

SENATOR BRUNO: This, Mr. President, is the bill that allows all public employees to be paid with the exception of legislative employees and executive employees other than those that must be paid according to the national Fair Labor Standards Act.

Senator Stafford, the chair of Finance, may have something to add to that explanation.

ACTING PRESIDENT KUHL: Senator Stafford, you would like to expound on the explanation?

SENATOR STAFFORD: It is impossible to improve upon the explanation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Would Senator Bruno yield for a question?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno yields for a question.

SENATOR PATERSON: Senator Bruno, who is going to make the determination of who is covered by the Federal Fair Labor Standards Act?

SENATOR BRUNO: Senator, the original version of this bill had left part of that decision up to the Governor, but we had a discussion with the Governor and with others and have offered up an amendment that now, in the enabling legislation today and tonight, makes that decision so there is no decision to be made. It will be part of the legislation that is before us. We changed the original bill through this amendment.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Well, Senator Bruno, for instance, would public employees all be covered by the Federal Fair Labor Standards

Act?

SENATOR BRUNO: All the -- all the public employees that work for the state will be paid according to this enabling legislation, all.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, it's my understanding that that's not true. Now, of course, it's my understanding based on the fact that this amendment has just been offered up and so it's -- it's certainly our feeling from just a perusal of the records of employees that there will be at least 1,000 employees of the Public Employees Federation, for instance, that union that are excluded from the legislation.

So, in other words, going back to my original question, who is going to make the determination as to who can get paid and who can't get paid? If we see the first piece of legislation -- what I'm asking is that, in the amendment, it's not clear and I'm just wondering

if you can make that clear for us.

SENATOR BRUNO: Yes. I think and believe that the legislation before us very clearly states that those employees that are covered under the Fair Labor Standards Act that work for the state will be paid.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: If Senator Bruno would yield for another question.

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

(Senator Bruno nods head.)

SENATOR PATERSON: Senator Bruno, what we are having right here in this dialogue is a disagreement of the like that could exist theoretically in the next couple of days in terms of who is actually eligible and who is not eligible. And so in situations like that, there has to be a broad supervisory power that renders a decision as to who actually gets paid and who doesn't get paid, and the reason I asked the

question is because we are hoping that, as difficult a situation as this may be, that at least there will be a fairer standard that will override the determination of who gets paid and who doesn't.

We have a Constitution that certainly speaks to this issue and it speaks to the separation of powers between the executive and legislative branch, and in this particular situation, I'm trying to protect against that constitutional protection being violated; and so what I'm trying to figure out is who is going to decide who would fall under the Fair Labor Standards Act and who would not?

SENATOR BRUNO: It's my understanding that the normal procedure in this state, if there is any controversy at all, that that decision would first be made by the Comptroller of New York State and the Comptroller would make a judgment based on this enabling legislation as to who would get paid and who wouldn't get paid, and if people weren't satisfied with the Comptroller's judgments, then

I would guess they would have recourse through the courts.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, a voice in my ear said "explanation is satisfactory", but the voice sounded remarkably distinctly like that of Senator Bruno, but what I am continuing to ask is are we going to put the Comptroller of the state of New York in the position of having to rule on what is actually a federal standard when we are passing the legislation here at -- well, it's some time before the UCLA-Arkansas game and it's two days before the paychecks are supposedly to be released. And so what I'm saying is that this is remarkably ambiguous at a time when, just two hours ago, we had another piece of legislation which the Majority Leader points out needed to be amended, and that piece of legislation would have given that authority to the Secretary of the Governor.

At this point, it leaves it very

open as to which staff members are going to be policy making and which are not. And, of course, that's going to create a situation where there's an imbalance in the actual payment of different parties based on who they work for and, in my opinion, if we're all going to go through this process that the Governor has promised us we would go through were we not to pass the budget on April 1st as he stated in his state-of-the-state message on January the 5th, then we should go through it equally.

Now, the legislators, that's not a problem. We understand the Governor's concern. We passed budgets late on occasion in the past, and we should endure the hardship, but we're talking about staff members trickling down as low as interns that we're not going to pay, interns who make $110 a week. And so, I think it should be very clear and it should be scrupulously in detail that we would come to a decision before we pass this legislation as to exactly who is going to make the determination of the federal standard of what complies with

the Federal Labor Standards Act, and that's why I'm continuing to just try to arrive at a firm determination as to what that standard will be.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Senator, if I might.

Mr. President, Senator Paterson raises some very legitimate concerns and some very legitimate questions. We just received this legislation, have been reviewing it with counsels as you have. An amendment was prepared. I would -- and I respect the questions that you are raising and I am not sure that we can accurately reflect the intent.

So, Mr. President, I would ask my colleagues on that side of the aisle to go along with my colleagues on this side of the aisle in that I am going to describe broadly what is in this legislation and what the intent is again. And I will assure my colleagues in this chamber that it is critical that this get done tonight so that the work force can be paid. We're told

by the Comptroller's office that the process must take place starting tonight or people will miss paychecks on Wednesday, but I want to assure you, Senator, and the rest of my colleagues that if -- we will review this through the night and in the morning and, if there are omissions in this bill, we will correct them tomorrow in this chamber so that we don't hold up the paychecks of the state work force, and I'm sure that there isn't anyone in here that wants to accomplish that.

So, Mr. President, what this legislation does, it purports to allow all state employees to be paid on payday this Wednesday with the exclusion of the executive employees and the executive branch and the legislative - Legislature employees with the exception of those that are lined in specifically such as the messengers in both houses who are among some of them disabled who work here, nurses, librarians and any other employees that must be paid according to the Fair Labor Standard Act, and that's the amendment that we have posed. Only

those people will be paid. Others in the executive branch and in this Legislature will not be paid.

Mr. President, that's the understanding that we have of the bill before us with the amendment that we have posed. I will repeat again, if corrections are necessary because there are some omissions or commissions other than what we are stating here for the record -- this is being recorded -- for the public record, we will work to correct it by statute in separate chapter tomorrow.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, we are in a situation right now where a number of employees, whether they be government employees or the staff members of elected officials who nobody seems to want to defend or even the interns of elected officials are put in the precarious position of not knowing when their paychecks are coming.

Now, one thing we don't disagree

on; they all worked, and this particular check does not relate to any time after April 1st. It relates to the dates March 8th to March 22nd, dates that were worked, dates that existed in the 1994-1995 fiscal year, and so speaking personally, I don't see any reason that anybody should not be paid, but being that there are a number of individuals who will not be paid and excluding the legislators, because we understand that we didn't pass the budget on April 1st; it was our constitutional duty and we'll bear the burden, but we're now talking about staff members. They don't have a vote in this house, and we're now talking about public employees who aren't even staff who the Governor said just a few weeks ago, promised he would not suspend their paychecks, although he originally said he was going to do that.

So I'm saying, in this confusion, the one thing that I can rely on is that the Majority Leader has not run this particular house in a fashion where there has been any doubt, and if he offers his word, obviously I

take his word that he really intends to make sure that if there are any errors they would be corrected. He has run this -- these sessions on time every day until just now, and so I would assume that there is some confusion on this, and I don't want to be in any way antagonistic to the fact that this is a difficult situation. The paychecks are due Wednesday and I understand but, Senator, how are you expecting us to vote for a piece of legislation that we don't know tomorrow may have been a very bad vote and a number of individuals may not get paid on Wednesday and they will be knocking down our doors asking why we voted for the legislation.

So, although I understand the discrepancies in the whole situation, I cannot understand why we have to vote on this piece of legislation right now when it is eminently clear we don't know who the broad supervisory power that would render the decision as to who would comply with the Federal Labor Standards Act and we probably don't even know which employees are eligible and which are not in the first place if

you look just at the face of this bill.

And so my question is why the cursory nature of the need to have this legislation implemented at this time? Why don't we just wait until tomorrow, because I don't see how many of us in good conscience can vote for this bill with the situation as it stands right now where we are making a decision in the dark.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, I hear my colleague and, again, I respect what the good Senator has to say.

If there's confusion in the legislation, I am suggesting again, the legislation speaks for itself. The Comptroller of this state has the responsibility to interpret the legislation as relates to what we're doing here tonight, and the Comptroller of this state has 20 -- 30 attorneys whose work it is to deal with these issues, and they will make judgments. Our counsels have been conferring with them, and we are told very emphatically

that, if we don't do this bill tonight, people will not get paid, a number of them, on Wednesday, and those that already have the automatic deposits, that will not happen because we didn't do this by 4:00 o'clock today. So there's going to be a great inconvenience to tens of thousands of people in this state. So the only way to avoid the inconvenience to a couple hundred thousand people out there is to do this bill tonight.

We will work with the Comptroller's office with an interpretation to make sure that what we are saying for the record is -- as this legislation intends is what is actually enacted. Whatever corrections need to take place, we'll be prepared to take up tomorrow when we're in session.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR BRUNO: And, Mr. President, we can, you know, debate this for the two hours and I'm not sure that -

SENATOR PATERSON: I'm not trying

to debate this for two hours. In fact, I only have one other question, just one last question, as Lieutenant Colombo would say.

Senator Bruno, I've got to ask you this. The Comptroller could have theoretically decided he was going to issue these checks anyway. He could have decided that, but the checks have to be co-signed through the department of the treasury. The Comptroller didn't have the authority over the department of the treasury to determine whether or not those checks would be co-signed. And so under that same rule that governed the Comptroller on the checks that are coming out for all employees of the state of New York, I submit to you that, if the Comptroller rendered a decision based on the federal Labor Standards Act, that the department of the treasury didn't have to adhere to it. And so I'm just suggesting to you that I don't know that it's certain because it doesn't say that in the amendment to this bill, that the Comptroller has that authority. So I'm just going to ask one

last time. I'm going to sit down. I will not get back up. I just want to know whether - where we are deriving the Comptroller's authority other than the broad authority he's given in the Constitution which, in my opinion, would not apply in this case.

SENATOR BRUNO: Mr. President, my very learned counsel informs me that, whether or not the Comptroller has the authority to do anything dealing with allowing state work force to be processed and paid, is a question that may end up getting answered only in the courts if we don't do this enabling legislation.

Since our year ended March 31st, April 1st starts a brand new year, and we have to give the Comptroller the authorization to do this appropriation because there is an appropriation with this bill and that can only happen through the Legislature, both houses, signed by the Governor to allow it to happen. If that doesn't happen, the question -- it's questionable on whether the Comptroller can take any action.

And I didn't want to mention this before because I don't want to prolong the debate, Mr. President, but we, in this house, had hoped that this whole conversation would be unnecessary and that's why we passed the budget by March 31st and had the Assembly saw fit to pass the budget by March 31st, this conversation -- and I don't say this in any way other than as a matter of fact, this conversation would be unnecessary but -- thank you, Senator.

I think my colleagues agreed that, had we had a budget in place, then we wouldn't have to be even discussing this, and I feel very proudly, Mr. President, that it's necessary for us to be making judgments and distinctions on what public employees get paid because it creates pain for a lot of people, and that's not anything that any of us want to inflict on anyone. I'm well aware of that, and we want to do our best to avoid it, and the best way to avoid it is to get a budget in place in in state because, if that should happen by some miracle tomorrow, then, guess what?

Legislators get paid and legislative staffs get paid and the executives get paid in this state. All we have to do is get a budget in place. We passed a budget, and it would be nice if it could happen in the other house. And I say that, Mr. President, only because we are trying to move the process forward.

ACTING PRESIDENT KUHL: Senator Gold. Senator Connor, I have a list going.

Senator Connor, why do you rise?

SENATOR GOLD: Certainly, with all due respect, I would yield to Senator Connor.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

When I see this legislation and hear the discussion and I know the interest, the other one -- I think I know the other one, but if anyone in this house, as I read this, I'm sure that on the second floor of the Governor's

office, secretaries, clerical personnel will be paid for the work they did in March. We'll be paid on Wednesday but, as I understand this, it's my information that virtually no one who works for the Legislature is covered by the Fair Labor Standards Act.

So, therefore, secretaries, clerical personnel who work for the Legislature will not be paid on Wednesday for the work they did for the two weeks in March which is the pay period to be compensated on Wednesday; and I say why? What did they have to do with passing the budget?

I look at this list the Governor submitted to the Comptroller, of this staff that won't be paid and missing from here, going to be paid are the unit chiefs in the Division of the Budget, 104-, $105,000 a year, unit chiefs in the Division of the Budget. I hope they have something to do with the budget process for that kind of money, and I ask my colleagues, they will be paid on Wednesday? But your intern won't? They will be paid on Wednesday 104,000,

to be a division chief in the Division of the Budget, a unit chief. I think they're called assistant or deputy budget directors. They can be paid on Wednesday, but your secretary won't?

Not only are people being punished here but it's really hard to understand why they are being punished. Oh, legislators, the Governor, Lt. Governor, elected officials, no problem. Don't pay us. Don't pay us until there's a budget. That's our responsibility. But what are we saying here? That your receptionist tells you how to vote on a budget, when to do it and what do you put in it? That they're responsible somehow, more responsible than the receptionist in the Governor's office, more responsible than the unit heads in the Division of the Budget who makes 104,000 a year.

I have people in my district office, and we all do, who make -- I'm sure we all have people make less than $20,000 a year. Their job, constituent services, they worry about helping people wade through the bureau

cracy; they go to community meetings. They don't live in Albany, and they don't get paid Wednesday and they say to the landlord, "I didn't get paid." You know, important as these issues are, they're not going to be blasted all over the front page downstate. Upstate, in the Albany area, everybody will know, and I certainly hope landlords, lenders, people who have mortgages, car loans in this capital region will understand when someone says, "I work for the Legislature." They'll understand, I hope that, "Oh, I know you're not getting paid for a couple weeks, but you will get paid."

That's not true for everybody where somebody who works for the Legislature lives. Go explain to somebody who is a landlord in Brooklyn or Queens that, "Oh, I work for the Legislature, I didn't get paid." Their first reaction will be, "You don't have a job?" They won't understand what this little game going on of scapegoating clerks and secretaries for something the Governor and the legislators failed to do in a timely fashion.

This legislation makes absolutely no sense. Why would you pay someone who works in the Division of the Budget and earns 104,000 a year and not pay an intern that earns $110 a week?

There's no rationale for this. It's purely punitive. If there were a rationale, a consistency, it would make sense. If it denied pay to legislators only and elected officials, I'd vote for it in a minute, but that just makes no sense to pick on people who have absolutely nothing to do with the budget.

And now I'm told in this new amended version, and the reason that I won't vote for this, because as unjust as it was to legislative employees, low level legislative employees, I was prepared to vote for this to see that our work force was paid and that those who are represented in collective bargaining are paid, and now I'm told, Oh, commissioners will be paid under this, but commissioners will be paid 104-, $105,000 a year, they'll get paid,

but now I'm told that over a thousand employees who are represented in collective bargaining by PEF are not covered, for a variety of technical reasons, by the Fair Labor Standard Act and they won't be paid under this.

This isn't legislation. This is a piece a garbled up mess. This is a lashing out at I don't know what. It's certainly not thought out. For a governor who's threatened the public employees and the legislative employees of this state for the last two or three months with the loss of their paychecks, who's had all that time to threaten, and his budget director has all that time to threaten and plan and plot and worry the workers, to now come out with legislation that doesn't make any sense is the best that can be said about it and I appreciate what Senator Bruno wants to do. The best that can be said about it is maybe tomorrow we'll correct this because it doesn't seem well thought out; maybe there's a problem.

That's not good enough from that second floor. They've had weeks to threaten,

make campaign speeches, point fingers, and now they can't even come up with a piece of legislation that aims at the correct people that they ought to be aiming at if you're willing to subscribe to their punitive notions anyway.

This legislation is unworthy of a vote in this chamber.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

The one thing that this piece of legislation does say is that the Governor lost, because the Governor said, "If you don't have a budget on time, I'm closing down the state." And what happened? The state is not closing down, not under either of these bills, the first and the second because somebody said, "Oh, Governor, I know you said it. It was a good tag line, good tag line but, Governor, you can't do it," and they explained why.

Then they came up with the first bill, and there was -- they weren't closing down

the state exactly, but we're going to come close and somebody said, "Governor, you can't do that" and, Senator Bruno, you're left with something that you say you're unsure of but, as Senator Connor said, you could have been very sure.

Everybody gets paid in the state except the Governor, Lt. Governor and the Legislature. That's pretty clear. Of course, that's a tag line also, and that's ridiculous, because everybody knows that we are going to get paid. The Constitution says it, so it's a good tag line, but it really doesn't mean too much, and the biggest disappointment to me is that the Governor, who I respect, really is acting like a kindergartener because that's what this is.

The Governor says that we should put our pockets in front of our constituent pockets, and I for one won't do it. But that's what this says. It says, whether I like the budget or I don't like a budget, I've got to vote for something by March 31st or I won't get paid even, if my constituents get decimated, and I say, "Governor, I ain't goin' to do it."

That's not what I got elected to do.

Of course, Senator Bruno, I also don't understand the philosophy because I'm a part of this house and this house passed a budget. Well, why are we not paying the people who work in this house? We passed a budget. Of course, the fact that the budget was not passed on time is the fault of George Pataki, and I'll tell you why. I'm glad you asked. When the other budgets didn't come in on time and we had a Democratic governor and a Democratic Assembly and the Republican Senate, it was never the fault of the Republican Senate that the budget didn't come on time, never, never. It was always the fault of the governor and the Assembly because the governor was a Democrat and the Assembly was Democratic.

So why is this year all of a sudden that it's not the fault, I mean take the logic. The Governor and the Senate. Not Shelly's fault, not Assembly's fault. It happens to now be the same position you fellows were, you fellows and girls -- pardon me, ladies

-- for a number of years, so it's obvious taking the Republican philosophy of this house for years and years, it is your fault and George Pataki's fault that the Governor -- that the budget didn't get passed.

Of course, this is -- I don't know, by the way, whether the cooks in the mansion get paid because, if they don't get paid I guess the Governor could really put pressure on us and fast until the budget got passed. But I don't know whether we're going to see that.

The bottom line is that this is really just silliness. I'm sure it will have some appeal to some unemployable guys at the New York Daily News to write for their editorial page, and who like slogans as much as other people, but in the real world this is childish, absolutely childish.

You don't want to make payments and you're talking about delaying payments. The money is going to come. Is this a symbol? It is not a symbol and worst of all, worst of all, once you get past the childishness of it, you

come in with a defective bill. I've -- we've had our conference. I've been talking to people in the hall. There isn't a doubt in the world that, if there was a piece of paper which says until the budget is passed, members of the Legislature, the Governor, the Lt. Governor will not get paid, I don't even think you'd have a debate. I don't think you'd have a debate, but I can't believe, Senator Bruno, having known you for a long, long time, that in some way the Sergeant-at-Arms is at fault for George Pataki not bringing in a budget or your receptionist who is a lovely lady apparently sabotaged the state, and you're not paying that woman until we get a budget.

Well, this side of the aisle, I hope, would have done better during the budget process, and I'm glad that Senator Connor said what he said about how his vote would go because I'm going to vote with my leader. I think it's childish. There will be some people out there who say, Oh, my God, you know, at least vote to pay those people who can get paid. Let's at

least get somebody. I say nonsense. If you people can't even draw a bill to be able to tell people who's covered and not covered and you have to say the Comptroller has counsel, he's got 20 counsels, let them figure it out, you wouldn't dare put in a piece of legislation like that.

Is that the way you give rule making authority to the agencies? Come to think of it, you don't like the agency rule-making, that's what you must have been doing for 20 years. The bill is an embarrassment. It's not only a political embarrassment showing that the Governor couldn't deliver on the budget and couldn't even deliver on his threats to stop the state, it's a drafting political embarrassment and not only shouldn't people vote for it, they should be ashamed that we're even dealing with it.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Solomon.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, if Senator Solomon would yield for just one moment.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I wasn't going to get up, but I -- something just came to me, and I was wondering if Senator Bruno could yield for this one last question. He's on the phone. Oh, Senator Gold will -

ACTING PRESIDENT KUHL: Senator Bruno, would you yield to Senator Paterson for one last question?

SENATOR BRUNO: Yes, Mr. President. Trying to find out whether dinner was ready or not, Mr. President. I'm only kidding.

SENATOR PATERSON: Senator Bruno, are you aware that the Civil Service Employees Association has now asked the Assembly not to act on this bill this evening?

SENATOR BRUNO: No, Mr. President, I'm not aware of that. Senator

Paterson aware of that?

SENATOR PATERSON: I'm aware that they have asked the Assembly that.

SENATOR BRUNO: What did the Assembly say, Senator? Maybe you could share that with us. Because I just tried to reach the Speaker; he is not in his office; he's not in the chamber; he's in his car. I wasn't able to reach him. Maybe you can tell us that.

SENATOR PATERSON: I don't know, I thought maybe I should raise it, because I don't see this situation arising out of a problem that involves any sort of antithetical feeling between the Majority and Minority in this house. I think that Senator Bruno, by even assisting in putting forth this amendment, is trying to ameliorate this particular situation and so I just wanted to raise at this time that it is not clear that one of the houses will even act on this bill this evening, and so without that -- with that information, I thought we might want to consider whether or not it would be good to take a vote right now, and I think

Senator Gold's points are well taken that this bill as it stands now is, confusing as it is, is really not a good idea. That's putting the best face on it and embarrassment would be putting more than an accurate face on it, but I don't think it arose from any dissension within this house, and I think as a body, we should consider waiting until tomorrow if we find out that the Assembly is not going to, because people work - people are entitled to be paid, and it's my opinion, Mr. President, that people should be paid, all but the legislators, all but those who have a decision-making capacity, but what I am just rising at this time, Mr. President, is to advise the Majority Leader that there has been a request by the Civil Service Employees Association to hold this bill until it is scrupulously checked and without fault.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, I apologize for the delay. I just talked to the Speaker, and the Speaker -- we are going to lay

this bill aside and adjourn at the appropriate moment until tomorrow morning at 10:00 a.m., and I say that because there is a question about the wording that's here and apparently the counsels have been talking to the Comptroller's office and the Comptroller indicates that it could be days before they could make a determination and if that's the case, public employees would not be paid, and we would like to avoid that circumstance, so that being the case, I would lay the bill aside, Mr. President.

ACTING PRESIDENT KUHL: The bill is laid aside.

SENATOR BRUNO: And there being no further business -- oh, we have one more piece of business, Mr. President, and that is Calendar Number -- we will lay that bill aside as well, 361, Mr. President.

ACTING PRESIDENT KUHL: Calendar Number 361 is laid aside also.

Senator Bruno.

SENATOR BRUNO: Mr. President, there being no further business to come before

the Senate, I move we stand adjourned until 10:00 a.m., tomorrow morning.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow morning at 10:00 a.m.

(Whereupon at 8:59 p.m., the Senate adjourned.)