ALBANY, NEW YORK

May 15, 1995

3:01 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; members please take their chairs, staff find their seats. I'd ask all the members and everybody in the chamber to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

We're very pleased to be joined today by the Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing.

REVEREND FATHER YOUNG: Thank you, Senator.

ACTING PRESIDENT KUHL: Father Young.

REVEREND FATHER YOUNG: Let us pray. We pray today for all of our Senators that we might be delivered from any delusion, from all pretense of righteousness and from all arguments or hardness of heart, that we might know the meaning of compassion in all of our elected duties and that we may serve all of

those people in New York State, that their wealth and their power might become a course for peace rather than conflict, a source of hope rather than discontent, an agent of friendship rather than enmity. May the actions of this Senate be the example for all. We ask You this in Your name now and forever. Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Sunday May 14th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Saturday, May 13th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Any messages from the Governor?

Reports of standing committees.

Communications -- reports of

select committees.

Communications and reports from state officers.

Motions and resolutions. The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, on page 78, on behalf of Senator Cook, I offer the following amendments to Calendar Number 497, Senate Print 3223A, ask that after, it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted to Calendar Number 497. The bill will retain its place on the Third Reading Calendar. Senator Present.

SENATOR PRESENT: Mr. President, on page 78, I offer the following amendments to Calendar Number 496 on behalf of Senator Cook, Senate Print 3157, and ask that it retain its place.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 496 will be received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Skelos, on page 47, I offer the following amendments to Calendar Number 260, Senate Print 2337A, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar 260 will be received and adopted. Bill will retain its place on the Third Reading Calendar.

Chair recognizes Senator Sears.

SENATOR SEARS: Yes, Mr. President. Would you place a sponsor's star on Calendar Number 471 and 599 on today's calendar.

ACTING PRESIDENT KUHL: Calendar stars will be placed on Calendar Number 471 and 599 at the request of the sponsor.

SENATOR SEARS: Also, Madam President -- Mr. President, I wish to call up Calendar 759, Assembly Print 3998.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number

759, by member of the Assembly Stringer, Assembly Print 3998, an act to amend the General Business Law, in relation to licenses of persons engaged in the practice of nail specialty.

ACTING PRESIDENT KUHL: Senator Sears.

SENATOR SEARS: I now move to reconsider the vote by which this Assembly bill was substituted for my bill, Senate Print 5057 on 5-10.

ACTING PRESIDENT KUHL: Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: Senator Sears.

SENATOR SEARS: I now move that Assembly Bill 3998 be recommitted to the Committee on Consumer Protection and my Senate bill be restored to the order of Second Report Calendar.

ACTING PRESIDENT KUHL: Assembly

bill will be recommitted. The Senate bill will be restored to Third Reading Calendar.

Senator Sears.

SENATOR SEARS: Mr. President, on page 55, I offer the following amendments to Calendar 499, Senate Print Number 1663A.

ACTING PRESIDENT KUHL: Amendments received.

SENATOR SEARS: And ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 499 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Farley, I'd like to place a sponsor's star on Calendar 262, Senate 1601.

ACTING PRESIDENT KUHL: Sponsor's star will be placed on Calendar Number 262 at the request of the sponsor.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Lack, on page 45, I offer the following amendments to Calendar 182, Senate 1307 and ask said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to -- amendments to Calendar 182 are received and adopted. Bill will retain its place on the Third Reading calendar.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Velella, on page 53, I offer the following amendments to Calendar 442, Senate Print 3777, and ask that bill retain its place on Third Reading Calendar.

ACTING PRESIDENT KUHL: Calendar Number 442 will be amended; bill will retain its place on the Third Reading Calendar.

Senator Seward.

SENATOR SEWARD: Yes, Mr. President. On behalf of Senator Leibell, on page number 62, I offer the following amendments to Calendar Number 606, Senate Print Number

3681, and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 606 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Seward.

SENATOR SEWARD: Yes. On behalf of Senator Volker, I wish to call up his bill, Print Number 2444, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 181, by Senator Volker, Senate Print 2444, an act to amend the Real Property Law, in relation to disclosure obligations.

ACTING PRESIDENT KUHL: Senator Seward.

SENATOR SEWARD: Yes, Mr. President. I now move to to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: Motion is

to reconsider vote by which the bill passed the house. Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is before the house. Senator Seward.

SENATOR SEWARD: Yes, Mr. President. I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Seward.

SENATOR SEWARD: Also on behalf of Senator Volker, I move that his bill, Senate Bill Number 3694 be discharged from its respective committee and be recommitted with instructions to strike the enacting clause.

ACTING PRESIDENT KUHL: Without objection, the bill is recommitted; enacting clause is stricken.

Chair recognizes Senator Cook.

SENATOR COOK: Page 31, move to star Calendar Number 899.

ACTING PRESIDENT KUHL: Calendar Number 899 will be starred at the request of the sponsor.

Senator Larkin.

SENATOR LARKIN: Mr. President, I'd like to place a sponsor's star on my bill, Senate Bill 4268, Calendar Number 641.

ACTING PRESIDENT KUHL: Calendar Number 641 will be starred at the request of the sponsor.

The Chair recognizes Senator Solomon.

SENATOR SOLOMON: Yes, Mr. President. I'd like to put a star on my bill, Senate Calendar Number 705, Bill Number 4223.

ACTING PRESIDENT KUHL: Calendar Number 705 is starred at the request of the sponsor.

Senator Bruno, we have some substitutions at the desk. Would you like to take those now? The Secretary will read the

substitutions.

THE SECRETARY: On pages 34, Senator Trunzo moves to discharge from the Committee on Investigations, Taxation and Government Operations Assembly Bill Number 2225, and substitute it for the identical Senate bill, Calendar 926.

On page 36, Senator Kuhl moves to discharge from the Committee on Corporations, Authorities and Commissions Assembly Bill Number 6345A, and substitute it for the identical Calendar Number 940.

On page number 62, Senator Spano moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 2334 and substitute it for the identical Calendar Number 613.

On page 62, Senator Trunzo moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 6194 and substitute it for the identical Calendar Number 617.

ACTING PRESIDENT KUHL:

Substitutions are ordered.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, there's an immediate meeting of the Finance Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Finance Committee in the Majority Conference Room, Room 332. Immediate meeting of the Finance Committee.

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

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

THE SECRETARY: On page 42, Calendar Number 72, by Senator Skelos, Senate Print 1117, an act to amend the Business Corporation Law and the Civil Practice Law and Rules, in relation to shareholder derivative suits.

SENATOR PATERSON: Lay it aside.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 234, by Senator Johnson, Senate Print 1638, an act to amend the Penal Law, in relation to possessing an obscene sexual performance by a child.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 236, by Senator Velella, Senate Print 1851, an act to amend the Penal Law and the Criminal Procedure Law, in relation to forgery and illegal possession of vehicle identification numbers.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 378, by Senator Hannon, Senate Print 944, an act to amend the Civil Practice Law and Rules, in relation to statement of damages.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 381, by Senator Levy, Senate Print 1410, an act to amend the Penal Law, in relation to the offense of assault.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 431, by Senator Cook, Senate Print 565A, an act to amend the Correction Law and the Civil Practice Law and Rules, in relation to the repayment by inmates of the cost of college education.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 448, by Senator Trunzo, Senate Print 3314, an act to amend the Real Property Tax Law, in relation to exemption from real property taxation for foster parents age 65 years of age or older.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 453, by Senator Levy, Senate Print 359, an act to amend the Vehicle and Traffic Law, in relation to criminal history checks on school bus attendants.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 471, by Senator Sears, Senate Print 3545, an act to amend the Environmental Conservation Law, in

relation to hooking, snatching or snagging of Pacific salmon.

ACTING PRESIDENT KUHL: Bill is starred earlier today. Secretary will continue to call the non-controversial calendar.

THE SECRETARY: Calendar Number 503, by Senator Hannon, Senate Print Number 3467, an act to amend the General Business Law, in relation to unauthorized or improper use of debit cards.

SENATOR FARLEY: Mr. President.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: I spoke to the sponsor. Could you lay that aside for the day.

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

THE SECRETARY: Calendar Number 507, by Senator Lack, Senate Print 3775, an act to amend the Family Court Act, in relation to the duty to support recipients of public assistance.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 524, by Senator Volker, Senate Print 3180A, an act to amend the Civil Practice Law and Rules and the Public Authorities Law, in relation to personal service upon public authorities and commissions.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 529, by Senator Volker, Senate Print 3803, an act to amend the Criminal Procedure Law, in relation to the period of time which must be excluded in computing the time within which the people must be ready for trial.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 535, by Senator Cook, Senate Print 291, an act to amend the Real Property Tax Law, in relation to statements of taxes by school districts related to library purposes.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 545, by Senator Bruno, Senate Print 1859, an act in relation to authorizing the village of Round Lake, county of Saratoga, to reduce the speed limit on its highways.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. Secretary will read the last section.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

548, by Senator Farley, Senate Print 2415, an act to amend the Real Property Tax Law, in relation to permitting certain assessing units to require that a property be owner-occupied.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 568, by Senator Levy, Senate Print 350, an act in relation to requiring the Governor's Traffic Safety Committee to study rear seat safety belt usage.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 574, by Senator Goodman, Senate Print 911, an act to amend the Vehicle and Traffic Law, in relation to allowing parking violation bureaus to increase the fine for illegal parking.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 577, by Senator DeFrancisco, Senate Print 2937,

an act to amend the Highway Law, in relation to including within the state highway system, certain roads in the village of Camillus.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 580, by member of the Assembly Feldman, Assembly Print 290 an act to amend the Vehicle and Traffic Law, in relation to making a certain technical correction with respect to the tow truck advisory board.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 584, by Senator Levy, Senate Print 4147, an act to amend the Transportation Law, in relation to authorizing the Commissioner of Transportation to approve funding for improvements to certain airports.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 600, by Senator Trunzo, Senate Print 2920, an act to amend the Election Law, in relation to the order of offices listed on ballots.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR DOLLINGER: Lay the bill aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Dollinger.

THE SECRETARY: Calendar Number 601, by Senator Larkin, Senate Print 2963. Election Law, in relation to the hours for voting at primary elections within the county of Orange or Ulster.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 619, by Senator Levy, Senate Print 2969, an act to amend the Retirement and Social Security Law, in relation to transfers of certain eligible members from improved career retirement plans to

optional 20-year retirement plans.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. 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 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 620, by Senator Volker, Senate Print 3135, an act to permit the re-opening of the optional 20 year retirement plan to Tracey O'Donnell.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. 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 -

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 46, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 621, by Senator Trunzo, Senate Print 3821A, an act to amend the Retirement and Social Security Law, in relation to retirement of sheriffs, undersheriffs and deputy sheriffs.

SENATOR LEICHTER: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 623, by Senator Cook, Senate Print 3139, an act to amend the Facilities Development Corporation Act, in relation to definitional provisions.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 624, by Senator Kuhl, Senate Print 3235, an act to amend the New York State Urban Development Corporation Act, the Omnibus Economic Development Act of 1987 and the Economic Development Law, in relation to including firms.

ACTING PRESIDENT KUHL: Secretary will read -

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Lack, why do you rise?

SENATOR LACK: Mr. President, I am informed that Calendar 507, S. 3775, just

passed within the last couple minutes.

ACTING PRESIDENT KUHL: Senator Lack, your information is correct. Calendar 507 did pass earlier on, on the non-controversial calendar.

SENATOR LACK: My apologies, sir, but could I ask that the vote be reconsidered by which that passed, and lay it aside for amend ment.

ACTING PRESIDENT KUHL: The bill is still in the house. The motion is to recon sider the vote by which 507 passed the house. Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: Senator Lack, the bill is before the house.

SENATOR LACK: Please lay it aside for the day.

ACTING PRESIDENT KUHL: Bill is laid aside for the day. Secretary will continue to call the non-controversial calendar.

THE SECRETARY: Calendar Number 629, by Senator Wright, Senate Print 3183, an act to amend the Navigation Law, in relation to boating on the St. Lawrence River.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. 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 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 632, by Senator DeFrancisco, Senate Print 3608, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to authorizing the sale of advertising or corporate sponsorship.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 669, by Senator Saland, Senate Print 3501, an act to amend the Environmental Conservation Law, in relation to the definition of the term "municipality" for purposes of the Environment al Protection Act.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the non-controversial calendar. What's your pleasure, sir?

SENATOR BRUNO: Mr. President, can we at this time return to reports of standing committees. I believe there's a report

there from the Finance Committee.

ACTING PRESIDENT KUHL: We'll return to reports of standing committees. There is a report from the Finance Committee. I'll ask the Secretary to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following bills directly for third reading:

Senate Budget Bill 5166, making an appropriation for the support of government.

Budget Bill, Senate Number 5167, making an appropriation for the support of government.

Budget Bill, Senate Number 5168, an act to provide for payments to vendors under the Women, Infants and Children's program.

Budget Bill, Senate Print Number 5169, an act to provide for payments to municipalities and to providers of medical services.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Without

objection, the bills are reported directly to third reading.

Senator Bruno, that brings us to the controversial calendar. What's your pleasure, sir?

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 996.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 996.

THE SECRETARY: Calendar Number 996, Budget Bill, Senate Print 5166, an act making appropriation for the support of government.

ACTING PRESIDENT KUHL: 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.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Bruno?

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 997.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 997.

THE SECRETARY: Calendar Number 997, Budget Bill, Senate Print 5167, an act making appropriation for the support of government.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Leichter, why do you rise?

SENATOR LEICHTER: May I explain my vote, please.

ACTING PRESIDENT KUHL: Senator

Leichter to explain his vote.

SENATOR LEICHTER: I believe I have the right bill, if this is the one making appropriation for the Legislature and the Judiciary.

ACTING PRESIDENT KUHL: I think that's the wrong bill that you're referring to.

SENATOR LEICHTER: If you will bear with me just one second, I'm sorry.

ACTING PRESIDENT KUHL: Senator Leichter, I'm informed -

SENATOR LEICHTER: I think -

ACTING PRESIDENT KUHL: Senator Leichter, I'm informed by counsel at the desk that this bill deals with Social Security contribution. Would you like to explain your vote on that bill?

SENATOR LEICHTER: I'll wait for a later bill. Thank you.

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Bruno?

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 998.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 998.

THE SECRETARY: Calendar Number 998, Senate Budget Bill, Senate Print 5168, an act to provide for payments to vendors under the Women, Infants and Children's program.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Can we at this

time take up Calendar Number 999.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 999.

THE SECRETARY: Calendar Number 999, Senate Budget Bill, Senate Print 5169, an act to provide for payments to municipalities and to providers of medical services.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: Yes. Thank you, Mr. President. Actually, I would have wanted to direct my comments more at Senate 5166, but I think my comments are equally appropriate for all these bills.

I don't know how many days it is now past April 1st and we haven't passed a

budget. I know negotiations are going on. I know people are working hard to try to resolve the disputes. My point is that the whole notion of not paying certain officials, including members of the Legislature, obviously had no effect whatsoever. It was really just a diversion. Fortunately, we're now paying legislative employees because of a decision by a very perceptive, forthright and fair-minded judge.

But I do regret that legislators are not being paid, and one of my colleagues told me he went to a meeting. He thought he'd make some points and he got up at this meeting and somebody said, "How about the budget?" and the legislator said very proudly, "Well, we're not getting paid." Somebody from the audience yelled out saying, "I still think you're over paid."

So my point is, we know that it's red meat for the public to say you're not going to pay legislators, but I really think it's wrong. It's certainly shown that it doesn't

facilitate the budgetary process. On the contrary, it makes it, I think, more difficult to reach agreement. We now at least, fortun ately, are paying the legislative employees. I think the Governor should be paid, the Comptroller should be paid, the Attorney General should be paid. They're all working hard, the Lieutenant Governor, I'm sure, is working hard. We don't see her, but I know she's working hard. Certainly the members of the Legislature are working hard, and we should remove that sort of threat on legislators which in some way seeks to impair their integrity and their independence.

Having said this, Mr. President, I vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the affirmative. Secretary will announce the results.

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator

Bruno.

SENATOR BRUNO: Can we now go to the controversial calendar in regular order.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar beginning with Calendar Number 72, in regular order.

THE SECRETARY: Calendar Number 72, by Senator Skelos, Senate Print 1117, an act to amend the Business Corporation Law and the Civil Practice Law, in relation to shareholder suits.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos, Senator Paterson has asked for an explanation of Calendar Number 72.

Senator Skelos.

SENATOR SKELOS: Mr. President, Senator Paterson, this bill would discourage baseless shareholder derivative suits while preserving the opportunity to shareholders to bring meritorious derivative suits.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Would Senator Skelos be willing to yield for a question?

ACTING PRESIDENT KUHL: Senator Skelos, do you yield to Senator Paterson? The Senator yields.

SENATOR SKELOS: Yes, I do, Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

One of the particular aspects of this legislation is the description of the effect by which a derivative shareholder suit would be brought by receiving a certain majority of the independent board members. I was just wondering if Senator Skelos would share with us what the definition of an "independent board member" is?

SENATOR SKELOS: Well, first of all, as I'm sure you know, Senator Paterson, derivative suits on behalf of the shareholders and the corporation and any benefits that are

derived go back to the corporation. What this legislation intends to do in terms of independent directors would say they would make a determination under the business judgment doctrine as to whether a -- a lawsuit would be meritorious and in the best interests of the corporation, rather than frivolous lawsuits, many of which occur in this area where the attorneys are getting enormous fees and the corporation is getting no benefit.

In terms of how you would define "independent", quite honestly, I think it's al most like how do you define "pornography". It's very vague. I don't think you can put an exact definition to it, but I believe a judge, in his discretion, would know whether a person - whether the shareholders were independent or not, and I don't think you can put a precise definition. I believe other states have attempted to do so, but it has just not worked.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I think that's

right, Senator Skelos. It's hard. I'm not trying to be euphemistic when I ask you to give us a definition of the word "independent", but what I think I'm really getting at is that there is really kind of a fiduciary relationship if not other types of relationships that exist between board members and, therefore, to try to get that kind of majority seems difficult when you have a number of shareholders right now who they haven't -- they aren't always the individ uals who, and rarely are they the individuals who are actually bringing the lawsuit.

Their interest is, as you stated, the best interests of the corporation, and so I was just wondering that, since the perusal we made showed only 13 of these such suits within the last year, and this is kind of one of the last vestiges of corporate democracy, why you'd be interested in changing the law at this time.

SENATOR SKELOS: Well, there's been an attempt to change this law for several years. This bill, which was sponsored by Senator Daly in the past, passed unanimously in

the Senate in 1993 and 1994, so it isn't a first time; but the bottom line is it is part of our effort, I believe, to make New York State more receptive and more hospitalable to corporations so that they stay in this state rather than fleeing to Delaware and other states and, as you know from looking at the legislation, the group that is seeking to bring the derivative lawsuit can challenge in front of a judge whether, in fact, the directors -- the independent directors were, in fact, independent or not.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I guess my question to Senator Skelos is -

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

SENATOR SKELOS: Yes, I do.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: I would imagine there may have been a time, Senator,

when Senator Daly, our colleague, introduced this legislation when there was a real need. Being that perhaps even the desire to create legislation might even have influenced the circumstances -- I don't know whether it did or it didn't -- but what I guess I'm just asking you there doesn't -- there don't seem to me to be that many derivative lawsuits that are being created this way now and so, since it is an option that a shareholder can take and it isn't being used to an extent I don't think that we would consider to be outlandish, I don't know how many of those suits were frivolous, but there couldn't have been that many of them, I just wondered why we would want to change the law.

Now, I think you have, in a sense, answered that question but the part of the question I'm still looking for an answer to is can you tell us what the damage has been to the state or even corporations that want to do business in the state from these derivative lawsuits?

SENATOR SKELOS: Mr. President, if I could respond.

ACTING PRESIDENT KUHL: Senator Skelos to respond to Senator Paterson's question.

SENATOR SKELOS: First of all, there have been studies that have been conducted by different universities which indicate that most of the lawsuits that are brought end up with plaintiff not accepting a judgment favorable to their cause of action, but the corporation is saddled with the cost of attorneys' fees which many times are extravagant.

Many of these derivative suits are brought against the larger corporations and it would be very similar to something like pain and suffering, let's say, in a medical malpractice case. There may not be a lot of lawsuits or judgments with pain and suffering, but corporations have to anticipate that possibly their corporation is going to be hit with an enormous legal fee in one of these

derivative actions; so what we are trying to do here is strike a balance to make sure that, yes, derivative suits can be brought but to discourage frivolous derivative lawsuits.

ACTING PRESIDENT KUHL: Senator Paterson. Senator Skelos, you continue to yield to Senator Paterson?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Senator, I just want to get a point of fact cleared up here. Just a moment ago, you said the court had the option inevitably to rule on whether or not the independent board members were independent, but my reading of it is that actually it's the corporation that makes the decision as to whether or not the suit can go before a judge itself. Am I wrong?

SENATOR SKELOS: A judge ultimately would make a determination that -- if the attorneys for those who are bringing the

derivative suit, if the independent directors indicated that there is no basis for this lawsuit. Shouldn't say "basis", that it's not in the best interests of the corporation, then the plaintiff's attorneys can challenge whether, in fact, these independent -- these directors are, in fact, independent or not, period.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator. My last question.

ACTING PRESIDENT KUHL: Senator Skelos, do you yield for one more question?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: What would you suggest is the option for the shareholder if the board rules that it is not in the interest of the corporation now that this bill is passed?

SENATOR SKELOS: Well, they have -- they can -- they can challenge that again in

front of a judge and certainly what we are doing with this part of the legislation is codifying the case of Auerbach vs. Bennett which indicated that the business judgment doctrine would stand in New York State and that the directors would make the judgment -- the independent directors -- as to what is in the best interests of the corporation. Rather than a court subjecting it to what its business judgment is, it would be the directors injecting what their business judgment is.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you. It's a very good answer. Senator Skelos, I don't want to sound like Lt. Columbo, but I'm going to ask you one more question.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: I want to go back to the -- the majority of the board deciding that the lawsuit is not in the interests of the corporation.

My reading of your bill is that the court must dismiss the lawsuit. In other words, the court does have an action as you have described, but if the action is sanctioned, it must dismiss the lawsuit as a result of the passage of this bill, so in other words, the court is not making a meritorious rejection of the action. It is just going through the process of dismissing it, unlike what I thought that you were saying which was that the court could still rule on whether or not these board members were independent.

SENATOR SKELOS: But the court would not -- would not have to dismiss it if they found that the board was not independent, was not acting in the -- was not acting in an informed manner. They then, at that point, would not have to dismiss the suit, but if, in fact, they found them to be independent, to be informed of the facts concerning this lawsuit, then they would have to dismiss the lawsuit and not -- not subject the corporation to what their business judgment would be.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Well, thank you, Senator Skelos.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: Mr. President, on the bill.

That was why I asked Senator Skelos what the definition of "independent" actually was, because that became -- that is pertinent proof that the plaintiff must reach. So without a very clear definition of what that is, I just think it makes it very difficult.

Other than that, the -- the court's ruling, I would suppose, is the way Senator Skelos says it is.

ACTING PRESIDENT KUHL: Chair recognizes Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President.

This bill goes in the wrong direction, but it's part of the direction that

this Majority is going towards in so many areas, which is to protect the strong, the wealthy, and to hurt those people, the vast majority who need some resort for remedies.

What you're doing here by this bill is really curtailing corporate democracy. What is fairer and more appropriate than to allow shareholders to go and to challenge the acts of corporate directors who stand in relation to them in a fiduciary status?

That relationship or that nexus is being cut by this bill, and it's hard for me to understand why you would want to do it. If Senator Skelos says, Well, there have been abuses, well, there are protections. There are protections if you bring frivolous suits, but I think Senator Paterson rightly pointed out that there had been very few of these lawsuits.

It happens it's extremely difficult and complex to bring a shareholder's derivative action. It isn't that anybody can just bring one of these actions and, by limiting to this extent the ability of shareholders to

challenge the acts of corporate directors, you're really making it impossible for thousands and millions of shareholders to try to bring some responsibility to corporate directors.

We've had any number of examples in the last few years of corporations that have acted not in the interest of the shareholders. Corporate directors have often acted in the interests of the corporate directors. We've seen these enormously high salaries. We've seen where corporations have had the leveraged buy outs. We've seen all number of abuses where shareholders have really been placed at a disadvantage, and the only remedy that they have now is to go into court.

Senator Skelos says, Well, we want to keep corporations from fleeing New York State because otherwise they'll get a Delaware charter. That makes no sense. Some of the corporations that have been associated with New York State for a long period of time have a Delaware charter. You can have a charter and you can have your corporate headquarters

wherever you want it. I think Exxon, as an example, had a Delaware charter. I'm fairly certain that U. S. Steel, which was at one time in New York City -- I don't believe they are any longer -- had a corporate charter, so that that's not a reason for this bill. I think that's a -- that's a weak excuse.

Senator Skelos also says, Well, we're trying to keep attorneys from getting large fees. Senator, I know you're a distinguished member of the bar and I'm sorry to see you join in this attorney bashing which has been popular as we know since the days of Shakespeare, but I think it's wrong. I don't think there's any example of lawyers taking unfair advantage, and very often their fees are -- are checked by the courts.

All right.

SENATOR SKELOS: Mr. President, would Senator Leichter yield for a question?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator Leichter, do you yield to Senator Skelos?

Senator yields.

SENATOR SKELOS: Just for historical purposes, because I'm sure everybody is following this debate very closely, since this bill passed unanimously in 1993 and '94, I assume you voted for it in 1993 and 1994. What has occurred that you would suddenly consider this bill so bad that you would attack it so viciously, as people are looking to record this debate for historical purposes?

SENATOR LEICHTER: Senator, that's an extremely good question, one I've been asking myself, and I didn't know whether it was, well, it had a different sponsor last time. Maybe he was more eloquent, and I -- I consid ered -- I considered that, but I rejected it.

Secondly, I wondered, was I in the house when this bill came up. Thirdly, maybe I was asleep. Fourth, maybe Senator Stachowski was speaking to me and had my atten tion, but it's a good question, and I'm sure it's happened to you, Senator, that you see a bill and you say, Oh, this is terrible, and then

somebody points out you voted for it. I've gotten up at public meetings and said, This is a terrible bill, and so on. I'd never support it, and then somebody says, Well, wait a second. I've got the voting record here of a couple years ago and you did vote for it.

Unfortunately that happens, and I'd like to say that was the only bad vote I ever cast in this Legislature, but if I voted for it and was here, I think that I was mistaken and now that I look at it, maybe also memos that were sent to me that opened my eyes to it, but I think the basis of this bill -- and that's really what I wanted to address, Senator, is that independent directors really serve in a sense as a prophylactic for everyone else, but the independent directors, Senator, you and I know that very often, who do they take, they take college presidents. The president of City University system serves on a number of boards of directors, the president of Columbia University used to serve on a lot of boards of directors.

These happen to be extremely busy individuals. I just don't believe that they can really inform themselves sufficiently about the affairs of the corporation and besides that, as you know, all that information comes from those directors who are part of management, who are associated with the corporation.

So that's really no protection whatsoever. It -- it's nice cosmetics for the corporation. Oh, we have President So-and-So, they like to put priests on, sisters, rabbis, I mean it looks good, but in point of fact these independent directors, I don't mean to say that they don't try to do a good job, but they're really not in a position to protect the shareholders, and I think it's for that reason, if you read the memoranda in opposition, I think they make this point very well, and they say that you are eliminating this last bit of corporate democracy, and that's why the notes that I have and the memoranda I have here show that NYPIRG opposes it; the New York Bar Association opposes it, the National Association

of Securities and Commercial Attorneys, New York State AFL-CIO, I believe the trial lawyers have opposed it, and I don't think it's selfishness. I don't think it's self-interest. Maybe some of that enters into it, but I think if you look at it, I think the issue really is whether corporate shareholders should not have the right to challenge actions of corporate directors, particularly when we have seen so many acts in recent years that raise so many questions whether it's of interest to the shareholders. Don't deny them this right.

Mr. President, this bill should be defeated.

ACTING PRESIDENT KUHL: Chair recognizes Senator Waldon.

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

Would Senator Skelos yield to a question?

ACTING PRESIDENT KUHL: Senator Skelos, do you yield to Senator Waldon?

SENATOR SKELOS: Yes, Mr.

President.

ACTING PRESIDENT KUHL: Senator yields.

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

Senator, when you came up with the idea for this bill, had something occurred or was there a base of information that you viewed which inspired you to write it? Was - you know, were you on the road to Damascus and something happened?

SENATOR SKELOS: I think what happened when I introduced this bill, Senator Daly was leaving the Senate. He thought it was a very good bill for me to introduce, which I agreed upon, and I looked at the record and saw that probably, since you voted for it, it was a great bill and passed unanimously that I would -- I would put the bill in.

SENATOR WALDON: I appreciated very much your observation, Senator. May I ask another question?

ACTING PRESIDENT KUHL: Senator

Skelos, do you continue to yield to Senator Waldon?

SENATOR SKELOS: Absolutely.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Senator, in your research prior to accepting the bill from Senator Daly and introducing same, did you find any information which showed that there was an abundance of suits by shareholders which caused great pain and suffering of a financial nature to the corporations of the state of New York?

SENATOR SKELOS: There was a - well, first of all, again I thought basically the bill was good and, since I had studied it in prior years when I voted yes like everybody else who voted yes for it in the Senate in '93 and '94, I thought it would be good to be consistent and to continue to vote for it now and that it was a good bill.

SENATOR WALDON: Well, Senator, I accept your analysis. I accept your thought process, but you didn't respond to the

question.

SENATOR SKELOS: Well, in the Senate -- Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: If I could, I believe you asked the question, and I'm going to respond as I wish, but there have been a number of cases, many cases where the suits are dismissed and the lawyers get big bucks and that's what I'm trying to avoid.

SENATOR WALDON: May I ask the learned Senator just a few more questions, Mr. President?

ACTING PRESIDENT KUHL: Senator Skelos, do you yield to Senator Waldon for another question? Senator yields.

SENATOR WALDON: In the information base that you have discovered or that you were advised about, Senator, by Senator -- I should say, Senator Daly, was there anything which showed that shareholders had voted themselves enormously interesting perq's,

plane rides free of charge charged to the corporation, big vacations charged to the corporation, other benefits, annuities and money, monetary benefits voted by the shareholders to themselves in that information base that you discovered regarding this bill?

SENATOR SKELOS: The independent directors that would make a determination as to this -- under the business judgment doctrine would determine whether, in fact, the share holder bringing a derivative, or the attorney bringing the derivative action for the shareholder, whether in fact whatever the board voted was proper or not. If you can't find independent directors, then the derivative law suit is going to proceed.

SENATOR WALDON: Last question, Mr. President.

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

SENATOR SKELOS: Absolutely.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Senator, in helping to educate those of us who may have made a mistake in the past or may have, as history will dictate, did the right thing with our vote on this bill in previous years, is there a dollar amount from these so-called frivolous actions brought by shareholders characterized, if I may use my own statement, causing pain and suffering, crippling corporations, is there a dollar amount that you have or have had that you can share with us as to the amount of money negatively impacting corporations because of these derivative actions?

SENATOR SKELOS: The lawyers in a study that I have here got fees averaging $350,000 from settlements in 60 percent of derivative suits recently studied. It's by a Yale Professor Romano. The other 40 percent were dismissed or settled without fees. Not a single one of the 55 suits resulted in a judgment for the plaintiff.

SENATOR WALDON: Thank you very much, Senator Skelos.

Mr. President, if I may, on the bill.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: I'm a little concerned about the responses that I received. I would have appreciated it, and I'm sure my colleagues would have appreciated it if it could have been more on point, but that's my personal observation.

In regard to the bill, I think that we're -- we're witnessing in this country, not just in our Legislature but in this country, a move to make the strong stronger, to diminish the ability and capability of those who are in lesser positions to rail up, to rise up against those who are strong, and we're creating a situation that is clearly a class struggle personified.

We're creating a situation which, in my opinion, will cause those who have, in the past, had little hope to become even more hope less. This is ridiculous. It's ridiculous that

those who are raping corporations should have a need to be complimented for the rape that they are doing and eventually the rape hurts all of us. It hurts the shareholder right away, but it hurts all of us who participate in this economy that is America eventually.

I don't see a need for it. I don't see why we have to make the strong stronger. I don't see why there's such a move to ensure that those who are less strong become weaker, so I will have to vote this year, and I think that this vote this year is the right vote in the negative.

Thank you, Mr. President. Thank you, my colleagues.

ACTING PRESIDENT KUHL: Chair recognizes Senator Abate on the bill.

SENATOR ABATE: Yes. Senator Skelos, I never had the privilege of voting up or down on this bill, so I can take a look at this piece of legislation in a new way in the first instance, and my concern is that, if you look at the words of this legislation, it does

not seem to try or attempt to relieve the financial burden on corporations, but is, in fact, eliminating shareholder derivative lawsuits and, if you look at the basis for the demonstrated need as I'm sure you have, have you looked at the court's review of these cases in the past?

It's my understanding that the courts have viewed these cases very favorably in most instances when the board of directors have refused to uphold the lawsuits. The courts have ruled in the favor of the board. Please tell me if I'm -- if I have misinformation on that.

It's my understanding that the courts have been very favorable towards the corporations in these instances.

ACTING PRESIDENT KUHL: Senator Skelos to respond to the question posed by Senator Abate.

SENATOR SKELOS: Yes, I do, Mr. President.

Senator Abate, what this legislation does, it does not eliminate

shareholder derivative lawsuits. It seeks to eliminate frivolous shareholder derivative lawsuits, many of which are settled for nuisance value just to get rid of the case by the corporations.

SENATOR ABATE: But it's my understanding, if I'm a shareholder -

ACTING PRESIDENT KUHL: Senator Abate, excuse me. You're asking Senator Skelos to yield?

SENATOR ABATE: Yes. Will you yield for another question?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos yields.

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

It's my understanding that, if I'm a shareholder and I believe that the board of directors has or the corporation has engaged in fraud or malfeasance or misfeasance, the only way I can get involved in a court, I could ask

the court to review it on two bases, on procedural grounds and secondly, whether the board members, the two board members that aren't -

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Your point, Senator Skelos, is very well taken. It has been a little noisy all day. If we could have the staff who are having conversations please take their conversations out of the chamber, the same is true of the members. That way Senators can engage in a meaningful debate.

SENATOR ABATE: I'll repeat the question.

My concern is this legislation does virtually eliminate derivative shareholder lawsuits because, if I'm a shareholder and I believe the corporation is engaged in fraud or malfeasance or misfeasance, I can go to the court after the board -- two independent members have ruled and say one, the two board members aren't independent, or they didn't follow certain procedural guidelines.

There's nothing that would mandate that the court would review whether my claim is meritorious, so on substance, as a shareholder, you're taking away my right to ask the board to pursue certain remedies on my behalf.

SENATOR SKELOS: Mr. President, if I could respond -- if I could respond, Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos, the floor is yours.

SENATOR SKELOS: Again, in my judgment, this does not eliminate shareholders' lawsuits. It eliminates shareholders' frivolous lawsuits. They may have other options and they can eliminate the directors, so they can vote out the board if they're not happy with that board.

SENATOR ABATE: But, Senator, you're talking, if you could yield to another question.

ACTING PRESIDENT KUHL: Do you yield to another question, Senator Skelos?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: But you're not talking about an equitable relationship where the board of directors have all the infor mation and access to policies. There are legitimate claims that can be made by a shareholder and they don't have also the ability to organize to elect or not reelect a board of directors.

So by virtually taking away this lawsuit, you are disenfranchising thousands of what I would call little shareholders that will not have access to the courts. So, Senator, would you agree with me that there are many meritorious claims that won't be addressed by the court because they'll only be looking at procedural guidelines, not for the substance of the claim?

That's what's written in the bill unless I'm reading it differently.

SENATOR SKELOS: Mr. President, if I could respond that the meritorious lawsuits will be brought and, as Senator Leichter pointed out, we could get an independent board. As he mentioned, many times there are rabbis, priests and college professors, and I'm sure a rabbi, a priest and a college professor would be very independent and would consider the best interests of the corporation in making their determination.

SENATOR ABATE: Senator, would you yield to another question?

SENATOR SKELOS: Absolutely.

SENATOR ABATE: Would you agree that, by the virtue of who pays the stipend of the board, the fact that they get perq's and other kinds of bonuses, they're there to represent the corporation's interest, there will be some compelling forces that will cause a board of directors, and they will describe themselves as independent but would reject these law suits?

SENATOR SKELOS: Well,

determinations are made by the board just like so often in the Legislature, if we make a bad decision and the legislation is held unconstitutional, except under extraordinary circumstances that we find ourselves right now, we continue to get paid too until we face the day of reckoning, the November that we run for reelection, so you have -- in no way does this bill eliminate all shareholder derivative actions.

It eliminates or seeks to eliminate frivolous ones, and also the board of directors is still the entity that will run a corporation and, as a shareholder, you have the option to elect or not elect that board.

SENATOR ABATE: If, in fact - would you yield to another question?

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

SENATOR ABATE: If, in fact -

ACTING PRESIDENT KUHL: Excuse me, Senator Abate. Do you yield?

SENATOR SKELOS: Yes, Mr.

President.

ACTING PRESIDENT KUHL: He's desirous of yielding to your question, Senator Abate.

SENATOR ABATE: If, in fact, your legislation sought to eliminate frivolous lawsuits, there would be language in this bill that talked about meritorious lawsuits versus frivolous lawsuits, and I do not see the distinction, and I'm particularly troubled by the fact that the board of directors do not have to put in writing why they are rejecting the lawsuits.

It says "good faith," they have to be independent, but they can come up in their mind with any reason and they don't have to clearly articulate to those shareholders why the rejection is occurring. To me, that leaves open the opportunity to reject meritorious, maybe costly to the corporation and the management, but not in the best interests of the shareholders. Do you agree, Senator?

SENATOR SKELOS: We have a basis

of disagreement.

SENATOR ABATE: Again, on the bill.

When we talk about reform, it's one thing. In this case, we're totally eliminating the opportunity, I believe, for shareholders to bring their grievances in court and many of them are meritorious and there has been no demonstrated need other than perhaps in some isolated cases where management have had to pay for attorneys' fees, but then again, there needs to be checks and balances on the shareholders investing in these corporations. Many people put life savings. These are middle income individuals, many of them our constituents.

What we're doing is taking them out of any possibility of receiving relief from the court. I think this will bring inequity, injustice to the little guy that we are elected to serve and also in a real world obviously we have to provide fairness to the corporation, but this goes overboard, and I can not support this

legislation.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Yes, Mr. President.

Will Senator Skelos yield to a couple questions?

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

SENATOR DOLLINGER: My concern, Senator -- did he yield? O.K. My concern is with -- and this is a very complicated bill, but I've looked at some of the memos really for the first time today. As I understand it, if there is an action brought and it's rejected by the board of directors, the court would be required to dismiss the action assuming, one, that the directors were independent, is that -- that's correct?

And again through you, Mr. President, the way it would work is that the plaintiff would have the opportunity to litigate whether or not they were truly independent;

that's also correct?

SENATOR SKELOS: It is.

SENATOR DOLLINGER: Then the question is whether those independent acting directors were at the time they rejected the lawsuit, acting in good faith in the best interests of the corporation; and is it my further understanding that the question of good faith, that is the process by which they reach the decision would be part of the review by the court?

SENATOR SKELOS: Yes.

SENATOR DOLLINGER: And then your question of whether it was in the best interests of the corporation, and I assume that that best interest would require some financial gain or other gain for the corporation as a result of the lawsuit, is that correct?

SENATOR SKELOS: Foreseeably it could. I think it's more in terms of whether they're acting with good faith, but I think that could be part of it.

SENATOR DOLLINGER: O.K. But my

-- the reason I focus on that question is because -

ACTING PRESIDENT KUHL: Are you asking Senator Skelos to continue to yield?

SENATOR DOLLINGER: Continue to yield.

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

SENATOR SKELOS: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: I assume that if it's -- if a shareholder can show an action of financial benefit to the corporation of some significance, not a dollar for the pot machine but some significance, that under those circum stances, if the independent directors had rejected, it would not be in the best interests of the corporation and the law suit would be sustained.

Now, my critical question, Mr. President, if Senator Skelos will continue to yield is, are you familiar with the business

judgment rule in New York State, and my question is, is that decision of the board of directors shielded from review by the business judgment rule, or would the court have the de novo power to analyze whether they acted in good faith in the best interests of the corporation?

SENATOR SKELOS: Senator Dollinger, under Auerbach vs. Bennett which is law in New York State, the business judgment doctrine would prevail, and we are now trying to codify that with this legislation that the - the corporate -- the directors will make a judgment what is in the best business interests of the corporation.

SENATOR DOLLINGER: And that's my exact point, Mr. President, is that -- on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Auerbach against Bennett is exactly the rule announced by the Court of Appeals that establishes the business judgment rule. The one danger of the

business judgment rule is that it gives tremendous weight to the corporate directors, and it doesn't allow the corporate -- the court to review de novo the underlying decisions of best interest, and it doesn't allow them to decide de novo whether it's been of financial benefit to the corporation, and that's my concern with Auerbach against Bennett. I'm concerned about that provision.

I voted for this bill twice in the past. I'm going to vote for it again today because I think it does many good things, but I do think we need to look closely perhaps again at that issue because, if the board is totally shielded by the business judgment rule, the scope of review by the court will be so limited that the issue of good faith could be resolved in the board of directors and not by the court.

As I understand it, the intention of the sponsor today is that the court would have the ability to decide that good faith best interest analysis and would not necessarily be completely bound by the corporate board which

makes that decision in rejecting or accepting the lawsuit.

So, although I'm concerned about that, I've voted for this in the past. I think there are some good changes in it, and I'm going to vote in favor of it again, but I remain concerned about that application of the business judgment rule. I hope that if there proves to be a problem in the next couple of years if this bill becomes law, we'll take a closer look at that.

ACTING PRESIDENT KUHL: Secretary will read -

Senator Leichter.

SENATOR LEICHTER: Mr. President, would Senator Skelos yield, please?

ACTING PRESIDENT KUHL: Senator Skelos, do you yield to Senator Leichter?

SENATOR SKELOS: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, I'm confused by your answers to Senator Dollinger.

It is my understanding of this bill that, if you challenge the action of the directors, that you need to plead with specificity the acts that they've done which have hurt the corporation but also to -- you would have to plead and show that independent directors did not act in good faith, is that correct?

SENATOR SKELOS: You would challenge. If the independent board made a determination that, in the best interests of this corporation, this lawsuit should not be brought, you could then show that they were not an independent board or they were not acting in good faith, and I think also that they were not properly informed.

SENATOR LEICHTER: All right. But if you failed to establish that, at that point the business judgment rule which concerned Senator Dollinger, and rightly so, would not come into play until and unless you overcome that hurdle of establishing that the board was not independent as such and did not act in good faith. You never reach the business judgment

rule, isn't that correct?

SENATOR SKELOS: This codifies the business judgment rule.

SENATOR LEICHTER: Well, Senator, I don't know, if you continue to yield.

ACTING PRESIDENT KUHL: Senator Skelos, do you continue to yield to Senator Leichter? Senator yields.

SENATOR LEICHTER: I don't know if you codify it or not. It's my understanding if I bring a derivative shareholder suit, unless I overcome that first hurdle -- very significant substantial hurdle of the independence of the board and acting in good faith, I don't get to the business judgment rule.

SENATOR SKELOS: The benefit of a derivative lawsuit flows to the corporation; it will not go directly to the shareholder although the attorneys' fees go directly to the attorney. Once it is found that these independent direct ors were, in fact, independent and acting in good faith, they are then acting in the best interests of the corporation which is their job

as directors, and then the business judgment doctrine would prevail in the sense that they are -- the courts are not going to substitute what their judgment is as good business judgment for the corporation, but rather it's the job of the directors to do so.

SENATOR LEICHTER: Thank you very much.

If I may again, on the bill, because I -

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: This is an important issue, and I think, Senator Dollinger, if I understood the purport of your question which was that you wanted to see that the court was still in a position to apply the business judgment rule, I think the last answer that was made by Senator Skelos makes it clear that that test is never reached unless you establish that the board was not independent and didn't act in good faith, which is a terribly difficult burden to establish.

I just want to read from the memorandum of the New York State Bar Association, and I think it's an excellent memorandum, and I call it to your attention, but it says: "The majority" -- that's the majority of the committee -- "would also note that Assemblyman Feldman, one of the original sponsors of the bill, has withdrawn his support because he has come to the view," quote, "'that the independent committee as set forth by the bill would indeed operate as a shield protecting corporate malfeasors against legitimate shareholders' derivative lawsuits'," unquote.

So when Senator Skelos says you can still bring a lawsuit, yeah, you can still bring a shareholders' derivative suit, but you just can't win. You'll always lose because you can't really, except in very rare instances, show that the independent directors did not act in good faith. They may have used terrible judgment, they may not have known what they were doing, and these -- I didn't mean to make light of the independent directors when I said they're

college presidents and priests, and so on, but very often you'll find somebody like that on the board for cosmetic purposes, and these are good people, they're smart people, but they don't have the business background. They're usually terribly overextended and, if you show or the corporation shows, well, they have used their best judgment, they were independent, they weren't bribed, they weren't drunk when they were sitting at the corporate table, they've established good faith.

You're never going to overcome that burden, and that's why this bill really makes it almost impossible for shareholders to challenge acts that ought to be challenged, salaries of 70-, $80 million, stock options that are worth millions, "golden parachutes." If you finally do get rid of inept management. They walk out of there with an enormous bounty from the corporation.

We ought to let democracy rule. We ought to let the courts decide whether, in fact, these acts were done in the best interests

of the corporation or not and, with this bill, you're going to be precluded from doing that. It protects, as Senator Waldon rightly said, the powerful and it takes away a small weapon and, believe me, stockholders derivative actions is a very small weapon, but it takes even that weapon away from the majority of people who invest in corporations with the idea of getting a fair return and often do not because of the acts of corporate directors to allow those acts to be challenged.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 72 are Senators Abate, Connor, Leichter, Markowitz, Montgomery,

Onorato, Paterson, Smith, Stachowski and Waldon. Ayes 41, nays 11.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 234, by Senator Johnson, Senate Print 1638, an act to amend the Penal Law, in relation to possessing an obscene sexual performance by a child.

ACTING PRESIDENT KUHL: Senator Hoblock.

SENATOR HOBLOCK: Mr. President, at the request of the sponsor, will you lay that bill aside for the day.

ACTING PRESIDENT KUHL: At the request of the sponsor, Senate Calendar Number 234 is laid aside for the day.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 378, by Senator Hannon, Senate Print 944, an act to amend the Civil Practice Law and Rules, in relation to statements of damages and tort

actions.

SENATOR HOBLOCK: Mr. President, at the request of the sponsor, may the bill be laid aside for the day.

ACTING PRESIDENT KUHL: Calendar Number 378 will be laid aside for the day at the request of the sponsor.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 381, by Senator Levy, Senate Print 1410, an act to amend the Penal Law, in relation to the offense of assault.

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

SENATOR LEVY: Yes, Senator Paterson. I originally initiated this bill a number of years ago. It's subsequently been adopted and made part of NYSUT's legislative program and it tries to respond to the ever escalating number of assaults on teachers and other staff and, to give you an idea of the

magnitude of the problem, based upon figures we just received that were released today by the United Teachers, in the four-year period beginning in September of 1990, there were - there were 14,300 assaults on teachers and other staff, and just last year there were 3,785 teachers and staff assaulted in connection with their work in the public schools, and thumbing through NEWSDAY on Long Island on Saturday, a page 3 story of an assault on a school teacher in the Amityville School District where the teacher had to go to the emergency room.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

We really need to thank Senator Levy for bringing this legislation forward. It is alarming the increases of attacks on teachers.

What I wanted to know, if Senator Levy would yield for a question is, Senator Levy, a "D" felony, where you have a possible

seven-year term, I just wanted to know what would be the benefit that is served by designating a "D" felony to coordinate with these types of crimes, and the reason that I ask the question, just for some clarification, is the fact that if the punishment is for a retribution, then I can understand it.

We don't want teachers to be harmed and we want people to know that, if they harm teachers, that they are going to pay for the suffering they cause these individuals, but in terms of the deterrence aspect itself, aren't many of these types of crimes in a situation where the young people probably wouldn't even know what the penalty actually is and at a point they are going to continue in the anti-social conduct that is prescribed by this kind of behavior, we would probably wind up punishing them again down the road.

I know we would hope that this would teach them the lesson but I'm sure, Senator Levy, you know and I know we may wind up punishing them again. But in those instances

where you have a first time offense and perhaps an individual that doesn't -- that learns from it, do we want to put a "D" felony on the backs of people who are so young in this instance?

SENATOR LEVY: Senator Paterson, the genesis of this bill is a provision of the Penal Law that says that, if there is any type of an assault on a police officer, it is a Class D felony, and the intention of this bill is to raise the teachers and other staff in our schools to the level of a police officer.

Now, Senator, you and I know, depending on the age, the age of the person that is involved, many of these people would receive youthful offender treatment.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I want to thank Senator Levy for the answer and I just would like to add that what I really do like about the bill is that there are certain pillars of our society, the police and I suppose teachers and others, where the attack on them is

more than just an attack on an individual. It's really in some respects an attack on our society, so I don't oppose the raising of the penalty in specific cases where the -- the teacher is one that serves society in a special way, as do the police.

I would just like to point out that Class E felony status that's associated with the automatic assault on a police officer kind of assumes that those who are committing the assault know better, and whether we should assume that the young people should know better, they are younger, they are given at times to more anti-social behavior, and I just would like not to see them be saddled with that kind of a penalty so early in their lives.

If Senator Levy is correct and the youthful offender status is granted, I think that would be the best way to resolve it.

ACTING PRESIDENT KUHL: Chair recognizes Senator Mendez.

SENATOR MENDEZ: Mr. President, I wonder if Senator Levy would yield for a couple

of little questions?

SENATOR LEVY: Yes, certainly, Senator.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MENDEZ: You mention - thank you.

Senator Levy, you mention that you received a report today stating how the incidence of attacks on teachers have increased. Do you have any data to the effect as to what has provoked those attacks, what has been the provoking incident that has made that student lose total control and engage in such a terrible act as hitting a teacher or doing whatever?

SENATOR LEVY: Violence in our schools throughout our state.

SENATOR MENDEZ: Well, certainly there must be, if that data comes, that data could be just an indication of one incident after another, or that data could be used to really use rational ways of dealing with

violence in schools, because if -- if all those incidents that are reported are analyzed by people in the behavioral fields, then we could see the kinds of commonality among them and then we could deal in a more structured, let's put it, way or a more rational way with the violence in schools.

What this bill-- will the Senator yield for another question?

SENATOR LEVY: Yes, Senator. Let me just further respond to your question. I'm not suggesting with this legislation that this is the only route to go to deter students who would assault teachers. It's part of a comprehensive legislative program that NYSUT, among other people, have put together to deal with this problem.

This is -- this route is but one piece in trying to deter violence in our schools and the simple type of assaults on teachers and other personnel in the school system.

SENATOR MENDEZ: Will the Senator yield?

ACTING PRESIDENT KUHL: Senator, do you yield?

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MENDEZ: Senator, I know very well, and all of us here do know very well that you keep on trying to find ways of dealing with serious problems, and violence in the schools is one such serious problem, as well as drunken driving and everything else, so I, for one, do not question your motivations at all because you are -- you have proven -- you have a proven track record.

Now, my question is, will this bill apply to what age students?

SENATOR LEVY: Well, Senator, this would apply to students over the age of 16 because under the age of 16, they would be treated as juvenile delinquents, and this bill that -- this bill that relates to the Penal Law would not apply here.

SENATOR MENDEZ: Kids over 16

years of age. Thank you, Senator Levy.

Last time that this bill was presented before us, Mr. President, I didn't support it. In the meantime, there has been a series of articles that have come out studying the question as to why we do have so many violent youth and the increasing criminality actually by very, very young adults.

It was mentioned that the very first time that one youngster is -- goes into the criminal justice system, that life is going to be in a sense terminated forever, that person will not have very few, very, very few will have an opportunity to develop whatever talents they have and become law-abiding citizens.

I think -- I was a teacher myself, high school level, many, many years ago and -- and I am sorry, if a child doesn't learn in school, Mr. President, in my view the proof of the pudding is what do you do in that classroom to make sure that the knowledge is transferred to the students.

I think that this bill is too

severe, much too severe, much too determinative of the future life of that young man or young woman and, therefore, I think I can not possibly support it.

Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President.

Last year I voted against this bill, and I'm going to vote against the bill this year, not because I don't believe in increasing the penalties for assault. If this had said we're going to increase the penalties for all assaults against all citizens of this state, I would gladly support it. I am for increasing the penalties of assault, but not when it eliminates a large portion of the state of New York and the population who, in my opinion, are deserving of our protection as much as any other group and, for that reason, I'm going to vote no, not because I'm against increasing penalties, but philosophically I

disagree with the impetus of this bill.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. 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 381, Senators Connor, DiCarlo, Mendez, Montgomery. Ayes 48, nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 431, by Senator Cook, Senate Print 565A, an act to amend the Correction Law and Civil Practice Law and Rules, in relation to the repayment by

inmates of the cost of college education.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT KUHL: Senator Cook, an explanation has been asked for by Senator Onorato.

SENATOR COOK: Well, let us be clear that this bill does not deny college education to prisoners. It does put them on the same status as anyone else, says that if they are going to receive a college education while they are incarcerated, that they will be responsible for paying the cost of that college education to the state.

It doesn't seem to me that this is any more unfair than it is for anyone else to have to pay for their college education. It is a reasonable bill and I think ought to be passed.

ACTING PRESIDENT KUHL: Senator Onorato.

SENATOR ONORATO: Mr. President. Senator Cook, will you yield for a question?

ACTING PRESIDENT KUHL: Senator

Cook, do you yield to a question?

SENATOR COOK: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ONORATO: Senator Cook, I think I had some discussion about this bill last year. I'm fully in support of the concept but knowing full well what the difficulty that lies ahead for any youngster even today that isn't a prison inmate coming out of college, getting a job today is very difficult.

I'd ask you if you would change -- I don't know if you changed it or not in any way, shape or form simply by amending the bill to indicate that, if the individual coming out of the prison getting their education, is gain fully employed, that he must pay but if he's not employed, what are we going to do about him? How is he going to pay -- he or she going to pay for their education?

SENATOR COOK: Senator, I guess that they find themselves in the same situation as anyone does that graduates from college and

doesn't have a job, and there might be some people in the sound of our voice here today who are about to graduate from college and don't have -- don't have jobs and who are going to have to pay off college loans. I don't think prisoners ought to be in a favored position or in any better position than any other student.

ACTING PRESIDENT KUHL: Senator Onorato.

SENATOR ONORATO: When you make it as specific as this, is there an additional penalty for those if they don't pay it? What is the time frame that they have to make the payments?

SENATOR COOK: Senator, there is a ten-year repayment period. The -- the penalty is the same penalty that exists for anyone else on an unpaid bill and you've probably had some experience, and I have to admit that that penalty is almost non-existent because what happens is, you have a -- a lien, a judgment against the individual but at some point they have to repay, but until such time as they try

to borrow money or do something, that judgment really doesn't click in. There is no penalty per se on here except the penalty that exists at any time that somebody doesn't pay a bill.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes, on the bill.

ACTING PRESIDENT KUHL: Senator Abate, on the bill.

SENATOR ABATE: While I agree with Senator Cook, on its face this bill seems absolutely fair and rational, I believe it will produce negative results that will hurt all of us and all of our communities.

There's an oft-stated phrase called pennywise/pound foolish, cutting off our nose to spite our face. I think this is what this legislation does. I believe right now there are, what is there, about 3,000 inmates currently attending college, and there's this argument and myth that if we take the grant monies, and obviously we don't even know if these grant monies will exist in the future,

whether TAP will be available, but let's assume they will be, let's say we say to all these 3,000 inmates, the awards will not be available to you, will that mean more students in our communities going to college and, according to the existing rules and regulations, everyone who's eligible for a TAP award will receive it? It's just a question of how much.

So if we eliminate all 3,000 inmates attending college, because I believe this is what this bill will virtually do, that would mean we would put in every student's pocket in the community an additional $24, and I would suggest that would be a bad investment.

The better investment is to create incentives within prisons so that inmates become law-abiding citizens. They educate themselves, they learn skills. They make up their minds that there's another life that they can lead that's positive so that when they leave prison, they do not revictimize. There's not another victim created, and that we have to pay for additional expenses when they return to

prison or jail.

So, one, if this bill goes through, I believe many of the inmates will not go to school because they know that they will never have the capacity, at least not for a long time, to pay off these loans, and many of the students and, if you talk to the colleges, many of the inmates who go to school are very serious students, they want to do better for themselves. That's why they've decided to not just do idle time, but take advantage of their time in prison.

So what we're doing is, by and large, we're talking about an inmate population that's indigent. They make a dollar a day. They're already paying $150 surcharge; they're paying a crime victims penalty surcharge. If they're on work release they have to pay for their room and board. They have to pay $25 towards their GED.

What I'm suggesting is we already are taking much out of their commissary accounts so it will be very unrealistic that they can

work during their prison stay and be able to pay off some of these loans.

Now, the question is, if fewer people are going to school while they're incarcerated, how will that benefit us as a society? It certainly will not benefit the Department of Corrections. They will tell you over and over again, DOCS, that the more inmates that are involved in school, the less violence. These are the inmates that become peers and positive role models to the other inmates. Many of them are utilized as counselors, substance abuse counselors, teachers. They reduce the violence, they will reduce the injury to correction officers. They provide a much better climate within the correction system and they reduce tension. Certainly this is not a benefit to DOCS.

In terms of the benefit to society, we want to do everything we can in a prison situation so individuals leave, pay their taxes, become productive citizens. If we do that for them, we are doing it for ourselves.

It makes common sense. It's economically beneficial and the stat's show that the recidivism rate, the return to prison, is much less for those individuals who have completed a college education.

This small investment of allowing these 3,000 inmates to go to school compared to the cost of reincarcerating them, the cost to the future victims far -- is far less than that future cost. So again I say this bill is penny wise/pound foolish. It's -- may not be a popular position to take, but it's a position that makes good sense in terms of public safety, long-term public safety and long-term savings to the Correction Department. It reduces tension inside and will produce long-term public safety in the long term.

We have to be a society that says even though someone is incarcerated, we need to do everything possible so that when they leave prison and jail, they're productive and they do not commit the next crime. That's part of our or should be part of our criminal justice

policy.

This is a step backward, and I ask this body to reject this legislation.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Nozzolio, on the bill.

SENATOR NOZZOLIO: Thank you, Mr. President.

My colleagues, there are over $64 billion of expenditure that the state of New York taxpayers fund, some of which we agree with, some of which we may not agree with, but I can dare say that the expenditure which this bill ceases to or attempts to eliminate is, in my opinion, free college tuition for prison inmates, the most ridiculous expenditure that we have of those 64-plus billion dollars of our state taxpayers' money.

Senator Cook is to be applauded for this effort. I believe that each of those

young students sitting behind us in the chamber today that attend college, that are here on internships, should be asked how many of you receive free college education, should ask you how many of you are convicted felons, because if you were a convicted felon, if you were sent to prison, you would receive a free college education at taxpayers' expense. Not free, a college education at taxpayers' expense.

Each and every one of you, I know, worked very hard to pay for your college education, but right now being convicted of a crime and sentenced to a prison term in New York State is like being awarded a college scholarship. Thousands of law-abiding young citizens are prevented from attending college each year for lack of money. Thousands more must work, one, two, three jobs, to attend college. Thousands more must see their parents work long and hard so that their children can attend college. Yet in this state we have criminals going to college for free.

Just as the student who pays for

college with a student loan must pay back that student loan, this bill says that the inmates of this state must pay the state back upon their release from their prison college. What's worse about this expenditure is that we see in this state, those of you who claim this is a -- an incidence of rehabilitation.

I need only to point out to you that there are lifers in this state who are getting two and three master's degrees at taxpayers' expense. We have the most educated lifers of any state in the Union, yet we are not doing enough to ensure that those law-abiding, God-fearing college students are able to attend school at the least amount of cost.

How can we value -- how can we establish values, and how can we justify to our young people the value of obeying the law, studying hard and paying for their education when their peers in some cases making fistfuls of money dealing drugs finally get caught and are rewarded with a free college education?

The current practice is sending

an entirely wrong message to the young people of this state and, worse, it's establishing a terrible message to the taxpayers of this state who are working very hard to support services that are needed.

We're not denying in this legislation a college education to any prison inmate. We're saying that those inmates must share the responsibility that everyone in this state has to share when they seek a higher educational opportunity. They must pay for it. We're only saying that the inmates must pay for it. Every student of this state not in prison has to pay for it. Let's level the playing field and make those who have obeyed the law on the same field as those who have not.

Mr. President, I applaud Senator Cook in the establishment of this legislation. It sends the right message. I believe it is the right signal, and it must be adopted.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Oppenheimer.

SENATOR OPPENHEIMER: I'm -- I

voted for this bill in the past and I will vote for it again, but I -- I really question -- I would like to ask a question of Senator Cook.

SENATOR COOK: Yes.

SENATOR OPPENHEIMER: Senator Cook, I don't know if this is yesterday's legislation or the year before or the year before. All I know is that in my -- the prisoners in my district, we do not have at the present time college education courses being provided. They have all been decimated. Is that the situation, do you know, around the state?

SENATOR COOK: Senator, I -- I am not familiar. The statistics that I have indicate that there are about 25 colleges currently providing courses at various - various prisons, and that may be stale information, but that's the information I have.

SENATOR OPPENHEIMER: Thank you, Senator.

I feel very badly about this because we had some wonderful education courses

going in Westchester in some of our prisons and they have now been terminated. We have no education, not even GED, going on now in our prisons, and we do know and we have been able to track that if a prisoner has -- sorry, if a prisoner has a four-year college education, they're X likely to return to prison, two years this likely, GED this likely and, of course, with higher education goes to say that the likelihood of them coming back to prison is much diminished, and we do have the statistics to prove that.

I feel that the alternative to this, and I support, if they have a job after they get out of prison, of course, they should pay part of the tuition cost, but to me education is the only way to make a dent in the hard, hard core prison population because without this, the alternatives in my way of thinking are merely building more prisons and we've already tried that one. We did that for a decade, and we increased our prison population three times by a multiple of three from 20,000

to 66,000; so building prisons didn't seem to work, and I think without adequate recreation and alternatives to just sitting in with your friends and plotting, the alternative I think is riots in the prison which, of course, is something none of us want to see.

So I'm a great supporter of education in the prison, and I also wanted to mention that a previous speaker said something about law-abiding and God-fearing prisoners or non-prisoners. I think there are people who are law-abiding who may not be God-fearing. I don't feel that that reference is necessary nor is it synonymous to have the two linked.

At any rate, I will support this bill and, you know, hopefully, if the prisoner has gotten sufficient education, they would be able to find a job when they come out, though that seems to be a major problem in our state with an inadequate number of jobs and more people seeking to -- to fill them.

I mentioned, I think, on the floor earlier that we had an opening in

Westchester County for just a six-month job at our General Motors plant in North Tarrytown due to a variety of reasons, and there were no benefits offered, and the wage was below the wages of the regular factory workers. It was only minimum wage, and for these few hundred jobs we had people lining up from 5:00 a.m. in the morning and they totaled 5,500 people.

So I think we have to get to work on providing more jobs and maybe this inmate, when he comes out, will be able, with his education to find one of those jobs.

I vote yes.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Larkin.

SENATOR LARKIN: Mr. President, on the bill.

First of all, I'd like to join in congratulating, commending Senator Cook for doin' it, and I think we ought to read one part of his support memorandum. It's very clear. "Inmates should also receive no better treatment than many students in our state who

must pay for their education."

Those of us who are parents and had children in college spent a lot of money to see that our children received a great educa tion be it in the private or public institu tions. Now, maybe if we look around the halls here and the side here and think about people in our offices, some of our people that work for us whether they're interns or now part of our staff, owe 60-, 70-, $80,000. No one's wiping out those loans.

This bill does not say we will deny anyone an education. It just says in plain English, we're all going to play off the same ball field. I have three prisons adjacent to my district and at one time in the Assembly I had five prisons. The biggest complaint I had then and now is the free benefits that the inmates receive.

I've heard some people here say that by going to school they won't be rambunctious and we give them exercise and we don't do this. What do we tell a student who is

going to college and says, "I can't go back to my junior year because I owe too much money? I have to start paying it. I don't have money for this and I don't have money for that. My parents can't afford it." Well, what you got to say is, "Heck, let's go out and rob a store. We'll go to prison. We'll get the next two years free."

Sounds childish, but that's exactly the message we're sending. This is very serious, and I -- for those who are going to vote no and in the other house the same way, it's plain unadulterated garbage. This program denies no one of a college education. This program says you want an education, we're going to provide the access to you, but you are going to have to reimburse the state just like someone who borrows money from a bank to meet their educational requirements is required to pay it back.

So I think we ought to stop espousing liberal philosophies about take the inmates here and take the inmates there. Maybe

what we ought to do is to tell the people that are paying the freight around here that we support you as taxpayers and that what we want to do is to see everybody have an opportunity for an education and an opportunity for a job, but when I see hard working parents working two jobs to help pay the educational costs of their children and then I hear people on the floor saying, Oh, we should be doing this for the inmates, ladies and gentlemen, maybe we ought to do something for the taxpayers.

I commend you, Senator Cook. I only wish we could get enough people to take this on.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Stavisky.

SENATOR STAVISKY: You talk about garbage. Let me tell you some of the garbage that I've heard just in a few minutes in this chamber.

What will you say to your constituents when the tuition at the SUNY institutions rises perhaps $1,000 a year or

$1500 a year? I am not directing it to anyone. I am just raising this as a question for all of us to consider.

By the action we take here, the Legislature may be triggering an increase in the cost of tuition for our constituents to the tune of $1,000 or $1500 a year. By the action we take here in reducing the state's contribution to the cost of higher education, we will throw additional burdens upon the shoulders and the backs of the students and their families; and what do we say to that when a budget comes out that proposes that kind of increase in tuition in the public higher educational institutions? What do we say to our constituents whose young people and older people attend independent colleges where TAP funding may be curtailed? What do we say then?

And what do we say on the very issue we're talking about now? What do we say about the cost to the taxpayers for incarcera tion in prison?

I am a believer that someone who

has committed a crime should go to jail, should be tried and convicted, if guilty. I am not in favor of letting them loose, but each time some one goes to a state correctional institution, you know what the cost is to your taxpayers and mine? $25,000 a year, sometimes $30,000 a year, just to keep them in a state correctional facility, and that is a very great burden on our constituents, the taxpayers.

There have been studies undertaken of the consequences of educating someone who has done the wrong thing to society, someone who has committed a crime and has been incarcerated. Those people who have not received higher educational benefits are likely to return, according to this study taken by the Department of Correctional Services of the state of New York, and I'll share it with you.

46 -- 44.6 percent of those who did not improve their educational qualifications will return to prison according to the official records of the Department of Correctional Services. That's a hit to your taxpayers and

your constituents of 25- to $30,000 a year, and what are you going to say on that issue?

The rate of recidivism or return based upon those who are given the opportunity for an education, including a college education, is significantly lower, nearly half below the cost and below the percentage of recidivism of those who were given a chance.

Our economy is miserable. With your governor or the previous governor, it hasn't made much difference. There are no jobs to speak of for the untrained. There are private corporations that are letting people go. Haven't we noticed the state of New York and all levels of government are also reducing the work force? And if law-abiding people cannot get jobs in the private or the public sector, where will someone untrained, unskilled be put to work and have an opportunity in the public or private sector? There isn't a great demand for people when they're released from prison to find employment making license plates. That's not a high demand type of

occupation.

So here we have a choice. They commit a crime, they go to prison, and they learn nothing except how to be more effective prisoners and more effective criminals in the future. They learn -- and it's our decision as to what they learn, an advanced course on how to be a better criminal or an opportunity to turn them around and make them law-abiding, perhaps productive members in society; and there's a fiscal price tag, and we don't save any money when we don't make this opportunity available. It only costs us more and more as more and more inmates upon their release come back the next year, or even sooner, to be treated in prison at our expense. There is no higher educational opportunity that will cost 26- or $30,000 a year, none that I know of, unless they're going for an advanced program in medicine.

So where are we saving money and where are we wasting money? For those who speak in favor of this bill are decently motivated, but in speaking in favor and voting in favor of

this bill, may we, in fact, be wasting the taxpayers' money, and I suggest to you, consider the benefits to society. If we turn around some of these people from a life of crime, we'll be sparing our constituents from becoming victims of criminals who continue to prey on them, and we will be saving money on the cost of investigation, arrest, prosecution and incarceration. All of these costs will be saved if we prevent someone from returning to a life of crime.

Those who are espousing this bill should be rising in opposition to this concept, because truly, it's self-defeating; and if you look at that cost/benefit, you look in terms of the consequences, you should, in the interest of your constituents, be opposed to this type of legislation.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Waldon.

SENATOR WALDON: I saw Senator Cook raise his hand. Was it for a purpose?

SENATOR COOK: Mr. President, I

will be recognized at some point, but go ahead.

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Waldon.

SENATOR WALDON: I have some notes in front of me, my colleagues, which state that New York spends in excess of $4.5 million per day to incarcerate its prison population now, round figure of 68,000 people.

The cost to educate all of those people who are in prison on an annualized basis if this information that I have is accurate would be about $4.5 million. So for one day of the cost of incarceration, we can allow those who desire to be educated with the state paying; and we're in a very difficult fiscal situation, but if we can afford to give $4 million to AASCO -- and I don't know if I'm pronouncing it correctly, the salt mine in western New York - to build a rail spur when it is, as I'm told, the largest rock salt mine on earth -- if we can give $440 million to, I believe it was GE -

they had a $4 billion profit last year -- if we can give a $950 million surcharge -- business surcharge relief to the business sector, if we can give a personal income tax reduction of $720 million, 60 percent of that benefits five percent of the people of this state, then we can give this paltry sum of $4.5 million so that prisoners can be educated so that ladies like the one in Brooklyn, 80 years of age, beaten to death with her own cane, may not occur; so that multiple murders may not occur when someone has no skills, they have been raped -- if you saw the Shawshank Redemption, that is very indicative of what happens in prison -- when they are made to be worse than they are when they arrive, when they leave without any redemptive process occurring in prison, if you take away the education.

There's a mind-set now, I'm told which says, "We're not going to allow them to pump iron. We're not going to allow them to have any recreation. We're not going to allow them to have any television. We're going to cut

down on conjugal visits. We're going to make prison the worst experience humanly possible." What happens with that situation for those of us who have been in law enforcement and who have gone into the prisons and who have interviewed the prisoners is that they become more violent, more vicious, more angry, more vindictive when they're released. It doesn't work stacking them like cord wood, giving them no sense of help.

This educational program is one which has hope, meaning that someone -- and I've made some of these guys -- Elijah Ingram is an example -- who have gone to prison, who have gone through their GED process, their higher education process all the way to a Master's degree and some have even gotten points towards their Ph.D. who I have met personally. I think it's a mistake. I think we're being pennywise and pound foolish if we decimate this opportunity, deny people a chance to have an education without cost. It just doesn't make any kind of sense to me, and when we think of what we're doing to the educational system with

all of these giveaways to the business sector, we're forcing middle class families to have to work two jobs because the cost of education is being driven up by our actions.

There is no one here who is sacrosanct. None of us are sacred cows, and I think that it is wrong to punish these people, these people who may turn out to be a decent citizen if given the chance for rehabilitation while inside, and I would hope that somewhere in our mind's eye, somewhere in our heart of hearts, we can recognize the positive value of an education.

Everyone here is educated and had you not been educated, I don't know if you would be the same person you are today. I encourage us to give the opportunity to prisoners to be a better person than they are, to change the actions which took them into the criminal justice cycle and have caused them to create all kinds of pain and suffering for people around this state, many of them in the district I serve.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: Yes. Thank you, Mr. President.

Would the sponsor yield for a question?

ACTING PRESIDENT KUHL: Senator Cook, do you yield to Senator Montgomery?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Thank you.

Senator Cook, this legis... could I just ask you how many prisons are in your district and -

SENATOR COOK: How many prisoners involved?

SENATOR MONTGOMERY: Yes, in your own -

SENATOR COOK: Statistics, I have, Senator, are about 3400.

SENATOR MONTGOMERY: 3400 in your

district?

SENATOR COOK: Yes.

SENATOR MONTGOMERY: 3400 -- you have 3400 prisoners in your district?

SENATOR COOK: Oh, I'm sorry. No, I apologize. Don't -- 3400 statewide involved in the programs.

SENATOR MONTGOMERY: All right. How many -- which prisons are in your own district?

SENATOR COOK: Well, I have nine prisons -

SENATOR MONTGOMERY: You have nine prisons.

SENATOR COOK: -- altogether.

SENATOR MONTGOMERY: Are any of those the so-called secure ones; is that how you say it?

SENATOR COOK: Yes.

SENATOR MONTGOMERY: You have several secure facilities?

(Senator Cook nods head.)

SENATOR MONTGOMERY: Isn't it a

fact that the programs we're talking about, the prisoners that we're talking about are more likely to be long term?

SENATOR COOK: Probably. They have to take the program within ten years of release, so they quite have to be long-term prisoners.

SENATOR MONTGOMERY: So they would be considered relatively long term?

(Senator Cook nods head.)

SENATOR MONTGOMERY: Now, one of the reasons I ask, Senator, is that -- Mr. President, if the Senator will continue to yield.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield? The Senator continues to yield.

SENATOR MONTGOMERY: I have a number of requests from people -- from inmates to transfer from the non-secure facilities to the secure ones because -- simply because they want to have access for programs to advance themselves. So I'm just wondering, is there a

disproportionate number of the secure facilities in your own district?

SENATOR COOK: Well, I have a - I have a more than average number of prisons in my district, Senator.

SENATOR MONTGOMERY: Okay. Senator, if you would continue to yield. What would be the difference in the cost that an inmate would have to repay versus the cost to a student who -- as was referred to prior in another Senator's debate, a regular student who would have to pay back, a non-inmate student?

SENATOR COOK: Well, Senator, the calculation of this would depend upon the individual student, but there would be some areas in which it would be more and some areas in which it would be less.

For example, a TAP award that would be reimbursable for the prisoner, is not reimbursable for other people because it's money that's provided. On the other hand, the prisoner is receiving free room and board which the other student is paying for, so that the

room and board, I assume, would be more than the TAP award would be so, therefore, the prisoner actually is getting a greater benefit even though that prisoner would be responsible for repaying a TAP award.

SENATOR MONTGOMERY: So just this straight-out -- if you'll continue to yield, Mr. President.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield? The Senator continues to yield.

SENATOR MONTGOMERY: This straight-out tuition, comparing what one person pays versus what another person pays, one being an inmate, one being not an inmate, but they're both receiving TAP awards, the inmate pays back, even though it's a TAP award, the other person does not pay back that part which is strictly part of the TAP award?

SENATOR COOK: That's correct, but remembering that the inmate is also not paying for his room and board which is a larger -- if they're in a public institution, is a

larger amount of money than the tuition.

SENATOR MONTGOMERY: Okay. Thank you.

One last question, Senator. In terms of the colleges that participate in the program for the -- for the prisoners, are any of those also in your own district?

SENATOR COOK: I assume there are, Senator, yes.

SENATOR MONTGOMERY: Okay. All right.

Thank you, Senator Cook.

On many, many issues, I certainly agree with Senator Cook. I think that, were he a Democrat, we would probably agree on most things, but this is one of his strictly Republican mistakes, and it's a mistake, I think, because this really -- you know, it, as Senator Abate says, goes backward, in a way that, I think, does not save us money, and it sends out a message that we do not, in fact, want to rehabilitate people or, in fact, habilitate them if they need that in our prison

system to any extent, no one, and even though that may not be the ultimate result, that certainly is the message, I believe, that we send, and we just passed a law which is targeted, I believe -- Senator Levy's law - targeted to youthful offenders because it says if you assault a teacher, you -- you can receive an arrest as a felony, and we passed legislation a few weeks ago to increase the crime of assault against a police officer to a felony, and I believe we're going to see legislation which reduces or raises -- I guess you would say the juvenile offense lowers it to the age of 13.

That is one proposal that I have seen, and so we passed legislation to widen the net that catches particularly certain young males in there, and we reduce all -- all supports for them on the preventive end, and Senator Cook is now saying we also want to eliminate the habilitative end once people are in the judicial system for a long period of time.

So there's a message here,

Senator Cook, that I keep receiving from that side of the aisle, especially around this issue, and I must say it's very troubling. It certainly does not fall on idle ears. I pay a lot of attention to it, and I just see this as one more statement along those lines and it's very, very troubled -- troubling.

I vote no, but I certainly think that we need to rethink a lot of what we're doing as it relates to the criminal justice system, how it's targeted, who it's targeted for, what it's targeted to do and ultimately the outcome. Besides the fact that it costs so much money, we're also not serving the purpose that we would hope or that we say we want, and that is to reduce crime.

So, Senator Cook, I disagree with you. I think this is a bad bill and I will vote no again this year and I hope that many more of my colleagues will also join me in voting no.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. On the bill. I want to rise -

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: -- just to respond to some of the information I've heard today.

It's suggested by some people that if you oppose the bill that one does not feel an inmate has to pay their debt to society, and clearly, that's not the case. Whether an individual repays the cost of their education is not necessarily paying one's debt to society. An inmate pays their debt to society when they pay restitution, have to provide community service, are removed from society, the fact that they lose their freedom.

I've heard today that students have a better -- inmates have a better deal than students. I believe an inmate pays their debt to society when they don't have access to their family; they have to leave their communities and have to potentially spend years in jail. That

is one way of repaying their debt to society.

Also, when they're in prison, they have to work. They're told what to do, where to go, how to behave, and if they don't, they spend longer times in jail. So there are many ways for an inmate to pay their debt to society.

I also heard today about the wrong message we give to students. By creating disincentives to inmates, we're giving them the wrong message. We tell them -- particularly our young inmates, we tell them power is not guns. We tell them power is not dope, and what we do tell them is power is their ability to make choices and how they use their minds.

How are we going to give them the instruments to better use their minds when we say to them, "Well, we're going to make it a lot harder for you to get an education and you're going to -- even though you only make a dollar a day, you're going to have to pay for this education for years to come and there will be penalties attached by giving you free education

today."

I say that's the wrong message to give to inmates. It's counterproductive. We want to create every opportunity we can to change the minds of people that are misdirected to make them into a positive force in our communities.

And the last thing I want to address, it was suggested today, if you're opposed to this bill, you care more about inmates than you care about students, and I would suggest if you oppose this bill because you care more about the civilians and the uniform staff that work in prisons than you care about law-abiding citizens, I want to say to one of my constituents who I meet a year from now who's been victimized by someone who gets out of prison and they ask me, "Did you do everything you could in prison to prevent that person from assaulting me or robbing me or burglarizing my home", we should be in a position to say, "Yes. We did everything in prison to turn this individual around."

So voting against this bill is about saving dollars and saving lives.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

Will Senator Cook yield to a couple of quick questions?

ACTING PRESIDENT KUHL: Senator Cook, do you yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Through you, Mr. President. Is it my understanding that the intent of this bill is to treat inmates the same way we would treat a normal college student in the state of New York?

SENATOR COOK: In general terms, Senator, that's the point. The point is that if somebody is receiving a benefit such as a prisoner receiving a college degree, that that prisoner is going to pay for the college degree

in the same manner that other students pay for their college education, and it may be that the computation is slightly different, but in all candor, it's probably still going to cost the inmate a heck of a lot less than it does anybody else.

SENATOR DOLLINGER: Through you, Mr. President. Could I call your attention to Section B (3) of the bill, lines 26 through 28, in which the bill says, "Any funds expended by the department or any other state agency or any public benefit corporation for tuition on behalf of the inmate shall be deemed a loan to the inmate." My question to you, Senator, we don't finance higher education in this state that way, do we?

SENATOR COOK: Senator, I think that the point that I made earlier relative to the computation of this is the answer to your question. No, we don't calculate a TAP award to students as a loan, but that student who is receiving a TAP award is paying tuition, room and board and all the other expenses of going to

college, whereas this inmate is getting room and board free. So there is a quid pro quo there that is different, but it is still a -- in rough equity to the same thing.

SENATOR DOLLINGER: Through you, Mr. President. In fact, tuition only makes up, I believe, less than 50 percent, in fact, in some cases in some of our state institutions, of the tuition cost. Forget room and board. I think my understanding is that that generally pays for itself, but the tuition cost that a student pays in our institutions of higher education is -- my understanding is less than a third of the real per pupil cost; yet we don't charge the students that go -- like the junior in college who lives next door to him -- to me, we don't charge them 8-, 9-, $10,000, which is the per pupil education cost. We don't charge him that. We charge him $2650.

So under your proposal, if we did what this section provides, we would jump the tuition in this state for that student by 5- or $6,000 so that we make sure that he's paying the

full per pupil cost, which is what you want to do to inmates, isn't that correct?

SENATOR COOK: Senator, I think you've -- I think somewhere you threw a switch and went off the track, because you're really not -- there are a lot of students who are getting TAP awards which are based on their income, and they're having to pay all of the rest of their costs, whatever those costs may be out of their pocket, whether it be tuition costs, room and board, books, whatever; they're paying for them out of their pocket.

Now, we're not -- all we're saying in this bill is that the point -- to the extent that the TAP awards and other kinds of awards that the state is making to the prisoner, that that is reimbursable but, Senator, the person paying -- who is going -- the typical college student is paying a heck of a lot more on the bottom line after whatever TAP award they receive than this college inmate will ever pay. The college inmate is getting an extremely good deal under this bill.

SENATOR DOLLINGER: Through you, Mr. President.

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

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: The way this bill is drafted, what it says is that someone in prison who takes a college course, the total cost of that course paid by the department or any public benefit corporation, is chargeable to the inmate as a loan. If the total cost of the course provided per student is $3,000, the inmate then has to pay back $3,000, and I'll agree with you that this bill leaves the leverage to the Department of Correctional Services to determine how you calculate that. I think that's a prudent move.

My question is, in the current state system, the per pupil cost of educating a college student, my recollection is - certainly, Senator Cook or Senator LaValle,

Senator Stavisky would know better -- but my understanding is the real per pupil cost is somewhere between 8- and $10,000, of which the total tuition that is financed by the student is $2650. The other 6- or $8,000 is paid for by you, by me, by the tax system, but we don't charge that student -- we don't force them to pay back 8- to $10,000. We only force them to pay back the amount necessary to borrow to pay his tuition for.

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: Senator, that is precisely the point. The student pays that amount out of their own pocket. That's exactly the point that I'm trying to make. You're talking as if somehow the state was paying the room and board for all of these kids. It doesn't. It makes a -- usually a TAP award and maybe there's some kind of other financial aid available, but these general costs are being paid by the students and their families.

SENATOR DOLLINGER: Through you, Mr. President. I apologize, Senator Cook, but I don't believe you understand the point of my question. The tuition cost, the per pupil tuition cost is $2650 in the state system. Put room and board aside, all right? We could talk about room and board, but the cost to educate the child -- the college student is somewhere between 8- and $9,000, $10,000 for the education component, just for the instruction in the classroom.

If this bill were law in the state of New York, the tuition for everybody in the institution, which means whatever we spend in our college system, we have to give back in the form of tuition, this means the tuition for a student would jump from $2650 to 8- or $9,000, because this bill says that the inmate has to pay the total cost of his education, and what we have in this state is we have a state in which our higher education is largely subsidized by the taxpayers, and the tuition is only a small portion of the total education cost.

My question to you is, if your goal is to treat inmates the same way that you treat every other college student, why shouldn't this bill provide that we'll charge tuition and that the taxpayer will underwrite two-thirds of the cost as we do for every other student in this state?

SENATOR COOK: Mr. President, Senator, I listen to you a great deal and most of the time you make awfully good sense, but I can't for the life of me figure out what you're talking about.

SENATOR DOLLINGER: What I'm talking about is this: Senator, I appreciate that. This is a complicated issue.

SENATOR COOK: You're telling me that because a student doesn't pay tuition, that if we're going to count -- if we're going to make the inmate repay the prison, they ought to pay for their room and board and that, because we make the prisoners pay room and board, we ought to charge the student -- other students in the university for their room and board as a

part of their tuition? That's all I'm hearing you say. It doesn't make any sense to me.

ACTING PRESIDENT KUHL: Senator Dollinger, would you like to explain that to Senator Cook?

SENATOR DOLLINGER: I will, Senator.

Set aside the room and board part of the equation. The cost of educating the student absent room and board is somewhere between 8- and $10,000 per student. In this state, we do not require that students in our public universities pay the entire education cost, correct?

SENATOR COOK: I'm sorry, Senator, you'll have to repeat that sentence again.

SENATOR DOLLINGER: Put room and board aside. The cost is the cost of instruction. My understanding -- and if I'm incorrect on this, please, someone, correct me -- the cost of instruction for a student in the State University system per pupil is somewhere

between 8- and $10,000. Whether they're boarding there or not, that's the cost. You take the total cost of the facilities, you divide it by the number of students and that's the per pupil cost, correct?

SENATOR COOK: You're saying that the costs of running the college divided by the number of students at some theoretical num... okay.

SENATOR DOLLINGER: Right. It's the education cost. It's not room and board. It's just the education cost. Under our current system, the tuition is $2650. So if it costs $8,000 to send a student to college, the student actually pays less than a third of the total cost, correct, under our current system? The boy who lives -- the boy or young man who lives next door to me pays about a third of the total cost, correct?

(Senator Cook nods head.)

SENATOR DOLLINGER: The other two-thirds of the education cost is borne by his parents, by me, by you and by everybody in this

room as the taxpayer contribution to support the public university system, correct?

SENATOR COOK: Up to that point.

SENATOR DOLLINGER: If that's the case, under your bill, the inmate is required to pay the -- his proportionate share of the entire cost of educating him, so he's actually got to pay at a rate of 100 percent of the cost of education, whereas the students in our universities only pay about a third of the cost, isn't that correct?

SENATOR COOK: No, Senator, it's not, because there's no one who contends that someone attending SUNY, for example, that their personal cost is $10,000. Their personal cost is the total of their room and board, their tuition, et cetera, et cetera, et cetera.

Senator -- I'm sorry -- we're saying that if the inmate enrolls in a course and there is a course cost that is the charge that's traditionally made, that they are responsible for repaying that charge, but it's the same thing that anybody else does who

enrolls in a college. It's not -- there's nothing mysterious about that. No, we're not trying to go back and count how much of the endowment funds is -- what proportionate amount is used to pay the professors.

I mean, if you really want to get ridiculous about it, I guess you would have to go in and find out how much each professor got paid and slice it down as to how many hours that professor spent with that student relative to the whole university.

Well, of course, we don't do that kind of thing. We're talking about using some common sense and saying, "If you enroll in a course, the tuition for that course is $1200, that's what you owe." That's -- it's as simple as that.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: If the sole purpose of this was to reduce the availability of TAP awards, I might look at it from a different point of view, but what I see this bill saying is that you're going to pay - charge to the inmate the entire cost of a program which, if he were enrolled in a state university, he would only pay about a third of the total cost, because that's all we charge collecting tuition for the per pupil cost for our students.

I voted against this bill in the past. Senator Waldon and everybody else has talked about what this bill means to the rehabilitation of inmates. I saw this bill paraded across the television screen in ads against me because I voted against this bill. I'll probably see it again, but I think if we're really looking at the benefit of taking inmates and providing them with more skills to get out in the work force and have some means of

subsistence, bare survival, providing them with a college education in prison is not a bad idea.

ACTING PRESIDENT KUHL: Senator Cook, "some time" has arrived. You indicated you wanted to speak on the bill some time.

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: You're the last speaker, so if you would like to speak to close debate.

SENATOR COOK: I will recognize everybody's patience, Mr. President.

I'm going to break a couple of rules, the first one being quit while you're ahead and the second one being don't address irrelevant issues, but I'm going to do that because everybody is talking about what will happen if we take away college educations. That's not the subject of this bill.

The subject of this bill is the cost of repaying that student -- that inmates should repay the cost of that education which they received. So, indeed, the bill assumes

that they are going to receive the education, otherwise the bill wouldn't exist.

But I think that we ought to examine -- and Senator Stavisky apparently has the same piece of paper I do or something very like that, but I thought there was something very interesting in the statistics, Senator, and as a professor, you would appreciate the use of these statistics because on the face it sounds as if these college educations are doing wonderful things for society because 44 percent of the people who were released from prisons who do not have college degrees are rearrested and go back to prison. Only 26 percent of those who do have college degrees go back to prison. So it sounds like it it's a wonderful thing, except that you considered two or three factors.

First, you've got the most motivated group of prisoners who are undoubtedly the ones who are going to enroll in this system, and I would suspect that given any kind of group of people in our society, if you took the most motivated, they would be the people who would

succeed at least to the degree of two to one compared with anyone else.

But then there's another factor that this doesn't take into consideration, and that is how many times have these people been back in prison? In other words, the rate, as I understand it, of people returning to prison is how many times has a person who completes a sentence gone back to prison? Well, let's assume somebody is arrested three times and they go back to prison, they're counted three times in the statistics because they have been resentenced three times. So now you've got one group over here and you count them three times and they end up with 44 percent. You've got another group over here who presumably only got one college degree and they're only counted once, and yet that group is only twice -- is only half the size of the other one.

Statistically, Mr. President, that leads me to the suspicion that you may, indeed -- and I don't know that this is the case -- but there may, indeed, be more people with

college degrees that end up going back to prison than there are people who don't have college degrees, if you really got down to an actual statistical account.

So, Mr. President, I think that that whole argument about how wonderful this is in preventing people from going back to prison is rather specious. Then, indeed, Mr. President, I would have to contend that any kind of a rehabilitation program that has a 26 percent failure rate is not much of a rehabilitation program.

ACTING PRESIDENT KUHL: Senator Stavisky, why do you rise?

SENATOR STAVISKY: Mr. President, will Senator Cook yield for a question?

SENATOR COOK: Yeah.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STAVISKY: I admire the way in which you describe those who wish to pursue their education as the most highly motivated group within the prison population.

Why do you, Senator Cook, want to punish those who are the most motivated and wish to improve their education in order not to go back to prison? Why would you punish these people?

SENATOR COOK: Mr. President, the very point, Senator, is that these people don't tend, from anything I can see in that statistic al study, that the prison -- the education doesn't do a thing to rehabilitate them, but as far as I can see, given the kinds of numbers we've got here, they return to prison at something which must be virtually the same rate as people who don't have college educations.

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: Senator Cook has added a new dimension to statistics maintained by the educational study undertaken by the Department of Correctional Services. He does so without any documentation. He praises with one breath the fact that these are the most

motivated people and then with the next breath would tell these people who are the most motivated, who want to turn their lives around, that they have to do something that may be nearly impossible.

I don't know if even the enlightened members of this chamber would go out of their way to hire somebody who has just been released from prison. I don't know. We've never taken a survey of that, and yet, I believe that a person discharged from prison, even with the education, will have difficulty. Why then are we requiring repayment within six months after the completion of the course of study? I believe that is in the bill, or six months after their discharge? Nobody is running up to them, offering them the opportunity. They will look at this and they will view it as a trap that they don't want to get an additional burden.

Maybe in Charles Dickens' time when there were debtor prisons, maybe that would be the appropriate course of procedure, but we don't have debtor prisons and we have a lot of

people, including some very well educated non prisoners, who take all of the money to go to medical school under the condition that they serve in a community that has an underserved public health population, and we don't go after them. We don't put them in prison, and yet these are very intelligent, highly qualified people whose entire medical course of study has been paid for by the taxpayers.

Are you prepared to introduce legislation to go after these people, find out where they're hiding from their responsibility to the taxpayers of New York State? These are people who know better, who should know better, and they're escaping, and I don't see any reference in your bill to that issue. When somebody is willing to admit a mistake and try to turn their life around, I think that's commendable.

I learned a great deal accompanying, not then Senator Abate, but New York City Correction Commissioner Abate on a journey to Rikers Island with a group of

youngsters who were at risk, who were getting into trouble with drug dealers, with peddlers of violence, and we took these kids to Rikers Island in what was similar to the Scared Straight Program that New Jersey has at Rahway Prison, and the prisoners there carefully selected to speak to the young people, gave them a harrowing experience as to what was going to happen to them if they got into trouble with the law the way these inmates did.

I learned a lot and so did these youths, and I think it was a lesson worth learning. If we can turn people around without an education as they may have been at Rikers Island, because they were there usually for less than a year, or with an education -- because this is the only time we will get them where we can convince them, prevail upon them to do something better with their lives -- what are you going to do, run after them with a salt shaker to put salt on their tails when they're free, when you don't have them up on charges, when you can't force them or convince them to

turn their lives around, when they're running around with guns and knives and maybe assault weapons, when they're abusing elderly people and children? We don't have much leverage with these people to get them to go to college. Here behind bars when they're presumably paying their price to society, this is an opportune time to convince them to turn their lives around, and you should be joining in that effort. You should be encouraging, not discouraging. You should say it's well worth the cost and let us see if we can expand and not curtail the program.

As an Education Committee chair, I would hope that would be your goal, to use education as a tool for reforming the lives of these people.

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

THE SECRETARY: Section 3. This -

ACTING PRESIDENT KUHL: Senator Onorato.

SENATOR ONORATO: If Senator Cook -- you know, I have been hearing quite a bit of conversation here regarding this, but I thought it was going to go much sooner than that, but a lot of the things have been brought out here that's kind of confused me a little bit again regarding the tuition.

I understood that your bill would make them pay their tuition, but now I'm a little confused as to what that tuition actually is. I believe now if a SUNY student going to college takes -- doesn't get any TAP or anything else and has to pay -- outright pay someone in the neighborhood of $2500 a year, so if he takes a four-year course, he would owe $10,000 -- he or she would owe $10,000 for their four-year college education. Is that what your bill does, charge them $10,000 or does it charge them $10,000 plus what you're saying, room and board is coming into this effect and whatever costs for the college professors? What is the actual figure, if the actual student fee is $10,000 for four years without room and board?

SENATOR COOK: Mr. President, Senator, as you posed the question, it would be $10,000. In actuality, there would be the -- it would depend on the number of courses, the number of credit hours a student was taking at a given year because I believe those charges are made per course or per credit hour as opposed to being a flat amount, but in general terms, it would be the $10,000.

SENATOR ONORATO: It would be the same as the student that would be going to -

SENATOR COOK: It would be the same as if you were a part-time student attending that particular college.

SENATOR ONORATO: Thank you.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce

the results when tabulated.

The Chair recognizes Senator Waldon to explain his vote.

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

In the best of all worlds, those who would be allowed to receive an education in prison and turn their lives around would not return to prison and, in effect, the prison population would diminish eventually in the best of all worlds.

If such is not the case, a way to ensure that there's always a prison population, that there's always a growing prison population is to take away every modicum of human sensitivity and concern which would allow people to turn their lives around. If what we want to do is to increase the prison population and ensure that the prisons are bursting at the seams, then you should vote yes on this bill. If you have any other thoughts in mind, do as I do and vote no.

I vote in the negative, Mr.

President.

ACTING PRESIDENT KUHL: Senator Waldon in the negative.

Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: Yes, to explain my vote.

If there was ever any wonder why there's no budget in the state of New York, I think you can -- judging from this debate, you would probably get a clearer understanding.

There's two different philosophies of government that you're hearing today. One philosophy that I think Senator Cook bill -- Cook's bill espouses is that individuals are responsible for themselves. Whether you are getting an education behind bars, you have to pay for the education or whether you're getting the education as a poor individual in the community or a rich individual in the community, you pay the tuition because that's your responsibility.

The other philosophy is that

government has a responsibility to take care of everybody, even those who are getting a benefit that others are paying for. Individuals who are in prison taking free courses are getting a benefit by being in prison over those who maybe can't afford those same courses that are forced to pay for them since they are -- happen to be on the outside.

I feel that it would be punitive to take away the opportunity of a college education, but the college education opportunity is not being taken away. The prisoner is simply being put in the same position as that person on the outside. If you have to borrow it or you have to pay it some day in the future, that's part of your responsibility; and we don't have debtors prisons, so if you can't pay it, then there's going to be an unsatisfied bill out there, and there's many of those by many people who have never gone to prison.

So for that reason, I vote yes on this bill.

ACTING PRESIDENT KUHL: Senator

DeFrancisco in the affirmative. Results?

THE SECRETARY: Those recorded in the negative on Calendar Number 431, Senators Abate, Connor, Dollinger, Leichter, Markowitz, Mendez, Montgomery, Onorato, Paterson, Smith, Stavisky, and Waldon. Ayes 42, nays 12.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Hoblock.

SENATOR HOBLOCK: Mr. President, would you please call up Calendar Number 621, Senate 3821-A, by Senator Trunzo?

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT KUHL: Senator Stavisky.

Senator Hoffmann.

Senator Hoblock, Senator Hoffmann's indicated at the desk that she'd like to, without objection, be recorded on a vote. Do you mind if we take that first?

SENATOR HOBLOCK: No, not at all.

SENATOR HOFFMANN: Thanks, Senator.

ACTING PRESIDENT KUHL: Senator Hoffmann.

SENATOR HOFFMANN: Mr. President, I was out of the chamber when Calendar 72 was taken up. I request unanimous consent to be recorded in the negative.

ACTING PRESIDENT KUHL: Without objection. Hearing none, Senator Hoffmann will be recorded in the negative -

SENATOR HOFFMANN: Thank you.

ACTING PRESIDENT KUHL: -- on Calendar Number 72.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, for the same reason, I should like to be recorded in the negative on Calendar 72.

ACTING PRESIDENT KUHL: Without objection and hearing none, Senator Stavisky will be recorded in the negative on Calendar Number 72.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President, I was out of the chamber when a vote

was taken on Calendar 381. I would request unanimous consent to be recorded in the negative on that bill.

ACTING PRESIDENT KUHL: Without objection. Hearing none, Senator DeFrancisco will be recorded in the negative on Calendar Number 381.

Senator Cook.

SENATOR COOK: Mr. President, if it's appropriate, I'd like to remove a star. Is that appropriate?

ACTING PRESIDENT KUHL: Certainly.

SENATOR COOK: Okay. Calendar 431, Senate Bill 565-A, if you could -

ACTING PRESIDENT KUHL: Sponsor's star will be placed on Calendar Number 43...

SENATOR COOK: Remove it.

ACTING PRESIDENT KUHL: Excuse me, removed from Calendar Number 431.

SENATOR COOK: Thank you.

ACTING PRESIDENT KUHL: Now, I ask the Secretary to -

SENATOR ONORATO: Point of information.

SENATOR LEICHTER: Put a star on it.

SENATOR ONORATO: Am I hearing correctly, you wanted to remove a star from Calendar Number 431?

ACTING PRESIDENT KUHL: Sen... Senator -- Senator Onorato, Senator Cook misspoke. He was referring not to Senate 431, to 495. Is that correct, Senator Cook?

SENATOR COOK: I was referring to Calendar Number 495, Senator.

ACTING PRESIDENT KUHL: That's what I thought I heard you say.

Senator Onorato, you might want to have your ears checked. They tell me they do that at the nurse's office.

All kidding aside, the Secretary will read the title of Calendar Number 621.

THE SECRETARY: Calendar Number 621, by Senator Trunzo, Senate Print 3821-A, an act to amend the Retirement and Social Security

Law, in relation to retirement of sheriffs, undersheriffs and deputy sheriffs.

SENATOR LEICHTER: Explanation.

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

SENATOR TRUNZO: Senator Leichter, this bill authorizes counties outside the city of New York at local option to elect special 25- or 20-year New York State and local employee retirement system plans for sheriffs, undersheriffs and deputy sheriffs engaged directly in criminal law enforcement procedures.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President, if Senator Trunzo would be so good as to yield, please.

ACTING PRESIDENT KUHL: Senator Trunzo, do you yield to a question from Senator Leichter?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, a general objection that I don't feel that strongly about, although I find some merit in the memorandum of opposition of the New York State Association of Counties. I assume you've seen that?

SENATOR TRUNZO: Yes.

SENATOR LEICHTER: Have they withdrawn that objection?

SENATOR TRUNZO: No, they haven't, but every county in this state has written in favor of it.

SENATOR LEICHTER: Every county in the state has written in favor of it?

SENATOR TRUNZO: The sheriff departments of every county in the state.

SENATOR LEICHTER: Oh, the police departments.

SENATOR TRUNZO: The sheriffs.

SENATOR LEICHTER: The sheriffs who have benefited are in favor of this?

SENATOR TRUNZO: That's right. Yes, yes.

SENATOR LEICHTER: That's amazing, Senator, really.

SENATOR TRUNZO: Okay.

SENATOR LEICHTER: But the county executives have not written in favor of it?

SENATOR TRUNZO: Only the Association of Counties -

SENATOR LEICHTER: Okay. Is opposed to it but, Senator, you do provide for local option and maybe that, you know, sort of mitigates the -- the opposition, let the counties decide, although, as you and I know, very often county executives look to us to protect them from pressures that otherwise may be put on them as we sometimes look for somebody to protect us from some pressures, but let me - let me get to what is really my concern.

Is there in this bill the provisions of what we call the "heart" bill? Do we make that available for sheriffs, under sheriffs, deputy sheriffs, assistant sheriffs?

SENATOR TRUNZO: Yes, it is, Senator Leichter.

SENATOR LEICHTER: Thank you, Senator.

On the bill.

ACTING PRESIDENT KUHL: Senator Leichter on the bill.

SENATOR LEICHTER: Yeah. My good colleagues, I've often risen on this floor when we deal with the "heart" bill and when we try to provide the benefits of the "heart" bill for certain public employees, and I point out, which is particularly true in this case, there is no medical evidence whatsoever that by reason of performing the duties of a sheriff or assistant sheriff or deputy sheriff that in any way this could cause cardiovascular problems, that if you should have any problem with your heart, that there's a presumption that it's related to the job, and really this costs the taxpayers a great deal.

I know we all like to get up here and talk about, you know, we got to protect the

taxpayers, but then we put across bills of this sort, and let me just say I, less often than you, get up and talk about protecting the taxpayers, because I think that, on balance, the taxpayers at certain times need to be called upon to pay for the cost of government, but they don't need to be asked to call -- to be called upon to pay a boondoggle. I mean this is just a provision that has no basis in any medical studies. We just shouldn't do this.

Now, we all want to be generous to our police departments, our fire departments, our sheriffs. They perform important functions, but they get paid for it, and now Senator Trunzo is going to give them a pension, but in addition he gives them this presumption which has no basis in fact and let me tell you, Senator, in my city, the city of New York where we have a "heart" bill it has cost us millions, hundreds of millions of dollars. Every police officer who has a heart problem because, one, it's genetic, or because that police officer smokes a great deal or he drinks or he does other things

that aren't particularly healthy, he eats a lot of fatty foods, and so on, that's why people get heart attacks and have problems with their hearts and not because of the jobs they have.

If the theory is, well, these people have stressful jobs, the point is that they're not that stressful. If you want to take people who have stressful jobs, take correction officers. I'll tell you somebody who has real stressful jobs, they don't have the benefit of the "heart" bill, legislators. It's a terribly stressful job. I don't have to convince anybody of that but, for good reasons, we don't have the provisions of the "heart" bill available to us, because that sort of stress is not shown to be related to problems of the heart.

So, Senator, maybe this bill, in spite of the objection of the Association of Counties, is a good bill or bill that we ought to let counties to decide, but don't add the "heart" bill. If you add the "heart" bill, then I think you taint the bill and I for one cannot support it.

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.

THE SECRETARY: Those recorded in the negative on Calendar Number 621 are Senator -- Senator Leichter. Ayes 53, nays 1.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar Number 574.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 72.

SENATOR MONTGOMERY: No.

ACTING PRESIDENT KUHL: I'm sorry. My hearing is bad. I should go to see the nurse. 574.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT KUHL: Thank you, Senator Montgomery.

Senator Hoblock.

SENATOR HOBLOCK: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: No housekeeping at the desk.

SENATOR HOBLOCK: Mr. President, there being no further business, I move we stand adjourned until Tuesday, May 16, 1995, at 11:00 a.m. sharp. There will be a Majority Conference immediately after session.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Tuesday, May 16th, at 11:00. Repeat that, 11:00 a.m. Majority Conference to follow immediately thereafter.

(Whereupon, at 5:50 p.m., the

Senate adjourned.)