ALBANY, NEW YORK

May 16, 1995

11:02 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Members please find their chairs, the staff their places. Ask everybody in the chamber to rise with me and repeat the Pledge of Allegiance to the Flag.

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

We're very pleased once again to be joined by a constituent of Senator Markowitz, Bishop Muriel Grant of the Mt. Olivet Disciple ship of Brooklyn, New York.

Bishop Grant.

BISHOP MURIEL GRANT: Let us pray. O God, I thank You for Your presence here. Eternal God, through Whose mighty power our fathers of this nation won their liberties of old, I beseech Thee humbly to hear my prayer this day. May the Almighty God Whose kingdom is everlasting and power infinite, have mercy on our land and so rule the hearts of the servants -- Thy servants, the President of these United States and all others in authority, for the

advancement of this great nation.

We can surely come to You on the strength of the words of another Abraham in our time in the foundation of the proclamation when he said, "The way is plain, peaceful, generous, just, the way which if followed, the world will forever applaud and God must forever bless."

Bless us, Lord, our Governor, whose glory is in all the world. We commend this nation to Thy merciful care, that being guided by Thy providence, we may dwell secure in peace. I beseech these souls, especially for the Senate, Republicans and Democrats alike. Heal all their infirmities, Lord. Bless this, their counseling session. I pray that Thou wouldst be pleased to direct and prosper all their consultations for the advancement of Thy glory, for the good of Thy church, the safety, honor and welfare of Thy people, that all things may be ordered and settled by the endeavor of these upon the best and surest foundation, that peace and happiness, truth and justice, religion and faith may be established amongst us for all

generations. This and all other necessaries for them, for us, the whole church, I humbly beg in the name and meditation of Jesus Christ, my Savior, my Lord. Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 15th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair. The prayer by the Reverend Peter Young of Bolton Landing. The Journal of Sunday, May 14th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Cook.

SENATOR COOK: Mr. President, on behalf of Senator Hannon, please place sponsor's stars on Calendar Numbers 378 and 503. I hope those aren't bills he's already passed.

Mr. President -

ACTING PRESIDENT KUHL: Calendar Number 378 and 503 will be starred at the request of the sponsor.

Senator Cook.

SENATOR COOK: Mr. President, I wish to call up Senator Lack's bill, Number 2833, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: By Senator Lack, Senate Print 2833, an act to amend Chapter 689 of the Laws of 1993, amending the Criminal Procedure Law.

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT KUHL: The motion is to reconsider the vote by which the bill passed the house. The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: Mr. President, I offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Cook.

SENATOR COOK: Also, Mr. President, on page 58, I offer the following amendments to Senator Skelos' bill, Calendar Number 880, Senate Print 2361, and ask that said

bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 880 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno, we have a substitution at the desk. Would you like to take that up at this time?

SENATOR BRUNO: Please take that up at this time, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the substitution.

THE SECRETARY: Senator Levy moves to discharge from the Committee on Rules, Assembly Bill Number 5182-A and substitute it for the identical Calendar Number 806.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, I would like to call an immediate meeting of Rules

in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee in the Majority Conference Room. That's Room 332. Immediate meeting of the Rules Committee in Room 332.

The Chair recognizes Senator Trunzo.

SENATOR TRUNZO: Mr. President, please put a sponsor's star on Calendar Number 600.

ACTING PRESIDENT KUHL: Calendar Number 600 will be starred at the request of the sponsor.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I would like to place sponsor's stars on the following bills: Calendars 90... I'm sorry, 944, 945, 954, 955, 956, 958 and 959.

ACTING PRESIDENT KUHL: Calendar Number 944, 945, 954, 955, 956, 958 and 959 will

be starred at the request of the sponsor.

The Chair recognizes Senator Bruno -- or Senator Hannon.

SENATOR HANNON: Mr. President, would you please place a sponsor's star on Calendar Number 378?

ACTING PRESIDENT KUHL: Senator Hannon, a sponsor's star was already placed on Calendar Number 378 by Senator Cook on your behalf.

SENATOR HANNON: Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Bruno. That brings us to the calendar, I believe, Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time adopt the Resolution Calendar?

ACTING PRESIDENT KUHL: Certainly can. The motion is to adopt the Resolution Calendar. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno.

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

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

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 310, Assembly Rules Committee, Assembly Print 4105, an act to amend the Tax Law, in relation to extending the sales and use taxes by the city of White Plains.

ACTING PRESIDENT KUHL: The Sec... 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: Ayes 43, nays 2, Senator Dollinger and Jones recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

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 it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

461, by Senator Levy, Senate Print 4118, an act to amend the Public Authorities Law, in relation to requiring the Metropolitan Transportation Authority to make public an annual summary of the attendance records of its members.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 562, by Senator Larkin, Senate Print 3652, an act to amend the General Municipal Law, in relation to the operation of games of chance by authorized games of chance lessors.

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

THE SECRETARY: Section 5. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LARKIN: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 602, by Member of the Assembly Tokasz, Assembly Print 4959, an act to amend the Election Law, in relation to merging election districts at school

board and general elections.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 603, by Senator Leibell, Senate Print 3343, an act to amend the Real Property Tax Law, in relation to the exemption of certain private dwellings and improvements within cities having a population of one million or more.

ACTING PRESIDENT KUHL: The Secretary will -- lay the bill aside.

THE SECRETARY: Calendar Number 617, Member of the Assembly Vitaliano, an act to amend the Retirement and Social Security Law, in relation to the extension of the temporary

benefits and supplementation of programs.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 618, by Senator Trunzo, Senate Print 2868, an act to amend the Retirement and Social Security Law, in relation to the membership of policemen and firemen.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 625, by Senator Marchi, Senate Print 3367, an act to repeal Section 630 of the Business Corporation Law, relating to the liability of shareholders.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 627, by Senator Marchi, Senate Print 3802, an act to amend the Public Authorities Law, in relation to powers and duties of the Battery Park City Authority.

ACTING PRESIDENT KUHL: The 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 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 635, by Senator Cook, Senate Print 562, an act to amend the Highway Law, in relation to the definition of the Southern Tier Expressway.

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

THE SECRETARY: Section 6. This act shall take effect on the 1st day of July.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 636, by Senator Levy, Senate Print 1476, an act to amend the Vehicle and Traffic Law and the Education Law, in relation to making technical corrections relating to phasing out the use of school buses.

ACTING PRESIDENT KUHL: The 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 44, nays 1, Senator Seward recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 637, by Senator Goodman, Senate Print 1695-A, an act to amend the Transportation Law, in relation to increasing penalties for violating a motor carrier certificate.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: May I inquire, Calendar Number 625, was that laid aside? Okay. Thank you.

ACTING PRESIDENT KUHL: 625?

Yes, Senator Marchi's bill, Calendar Number 625 was laid aside, Senator Leichter.

The Secretary will read the last section on Calendar Number 637.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 645, by Senator Seward, Senate Print 3432-A, an act to amend the Public Service Law, in relation to increasing the statutory ceiling for non major changes.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

Senator DiCarlo, for those members, we accidentally read Calendar Number 645. That's what the vote was. Are there any negatives on Calendar Number 645?

(There was no response.)

If not, the bill is passed.

The Secretary will return to Calendar Number 639 and call that.

THE SECRETARY: Calendar Number 639, by Senator Goodman, Senate Print 2429, an act to amend the Vehicle and Traffic Law, in relation to regulation of delivery bicycles.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 44, nays 1, Senator DiCarlo recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 648, by Senator Johnson, Senate Print 36, an act to amend the Tax Law, in relation to exempting from sales and use tax certain transactions.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of the quarterly sales tax period.

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 649, by Member of the Assembly Butler, Assembly Print 1248, an act to amend the Executive Law, in relation to requiring certain notices to be printed on reports and publications.

ACTING PRESIDENT KUHL: The 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 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 650, by Senator Farley, Senate Print 1446, an act to amend the Executive Law, in relation to the designation of August 7th as Family Day, a day of commemoration.

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

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 652, by Senator Saland, Senate Print 2336, an act to amend the Executive Law and the Education Law, in relation to providing security information to prospective students.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 655, by Senator Tully, Senate Print 2870, an act to amend the Executive Law, in relation to the creation of the Long Island Sound Coastal Advisory Commission.

ACTING PRESIDENT KUHL: The 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 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 671, by Senator Skelos, Senate Print 408, an act to amend the Correction Law and the County Law, in relation to maintenance of prisoners in county jail facilities.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 672, by Senator LaValle, Senate Print 579, an act to amend the Correction Law, in relation to eligible inmates for temporary release programs.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 674, by Senator Skelos, Senate Print 1740, an act to amend the Executive Law and the Penal Law, in relation to payment of a fee by persons sentenced to probation.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 678, by Senator Johnson, Senate Print 2355, an act to amend the Education Law, in relation to requiring that State University graduation ceremonies include the Pledge of Allegiance and National Anthem.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 688, by Senator Hoblock, Senate Print 3554, an act to amend the Retirement and Social Security Law, in relation to transfer of precious service credit.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 688, ayes 49, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

694, by Senator Cook, Senate Print 4165, an act authorizing the town of New Paltz in Ulster County to make provisions of Section 384-d of the Retirement and Social Security Law.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 703, by Senator Velella, Senate Print 4112-A, an act to amend the Insurance Law, in relation to investments.

ACTING PRESIDENT KUHL: The 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 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 704, by Member of the Assembly Bragman, Assembly Print 6245, an act to amend Chapter 625 of the Laws of 1992, amending the Insurance Law.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 708, by Senator Wright, Senate Print 3073, the act to amend the State Administrative Procedure

Act, in relation to requiring that agencies conduct and include a formal cost/benefit analysis in each regulatory impact statement.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR STAFFORD: Mr. President, there will be an immediate meeting of Finance in Room 332, please, Mr. President.

ACTING PRESIDENT KUHL: For the benefit of the members, there will be an immed iate meeting of the Senate Finance Committee in the Majority Conference Room, that's Room 332.

Immediate meeting of the Finance Committee.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 672.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 672.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Libous.

SENATOR LIBOUS: Mr. President, we're ready to do the controversial calendar, please.

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

THE SECRETARY: On page 12, 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: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 234 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR JOHNSON: Mr. President, this bill makes it illegal to possess an obscene sexual performance by a child, and a sexual performance by a child makes the penalty a - it's a -

ACTING PRESIDENT KUHL: Senator Johnson, Senator Johnson, excuse me just a minute. Can we have some order in the house, please? There's an awful lot of conversation going on. It's extremely difficult for members to hear what another member is saying. Staff, please take your chairs. Members, please take their seats.

Thank you, Senator Johnson, for the interruption. I apologize.

SENATOR JOHNSON: Mr. President, this bill makes possession of child pornography a violation, makes it a Class E felony. We're

joining 30 other states that have similar laws, the crackdown on child pornography.

We were presented with some sort of an amendment from the other side. I guess they want to talk about it further, but essentially we passed this bill several years running, and it's passed overwhelmingly.

That's about all I can say, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, I have an amendment that is at the desk. It is served and, if you have received it, I would be willing to waive its reading and just speak on it for a couple of moments.

ACTING PRESIDENT KUHL: The Secretary does indicate, Senator Paterson, that there is your amendment at the desk. The reading of it is waived and you are afforded at this time the opportunity to explain the amendment.

SENATOR PATERSON: Mr. President,

all the amendment would do is to require the knowledge or the reason to have knowledge of the individual who would possess the sexual performance that the subject of the performance is 18 years of age or older.

What we're trying to avoid is individuals who would have some kind of a sexual performance that they would be reasonably assured would be performed by adults, and then to later find out that actually a person who was under age was involved.

Recently, there was a situation where a pornographic film star, whose name is Tracy Lords -- all this information, Mr. President, was upon information and belief, and this individual announced that she had celebrated her 18th birthday, but apparently she had been appearing in these movies for years but no one knew that she was not 18, and so I would not like for a citizen of our state to be put in the position where it would seem that the individual who is the subject of the sexual performance is of age and, therefore, it is a

legal transaction and it is a legal participa tion, and then to find later on that the person is under age. That is the sum and the substance of the amendment.

ACTING PRESIDENT KUHL: Senator Saland on the amendment.

SENATOR SALAND: On the amendment, Mr. President.

Mr. President, the existing law in Article 263 already provides for an affirma tive defense, an affirmative defense which, I believe, is set forth in Section 263.20, and that affirmative defense states that it shall be such an affirmative defense that defendant in good faith reasonably believed the person appearing in the performance was 16 years of age or over.

Affirmative defense, under our Penal Code or civil procedure -- Criminal Procedure requires that to be established by a mere preponderance of the evidence. To burden the district attorney in these types of prosecu tions to prove beyond a reasonable doubt is not

merely a shift in the burden of proof as would be proposed by the Acting Minority Leader, but certainly would be an onerous burden and make prosecution pretty darn near impossible.

I would certainly oppose the amendment and urge that my colleagues similarly oppose it.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, truth is an affirmative defense, and the reason that truth becomes affirmative is because we don't know what the truth is when we indict people, and so I think we are confusing the nature of the description of what is an affirmative defense.

There are times when there are certain actions that the defense may take that, as Senator Saland said, require a preponderance of the evidence and have to be overlaid by a proof beyond reasonable doubt, but what I'm saying is by the time the truth comes up in this particular case, you have an individual who's

already been indicted; they have already been arraigned; they have already been put on trial; they have already in many respects been humiliated in our criminal justice system.

What we have a chance to do today -- and we are lawmakers and we would want to make the best possible laws. We don't want to leave a burden on an innocent party where we can correct it in law. What we would like to do today in this amendment is to establish that the individual knew; in other words, there are some very clear cases of child pornography. It is really a loathesome and despicable kind of action that is pervading our society in many ways, and I would not like to diminish it in any respect by creating any kind of confusion with the regular situation that adults engage in watching these sexual performances and which we have not made illegal.

Now, if we want to make them illegal or we don't like them, that's our choice, but while we have a law as it stands today, I don't think that the law should be

ambiguous. This would make the law clear. We don't need to establish an affirmative defense where we have a better way, and I'm suggesting that if we incorporate this amendment into Senator Johnson's bill -- it's a good bill. I'm going to vote for it anyway, but I would like for it to have served our society in the best way that it can.

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: Mr. President, I certainly don't want to debate this proposed amendment, but suffice it to say that this amendment would make the bill unenforceable and no one would be convicted. In fact, this bill makes it a misdemeanor, which means it will have no practical impact on possession of child pornography. This can be not be permitted.

I would like to say that 75 percent of the Senators here voted for this bill the last time, 83 sponsors in the other house, more than enough to pass the bill in the other house if it got on the floor. The people want

and need this bill and this amendment should be rejected, and I move that be done.

ACTING PRESIDENT KUHL: The question is on the amendment. All those who are in favor of the amendment signify by saying aye.

(Response of "Aye".)

Those opposed, nay.

(Response of "Nay".)

The amendment fails.

The Secretary will read the last section on the bill.

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 are Senators Smith and Waldon. Ayes 56, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

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 LARKIN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 562, by Senator Larkin, Senate Print 3652, an act to amend the General Municipal Law, in relation to the operation of games of chance by authorized games of chance lessors.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Gold laid this bill aside, and I think he's in the Rules Committee meeting. Can we

hold it for just a few minutes?

ACTING PRESIDENT KUHL: The Acting Majority Leader indicates yes. The bill will be laid aside temporarily.

THE SECRETARY: Calendar Number 603, by Senator Leibell, Senate Print 3343, an act to amend the Real Property Tax Law, in relation to the exemption of certain private dwellings and improvements within cities having a population of less than one million from local taxation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Leichter laid this bill aside. I believe he's also at the Rules Committee, so I figure under equal protection, we would give him a few moments as well.

ACTING PRESIDENT KUHL: Never assume anything, Senator Paterson, but the Acting Majority Leader submits to your request. The bill will be laid aside temporarily.

SENATOR LARKIN: Lay it aside

temporarily.

THE SECRETARY: Calendar Number 625, by Senator Marchi, Senate Print 3367, an act to amend the real -- an act to repeal Section 630 of the Business Corporation Law, relating to the liability of shareholders for wages due to laborers.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, even prior to the explanation on the substance of the bill, I just have a question about the nature of the bill, because if this is S.4... S.3367, we, earlier in the session in March, passed Calendar 384 which I thought was the same bill -- I'm sorry -- Calendar Number 174, which I believe was the same bill, and I just wanted to try to understand why that's the case.

ACTING PRESIDENT KUHL: Senator Marchi, an explanation of the bill was asked for when the non-controversial calendar was read, by Senator Dollinger. Senator Paterson certainly

has raised a question which you would perhaps like to address at this time. Maybe you would like to address both of those at one time.

So, Senator Marchi, I'll recognize you at this point for an explanation and in response to the question posed by Senator Paterson.

SENATOR MARCHI: Well, in this bill, Mr. President, there are about 680 -- the number of corporations that are put together over the year, we have about 47 or 48 in the state of New York. The provision that we have, of course, takes the first ten shareholders and the highest ten shareholders and makes them - can make them personally liable under -- for wages due to laborers, so it's not a bad -- it's not a bad provision.

The only problem is that the vast majority, I think out of 8,000 incorporations, they all go out of state and over half of them are in the state of Delaware; they're in other jurisdictions. The result is there are no corporations being incorporated in the state of

New York, and this bill -- and the law that - the law that prevails in the incorporated - incorporations in other states does not present -- does not -- does not coincide with the thrust of this law.

On the other hand, there is no relief. It just -- the net effect of it is that all but a few incorporations in the state of New York take place in other jurisdictions where this exculpation does not take place. I believe that in the long run that being -- having a more intimate role in the formulation of corporations would probably inure to the benefit even to those who are sought to be served by a point of view that I'm sure you reflect and I have to say I share myself, but under the present arrange ment, we are -- we are excluded completely from -- from this process, and all the incorpora tions are not taking place in the state of New York, they're going elsewhere, and they should be taking place here.

I feel that it would augur well and perhaps lead to some developments that would

meet both of our objectives. I sense what you're saying, and I can't really disagree with it on the merits, but on the other hand, I don't think that it's a good arrangement at the present time.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Actually, Senator -- Mr. President, to Senator Marchi, I just wanted to understand. I guess what I conclude from that is that Calendar 174 was more of an omnibus bill that repeals several sections of the law, and the bill that is before us right now, Calendar 625, is -- deals with this one section of the law, and so I would assume that whichever one would prevail first, should we pass it into law, would then be the enacted law. That's all I was trying to clear up.

By the way, Senator Marchi, there are four shopping days 'til my birthday, I'd like you to know that.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I rise just to speak against this bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This bill, as I understand it, Senator Marchi, says that if you're a small corporation, it doesn't apply to -- that section of the law does not apply currently to major corporations that have their -- I'm not sure what the numbers are, but in excess of 50,000 or something of that nature, but what this bill says, if you work for a small corporation and you're an employee and you work for that corporation -- and in many cases you're dealing with just the boss. You've got a corporate entity, but you deal with the boss who's the major shareholder, and the boss says, "We got to go to work this week" and "We got to go to work next week and, don't worry, I'll pay you. I'll pay you with your paycheck. Your paycheck will come at the end of the two-week period." What happens is they don't get the

paycheck. The employee goes in to the employer and says, "You owe me weeks' worth of pay." The employer then says, "Well, I've decided to go bankrupt. We're not going to pay you and, oh, by the way, there's no personal liability against me. You can sue the corporation as an unsecured creditor and you can stand in line behind all the people who filed liens, all the people who have filed claims against the corporation, have judgments against the corporation, you, Mr. Employee, you can stand behind all those other creditors." It seems to me that that's not fair.

What we have done in this state much to our credit over the course of the last 50 years is we have said that if you're working and you deserve to be paid wages, we're going to give you every possible tool to collect those wages, including we are going to make the shareholders of a small corporation personally liable when those wages are not paid.

It's a tremendous incentive for the corporation to put the employee, the person

who puts their labor into the fields or into the benefit of a corporation, that the employee makes sure that they're going to get paid.

I don't like the trend of this legislation. I don't like being -- telling our employees that if you work for a small corpora tion and they go bankrupt, guess what, you get nothing. We can tell that to creditors. We can tell that to other judgment creditors against small corporations, but I'm opposed to telling it to people that work for small businesses in this state. I think this is the wrong idea.

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

THE SECRETARY: Section 5. 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 625 are Senators

Dollinger, Onorato and Stavisky. Ayes 55, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 652, by Senator Saland, Senate Print 2336, an act to amend the Executive Law and the Education Law, in relation to providing security informa tion to prospective students.

SENATOR LARKIN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 671, by Senator Skelos, Senate Print 408, an act to amend the Correction Law and the County Law, in relation to maintenance of prisoners.

SENATOR LARKIN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 674, by Senator Skelos, Senate Print 1740, an

act to amend the Executive Law and the Penal Law.

SENATOR LARKIN: Lay it aside temporarily. He's at the Finance meeting.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 678, by Senator Johnson, Senate Print 2355, an act amend the Education Law, in relation to requiring that the State University graduation ceremonies including the Pledge of Allegiance and the National Anthem.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I don't know if some of those who are employed here know, but we only instituted the reciting of the National Anthem in 1988 in the winter, and I think it actually puts us in a good frame of mind every day when we come in here -- I'm sorry, the Pledge of Allegiance. We recite the Pledge of Allegiance, and that brings me to this bill.

I'd proudly support this bill but, Mr. President, I don't know why we don't sing the National Anthem here. I think we could bring in entertainers from all over the country to lead us in singing the National Anthem, and in the absence of entertainers, as in the absence of clergy, you, Mr. President, could sing the National Anthem.

ACTING PRESIDENT KUHL: I don't think you would want that, Senator.

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57, nays 1, Senator Connor recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR HOLLAND: Mr. President.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Holland. Senator Holland, do you have a motion in front of you?

SENATOR HOLLAND: I have two.

ACTING PRESIDENT KUHL: Ask the Majority Leader to do housekeeping.

SENATOR LARKIN: Let's do a little housekeeping, Mr. President.

ACTING PRESIDENT KUHL: Sounds like a good idea. Senator Holland, you have been given the room.

SENATOR HOLLAND: On page 24, I offer the following amendments to Calendar Number 581 for Senator Trunzo, Senate Print Number 3755, and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 581 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Holland.

SENATOR HOLLAND: Also on page 59, I offer the following amendments to Calendar Number 888, Senate Print Number 1470, and ask

that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 888 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Holland.

SENATOR HOLLAND: On behalf of Senator Libous, please place a sponsor's star on Calendar Number 801 and 938.

ACTING PRESIDENT KUHL: Calendars Number 801 and 938 will be starred at the request of the sponsor.

Senator Waldon, why do you rise?

SENATOR WALDON: If I may, Mr. President, I respectfully request unanimous consent in regard to Calendar Number 678 to be recorded in the negative and to make one statement in that regard regarding my vote.

I think that -

ACTING PRESIDENT KUHL: Senator Waldon, that is not really permissible at this point.

SENATOR WALDON: Okay, Mr. President. I stand corrected. Please record me in the negative.

ACTING PRESIDENT KUHL: Okay. Without objection, and hearing no objection, Senator Waldon will be recorded in the negative on Calendar Number 678.

The Chair recognizes Senator Johnson.

SENATOR JOHNSON: Mr. President, I would like to call up my Calendar Number 602 which already passed and reconsider the vote.

ACTING PRESIDENT KUHL: Senator Johnson, you're talking about Calendar Number 602, Senator Maltese's bill?

SENATOR JOHNSON: That's correct.

ACTING PRESIDENT KUHL: Senator Johnson, I'm informed that that bill has left the house, so we can no longer reconsider it at this time.

SENATOR JOHNSON: Well, I'll just have to let it go, Mr. President.

ACTING PRESIDENT KUHL: Senator

Maziarz, why do you rise?

SENATOR MAZIARZ: Mr. President, my apologies. I would like to, with your permission and the permission of the Senate, be recorded in the negative on Calendar Number 703.

ACTING PRESIDENT KUHL: Without objection, and hearing no objection, Senator Maziarz will be recorded in the negative on Calendar 703.

SENATOR MAZIARZ: Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Larkin.

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

ACTING PRESIDENT KUHL: Senator Larkin, I'm informed by the Secretary that there is a report of the Rules Committee at the desk, so we will return to the reports of standing committees at your request.

I'll ask the Secretary to read.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, reports the following bill directly to third reading:

By the Committee on Rules, Assembly Print 7373-A, an act to amend Chapter 729 of the Laws of 1994, relating to effecting the health insurance benefits and contributions of retired employees.

ACTING PRESIDENT KUHL: Senator Larkin.

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

ACTING PRESIDENT KUHL: The motion is to adopt the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Rules report is adopted.

Senator Larkin.

SENATOR LARKIN: Mr. President, may we take up Calendar 1000, Assembly Bill

7373-A, health insurance benefit extenders for retirees.

ACTING PRESIDENT KUHL: Senator Larkin, so that you know, the bill is being distributed to the members at this moment. May we wait just a minute before I have the Secretary read the title until it is distributed to all of the members?

SENATOR LARKIN: Thank you, Mr. President.

ACTING PRESIDENT KUHL: I believe all bills have been distributed to all the members at this time, so the Secretary will read the title.

THE SECRETARY: Calendar Number 1000, by the Assembly Committee on Rules, Assembly Print 7373-A, an act to amend Chapter 729 of the Laws of 1994, relating to effecting the health insurance benefits and contributions of retired employees.

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

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, I suggest we stand at ease for a few minutes. The Finance Committee has not finished its business, so let's just stand at ease.

ACTING PRESIDENT KUHL: The Senate will stand at ease for a short period of time.

(Whereupon, the Senate stood at ease from 11:51 a.m. until 12:06 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

SENATOR SKELOS: Would you please call up Calendar 674?

ACTING PRESIDENT KUHL: The Secretary will read the title on Calendar Number

674.

THE SECRETARY: On page 33, Calendar Number 674, by Senator Skelos, Senate Print 1740, an act to amend the Executive Law and the Penal Law, in relation to payment of a fee by persons sentenced to probation.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes. Is there an an amendment at the desk?

ACTING PRESIDENT KUHL: There is, Senator Abate.

SENATOR ABATE: I'd like to waive the reading of that amendment, and I'd ask for an opportunity to explain the amendment.

ACTING PRESIDENT KUHL: The reading of the amendment proposed by Senator Abate is waived and the opportunity to explain it is provided to you at this moment.

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

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: My amendment allows for a county or the New York City to have the option through local law to put this legislation in operation.

Right now, as the legislation is drafted, it's mandatory for all counties, and the reason that I'm seeking this change -- and I go back to the days when I was the Commissioner of Probation in New York City and I met with all the probation departments throughout the state -- we had lengthy discussions over the last four years around this piece of legislation, and there is an organization called COPA which is made up of all the probation administrators throughout the state, made up of the administrators from rural counties, from large cities, from all the counties throughout the state, and there was a consensus that this bill in spirit was very good, that many counties, particularly counties like Nassau County, could utilize this legislation to produce additional revenue, but there were other counties that felt that this legislation would

put an undue burden on them, and that the cost of collecting these revenues would exceed any revenues that they might be able to produce through the probationers.

So my amendment would not eviscerate this legislation. It would just allow the localities, through local option, to legislate, if they felt that this would be something that was beneficial to this county, and the reason the -- a number of the probation departments find this troublesome -- and I can speak to New York City because I know that department the best -- there are now 75,000 people on probation. 77 percent of them are felons, so we're not talking about individuals who have been arrested for drunk driving and property crimes, individuals that are currently employed or have an employment record. Many of these individuals are indigent and do not have money but, if this bill were passed, every probation department would have to expend limited resources doing a financial analysis for 77,000 probationers. Money would have to be put

in place to allow a reporting system for the court. The court would then have to put in place more judges to hear probation violators, and probation departments are saying they're having a hard time now getting money from probationers for restitution, for mandatory surcharges and other fees that need to be collected.

So, on balance, I think we should let it be done by local rule. Those probation departments that are barely surviving that need every resource possible to supervise violent offenders, those resources should not be depleted. We want those resources on the street to protect the general public to make sure the violent offenders that are on probation are supervised adequately, and many probation departments do not have sufficient resources to prepare their investigation reports to the court, and again, they would have to take those needed resources to try to collect these fees.

So I say let it be local option. I think it's a wonderful idea, Senator Skelos,

for those counties that want it. It's an opportunity for them to produce additional revenue. For the counties that don't have the resource do it, let them figure out other innovative ways.

A number of the counties want to come back and meet with you, Senator Skelos - I've talked with them -- to look at how next year, if this was changed to local option, how they could opt in, in a more creative and less burdensome way.

So I'd ask this body to seriously consider this amendment. There's a way then to move forward on your initiative, Senator, but - and in some ways it could serve as an experiment statewide; we could look at the results of this and then take the next step, if necessary, the following year.

ACTING PRESIDENT KUHL: Senator Jones on the amendment.

SENATOR JONES: Yes, on the amendment.

I would just like to add that I

commend Senator Skelos because this year -- I know we put on probation fees last year but we didn't give them any mechanism to do anything about it, and I know from talking to my own probation people, what was happening was many of them, because it didn't come from the court, their sentence would be up and there was no way to collect. So I see you've fixed that now so that it is a condition of the sentencing, but I will have to say that from my own director of probation in my county, he did indicate the same thing that Senator Abate just said, that they thought they had an agreement where it would be subject to local option and would not be mandatory on every county, that it would be left to the local government.

So I am supportive of the amendment. I am certainly supportive of the concept of making them pay and do whatever we can to not only lessen the cost for our community but, you know, to do something that I believe is right for people who have broken the law but, you know, I would also agree that I

wish we could have made it local option as opposed to mandatory for everybody.

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

(Response of "Aye".)

Opposed, nay.

(Response of "Nay".)

The amendment, in a close vote, failed.

SENATOR ONORATO: Mr. President, did you hear me say "aye"?

ACTING PRESIDENT KUHL: I heard you say it twice, I thought, Senator Onorato, but again, I'm in need of signing up for that hearing exam at the nurse's office.

The Secretary will read the last section on the bill.

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

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Mr. President - if I may, Mr. President, I would just like to ask a question or two of the sponsor.

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

SENATOR SKELOS: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator yields, Senator Waldon.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator Skelos.

Senator, would you please refresh my recollection about the mechanism for collecting these monies and who is the decision-maker as to whether or not someone can afford to pay?

SENATOR SKELOS: At the time of sentencing, as you know, the Probation Department will make a recommendation to the sentencing judge as to what they feel would be appropriate probation for the criminal. At that time, they would make a recommendation to the sentencing judge. The defendant would have his attorney -- his or her attorney present and -

to discuss with the judge at the time of probation whether, in fact, they can or are able to reimburse the county for the cost of probation. So this would be a condition of probation.

SENATOR WALDON: Mr. President.

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

SENATOR WALDON: Thank you, Mr. President.

Senator, I'm not clear, though, as to the decision on the amount that the person on probation would be required to pay. Is that going to be the purview of the probation officer or will there be a separate mechanism created, because becoming a probation officer requires certain skills and certain education, none of which is necessarily indicative that the person will be a good financial planner in regard to this situation.

SENATOR SKELOS: It would be determined by the sentencing judge. The judge

at that time would take into account the financial resources, assets of the individual, the health, the age and any other relevant factor in making a determination as to whether this person is indigent or non-indigent and could afford to reimburse the county or the city for the cost of probation supervision.

SENATOR WALDON: Thank you very much, Senator.

Thank you, Mr. President.

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

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Senator Volker to explain his vote.

SENATOR VOLKER: Just to explain my vote quickly.

The real reason for this legislation and the problem is the city of New York.

The city of New York absolutely refuses to -- the judges in the City, to even consider attempting to collect fees such as this, even though there is a considerable per centage, and I admit it's not a high percentage, but a considerable percentage of defendants who would be able to cover the cost, but the City has taken the attitude over the years and, very honestly, there has been some consideration, and I think one of the reasons why some of the probation directors are worried that we might do it, and that is to put some sort of restrictions on it, that is if they don't collect it, to put some sort of a penalty added.

One of the suggestions a couple of years ago was to set some sort of minimum where you could -- to say that whatever you collected would come out of -- would come out of the appropriation that you get. I think the truth is that that's the real fear of some of the probation directors. Frankly, with the new governor, that's not likely to happen, and certainly this Senate, I think, wouldn't support

that.

I think the problem is that the City in particular is going to have to join the rest of the state in attempting to deal with the problems of criminal justice and with the extreme costs.

ACTING PRESIDENT KUHL: Senator Volker, how do you vote?

SENATOR VOLKER: I vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Volker will be recorded in the affirmative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar 674 are Senators Abate, Connor, Markowitz, Paterson and Waldon. Ayes 53, nays 5. Also, Senator Smith.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Mr. President, could you call up Calendar Number 671, please?

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 671.

THE SECRETARY: On page 32, Calendar Number 671, by Senator Skelos, Senate Print 408, an act to amend the Correction Law and the County law, in relation to maintenance of prisoners in county jail facilities.

SENATOR PATERSON: Explanation.

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

SENATOR SKELOS: Senator Paterson, this bill amends the Correction Law and the County Law to provide that a prisoner who had been found non-indigent shall be required to reimburse a county or city jail certain expenses incurred during his or her term of imprisonment.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I know sometimes you'll read cases about the detention of Klaus Von Bulow or some music artist that has great personal attributes and probably could pay for their care during the

time that they're incarcerated, but I think that what would happen with this bill is it would create such a dilemma for all the different counties.

We haven't really issued a -- an overriding resolution for how each county should deal with this. I think, as Senator Abate pointed out before, it would create more of a problem for facilities than it would actually cure, but if Senator Skelos would yield for a question.

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

SENATOR SKELOS: Yes.

ACTING PRESIDENT KUHL: The Senator yields, Senator Paterson.

SENATOR PATERSON: Senator, I'm just a little concerned about the individuals who are not convicted. I know that we're talking about city and county jails and it would cover those who are convicted maybe up to one year or something like that, but let's just take those individuals who are not convicted. Don't

you think that this legislation, by passing it, would kind of open the door for the fact that, since we're going to charge them for their health care while we have detained them, those who are awaiting trial, for those who are found not guilty, do you think they would then have a right to come back and, in a sense, ask us for whatever it was that they were denied while they were being incarcerated?

SENATOR SKELOS: Well, it's the intent of this legislation that it would apply to a prisoner who's been convicted and released from jail. Then the county or the city would have the option of petitioning the court to get reimbursement from a non-indigent prisoner for the cost of incarceration.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: So, then, Senator, it does not cover those who are not convicted.

SENATOR SKELOS: The person would have had to have been sentenced to jail.

Let me assure you, Senator Paterson and Senator Abate, that with the two pieces of legislation, if the -- if the Assembly will get serious about the concepts that these two bills represent, then we will certainly enter into a discussion with suggestions that Senator Abate had with her amendment and certainly any concerns that you have.

SENATOR PATERSON: Mr. President, I heard what Senator Skelos said, and I don't need to see the nurse. I heard it very clearly.

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

THE SECRETARY: Section 7. 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 57, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Yeah. While I was at Finance, there were some bills called, and I would like unanimous consent to be recorded in the negative on Calendar 234, 674 and 678.

ACTING PRESIDENT KUHL: 670... what was the last one, Senator Gold?

SENATOR GOLD: 678.

Thank you very much.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Without objection, and hearing no objection, Senator Gold will be recorded in the negative on Calendar Number 234, 674 and 678.

Senator Leichter, why do you rise?

SENATOR LEICHTER: Yes, Mr. President. I was also in Finance, and I would like to ask unanimous consent to be recorded in

the negative on Calendar 234 and Calendar 678.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 234 and Calendar Number 678.

SENATOR MARKOWITZ: Mr. President.

ACTING PRESIDENT KUHL: Senator Markowitz.

SENATOR MARKOWITZ: Calendar Number 671, please record me in the negative.

ACTING PRESIDENT KUHL: Without objection.

SENATOR MARKOWITZ: Thank you.

ACTING PRESIDENT KUHL: Hearing no objection, Senator Markowitz will be recorded in the negative on Calendar Number 671.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 603, Senate 3343, by Senator Leibell.

ACTING PRESIDENT KUHL: The Secretary will read the title of Calendar Number 603.

THE SECRETARY: On page 26, Calendar Number 603, by Senator Leibell, Senate Print 3343, an act to amend the Real Property Tax Law, in relation to the exemption of certain private dwellings and improvements within cities having a population of less than one million from local taxation.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Leichter, why do you rise?

SENATOR LEICHTER: Mr. President,

with your indulgence, I apparently, coming back into session from Finance, voted against a bill because I thought it was another bill. So could the record please reflect that I am in favor or I should be voted in the affirmative on 671 and ask unanimous consent to be in the negative on Calendar 674?

ACTING PRESIDENT KUHL: Without objection, Senator Leichter, you will be recorded in the affirmative on Calendar Number 671 and in the negative on Calendar Number 674.

The Chair recognizes Senator Mendez.

SENATOR MENDEZ: Mr. President, I was in the Finance Committee, and I would like to be reported in the negative on bill Calendar Number 671.

Thank you.

ACTING PRESIDENT KUHL: Without objection, and hearing no objection, Senator Mendez is recorded in the negative on Calendar Number 671.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report from the Finance Committee at the desk.

ACTING PRESIDENT KUHL: You're correct, Senator Skelos, there is a report of the Finance Committee at the desk. We'll return to the reports of standing committees, and I'll ask the Secretary to read the report of the Finance Committee.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: E. Virgil Conway of Bronxville, Chairman of the Metropolitan Transportation Authority.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR STAFFORD: Thank you, Mr. President, Senator Skelos.

I'm sure some will say here, after I speak very briefly today, that it seems as though I'm always saying this; but when it's

true, I think it should be said. The Governor has sent up here tremendous individuals. He has nominated people who really will get the job done, and I will say here again today, we again have as good a nominee presented to us since I have been here in the Legislature, and that includes 30 years.

If you are a cum laude graduate, Phi Beta Kappa, valedictorian of your class, CEO of a major corporation, involved in all the community interests that Virgil Conway has been involved in, it shows the type of individual you are. We're all going to be better in this state with him being chairman of the MTA because he is going to get the job done, the job that affects all the people in this state, and I certainly am proud to stand here today and support his confirmation for a most important position.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Levy.

SENATOR LEVY: Thank you very much, Mr. President. It's a genuine honor and

privilege to rise to join with Senator Stafford in moving the confirmation of the nomination of E. Virgil Conway to be the chair of the Metropolitan Transportation Authority. Virg' Conway's career is the personification of the realization of the American dream.

As Senator LaValle pointed out at the Finance Committee meeting, Virg' Conway was born in Southampton. He grew up in the hamlet of Montauk. He attended elementary school in the community of Montauk, graduated from East Hampton High School, and he went to Colgate University on a scholarship; and as Senator Stafford pointed out, he was Phi Beta Kappa and he graduated magna cum laude. His education was interrupted by the Korean War, and he served as a pilot in the Air Force during the Korean War.

He went back to law school after the war, to Yale Law School. He went there on a scholarship, on the G.I. Korean bill of rights, and he worked his way through Yale Law School and he was the editor of the Yale law journal, the Law Review.

He began his career in public service working with Governor Nelson Rockefeller. He worked his way up through the chairs to be Deputy Superintendent of Banks and that led him into a career in the banking profession and ultimately to become the chair and the CEO of Seamen's Bank. During Virg' Conway's long career in the private sector, he has always made the time for the longest and widest spectrum of public service and community service, including serving during the past three years as a member of the board of the MTA.

Virgil Conway's nomination to be chair of the MTA comes at the most critical time, the critical point in the history of the Authority. After quantum progress forward under another private sector leader, Dick Ravitch, the MTA today faces a shrinking financial base, cutbacks by New York City, proposed cutbacks by the federal government and limitations on state government funding driven by our own deficit. As someone who has known Virgil Conway, I have complete, implicit faith in his ability in these

troubled times to bring order and control, to bring financial stability, financial restraint, and at the same time to improve the service and to continue the improvement of the Authority's infrastructure.

Virgil Conway is an extraordinarily experienced and successful leader. He is the right person at the right time for this Authority, and the Governor is to be commended for this outstanding appointment.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Thank you, Senator Levy.

Chair recognizes Senator Spano on the confirmation.

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

You might think after listening to Senator Stafford and Senator Levy that there might not be much to add about the Governor's nominee, but that is very far from the truth.

When you look at the resume, the

qualifications, the background of Virgil Conway, he is someone who is very uniquely qualified to be the head of one of the largest transportation systems in the world; and it is my pleasure to stand up and to say that I recognize that Virgil and his wife, Elaine, have been very strong, committed residents of Westchester County. He has served at the recommendation of the County Executive of Westchester as a member of the MTA. He knows the workings of that agency. He knows the concerns of the people who use the transportation system. He knows the background in terms of his own background in the financial services industry. That is a long and extensive background. He has been involved in many, many different charitable and philanthropic organizations in our region and in this state.

It is my pleasure, Mr. President, to stand and to join with my colleagues in very strongly supporting the nomination of someone I have known for a long time and who will do us all real proud, the nomination of Virgil Conway.

Also, I'm glad to note that his wife, Elaine, is here today, as well, who in her own right is a professional and is serving this state well, and I'm glad to see you both here today.

Mr. President. I second the nomination.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Goodman.

SENATOR GOODMAN: Mr. President. I have had the pleasure and privilege of knowing Virgil Conway for perhaps 30 to 40 years, and I'm just delighted to see that he has made a very important personal decision which continues his public service. It's very unusual to find someone of this background who is willing to devote his time on a pro bono basis to a sensitive and highly controversial position.

Make no bones about it, the MTA is one of the -- chairmanship is one of the toughest jobs in the State of New York, involving, as it must, the clashing of interests

of people, many of whom have legitimate claims on both sides of an argument. We have long seen the battle, for example -- a well-intended one, no doubt, but a bitter one -- that occurs when those who are outside the city of New York seek to obtain funds which the city of New York may think should more properly be directed to it; and to intermediate in such conflicts requires an individual made of stern stuff.

I'm happy to say that the inference which we can readily draw from the extraordinary experience of Mr. Conway is that he will have the capacity to handle these types of conflicts with skilled diplomacy and fairness.

I think it's very unusual to find a resume of this richness and diversity. Virgil Conway was not only a major bank president but he has been involved on the boards of a number of major corporations, including a large railroad. He has also had an extraordinary record of community service as reflected in the fact that he was Deputy Bank Superintendent in

an earlier administration in New York State.

To sum it up succinctly, this is a man of character, of dedication to the public interest, and of real ability of a type that is rarely found and available to government, and I think we should congratulate Governor Pataki and express deep gratitude to Virgil Conway for his willingness to take on this thorny and very complex assignment.

To the extent that he will be suffering the pangs and arrows, he will be mollified and consoled by his extraordinarily capable wife, who is in the chamber today, as was noted. She herself will be playing a significant role in this current administration, and I dare say that at night their pillow talk will involve all of the problems that beset the citizens of New York. They will have ample opportunity to exchange views on these matters, and the result will be benefits to the state that have been hitherto unimaginable except when unique couples are together and are both in high public service.

In all seriousness, Mr. President, let me say we are very, very lucky to have Virgil Conway available for this task, and we're very deeply grateful to him for being willing to take it on at no pay whatsoever. I would point out that the previous salary attaching to this job was $150,000 a year. Mr. Conway has waived that salary and, instead, has very advisedly, I think, taken the view that a chairman should be in place but, as well, there should be an operating officer attending to the daily details; and that combination is one which I'm convinced will serve the public in the best possible way under these services.

Mr. Conway, I salute you and I commend most highly you to the house for prompt confirmation.

ACTING PRESIDENT KUHL: Chair would recognize Senator Bruno on the confirmation.

SENATOR BRUNO: If Senator Gold is standing to speak, I would defer to Senator Gold at this time.

ACTING PRESIDENT KUHL: Senator Gold, the Majority Leader defers to you relative to the confirmation.

SENATOR GOLD: I would be surprised except I have always said he is a gracious gentleman, so it's no surprise. Thank you. You're very kind, sir.

I would like to make a few comments. First of all, I think the resume is important because, in a vacuum, if you didn't know anything about the gentleman, never met him and read the resume, you would have to be impressed and you would say Governor Pataki is looking for people who ought to be in government and he has made a major catch.

So I do congratulate Governor Pataki. I think this is a wonderful appoint ment, and he makes the entire state look good with this appointment.

There were a couple of rumors around that we have to dispel. One of them, which we did dispel, is that he has not been able to overcome his early involvement with

Martin Oppenheimer on the Yale Law Review. He has certainly done that and is doing great.

The other rumor which is of a more serious nature, and I'm glad that we discussed it at the Finance Committee, dealt with an issue of a cut in services in the city of New York and the subway system closing stations early, and the nominee, I guess, went out of his way to make sure that was corrected in the press, which was very important to the people in the city of New York, that he didn't let that lay out there as a rumor; and this morning at the Finance Committee meeting, he confirmed the fact that he believes New York City is a 24-hour city. He understands that our subway and transit system is like the bloodline of a human being and is very, very necessary for the survival of the city.

I also appreciated his remarks concerning a sensitivity to the funding inequit ies, the state funding inequities as it applies to the transit system. I understand with my eyes wide open that we are confirming today a

nominee of a Republican governor and that the budget in this state will have the imprimatur of a Republican governor, but still I think it's important for the people of the city of New York to know that the person who will chair the MTA has at least some sensitivity to that inequity; and maybe with the good help of people in the other house, we can do something about it.

The last issue -- and I know that to some extent it's a problem that transcends the nominee -- is, it is disappointing that we do confirm people with resumes not quite of the quality of Mr. Conway but of good people and then when the MTA holds its hearings we find out that the attendance record is under 25 percent. I would urge everybody who is a member of that board -- we are confirming today someone of fine credentials, someone who has a willingness to work, and someone who wants to make a difference. I hope the other members of the board will use his energies as an example and participate. Why? So that the intellect that helped to build their resumes becomes useful to

the people of this state. The resume does no good if we are withheld from the talents of those people. So I hope that, under the leadership of a chairman who I think is going to be terrific, I hope that his energy in some way passes its way through so we get the full advantages of the board.

Mr. President, it's a delight to support this nomination. I know it's one that we're all going to be very, very proud of.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, I also want to add my congratulations to our Governor for this very, very outstanding choice. My congratulations to Virg' and to his wife, Elaine, who has been a partner of his for an awful lot of years.

I first met Virg' when I was on staff, as you may recall, to Speaker Perry Duryea, and my recollection -- and that was some 20-odd years ago -- was that whenever anything was needed on behalf of the people of this

state, the Speaker could reach out, we could reach out, and Virg' Conway was there; and it didn't make any difference whether it was New York City, upstate, the Island, if there was a need, he was trying to be helpful, most of the time -- in fact, all the time that I'm aware of, in a nonpaid voluntary way. Why? Because he is committed to improving the quality of life for people in New York.

I appreciate that, and I know the people in this chamber appreciate that by your comments. So I commend him for accepting this great challenge that will be before him, and again I commend the Governor on this outstanding choice. We have a true public servant who is willing to take on the task that is beyond the comprehension of most people, but I'm totally confident, Mr. President, my colleagues, that he is up to the task, so I'm very pleased to stand in his support in this chamber.

ACTING PRESIDENT KUHL: Senator Farley on the confirmation.

SENATOR FARLEY: Thank you, Mr.

President.

I guess if the Pataki administration has accomplished anything, it is the superb appointments that it has made, and none is more outstanding than Virgil Conway.

For the 20 years that I have been on the Banking Committee and as chairman, I am very familiar with his work. Incidentally, he chaired the transition team on banks and has always been of service to this state. He's led the thrift industry through some very, very difficult times several years ago.

Virgil Conway is an outstanding citizen. I guess all I can say, Virgil, is thank you. Thank you for being willing to serve your state. As a citizen and as a Senator, I'm very, very grateful for your contribution. You are an outstanding person who has given of yourself, and I know that everybody in this chamber appreciates what you are trying to do in one of the more difficult jobs that exists in this state.

We wish you well, and I thank you

for serving.

ACTING PRESIDENT KUHL: Senator Marchi on the confirmation.

SENATOR MARCHI: Mr. President, I can only echo the sentiments that have been expressed here and the highlights that have been identified so well and unerringly with respect to Virgil Conway.

In the late '60s, I remember our committees, our committee structures here in the Legislature. We had Roads, we had Railroads, we had various components of transportation; and in that period, we began to evolve a general picture of the movement of people, the movement of people creatively, and to compensate and to complement the various elements that make up transportation, the lifeline of any regional area. Certainly this regional area, the premier area in the world culturally, economically, financially, it embraces so many different disciplines; and to have a man of this excellence at its service, a man who has held responsible positions and has addressed them

honestly and with integrity and with a clear vision of what his mission was and now embracing an even larger gamut of concerns because, without it, basic economic reason, basic economic and transportational needs, cultural needs, all of these factors cannot be harmonized in a way that lifts the spirits and give us a hint of the better life that is available to us.

Virgil Conway's assumption of this responsibility attests to his ability and is prologue, certainly, to a promise that holds great expectation. Sensitive, unprepossessioned -- there is no prepossession about him -- he is an honest individual, knowing his own limitations, but his capacity is so far expanded that all of us look to the future with great expectations.

God bless, Virgil. Thirty years, and all of them you have been a most edifying and wonderful example.

And, incidentally, you are serving pro bono. You are being confirmed by a

Senate that is also for the nonce serving pro bono.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the confirmation.

SENATOR OPPENHEIMER: Thank you, Mr. President. That would have been very funny, Senator Marchi, if it were not so painful.

Much has been said about Virgil Conway, and it's wonderful to have a candidate of this caliber before us. What wasn't mentioned was the near perfect attendance that Virgil Conway has had at all board and hearing meetings of the MTA, and the value of his financial background, having been the president of Seamen's and having been involved in finance and banking for so many years, is really going to be a great strength and addition to the MTA, and something that is desperately needed.

We have made great, great progress in the commuter railroads and the subway system with the enormous infusion of capital funds that has been put into both entities, and we know that they will now be

maintained and continued to be upgraded because of Virgil Conway's commitment.

I think I will end now because most everything has been said. I want to congratulate Virg'; and my husband, who graduated with him from Yale Law School, also congratulates him.

We wish you the very best, and we will be there to support you at every turn.

ACTING PRESIDENT KUHL: Chair recognizes Senator Stavisky, our last speaker, on the confirmation.

SENATOR STAVISKY: Mr. President. Virgil Conway has been accessible and candid in his response to questions. I spent, for me, a very productive period exchanging views with the designee on the enormous responsibilities of chairing a transportation system that covers the entire metropolitan region and doing it fairly so that it will not be a chairman whose sole mission is the commuter railroads or the New York City subway system or the buses or the roads but

rather someone who has the ability to understand the importance of each of these modes of transportation to the economy and stability and growth of New York State.

There were controversies with the last MTA chairman, and I rose in this chamber to express my concern about some very unwise actions taken by Mr. Conway's predecessor. Nevertheless, the previous chairman turned out to be a constructive head of the MTA, and I'm delighted that Mr. Conway does not have that baggage, but I'm absolutely convinced that he will be equally constructive and maybe even more so because he understands that he holds in his hands the level of support for all the systems. Within the large city or within the suburb area surrounding a large city, he has to be fair.

He has to be fair in understanding that there are portions of the state aid system and there are portions of the apportionment of funds, especially the surplus of the Triborough Bridge and Tunnel Authority, that does not always reflect where the money

comes from; and sometimes the MTA, even more so than those of us here in the chamber, may be able to make adjustments if we would not lock in an inflexible and perhaps unfair formula into state statute.

I'm concerned about what will happen with transportation for school children if the city of New York and the Mayor's office do not provide the funds that are needed. I'm concerned about the possibility and the opportunity for passes between subway and bus transportation for those riders who are subject to two-fare zones.

I'm concerned, finally, with the future of the MTA's capital improvement program. The long-range capital plan must move ahead, and it must be resubmitted for action over the next five-year period.

All of these are enormous responsibilities that you will bear.

I'm convinced that he will carry these responsibilities with fairness and equity and with good sense, and I support his

nomination.

ACTING PRESIDENT KUHL: The question is on the nomination of E. Virgil Conway of Bronxville to become the chairman of the Metropolitan Transportation Authority. All those in favor of the confirmation signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed unanimously.

Virgil, and your wife, Elaine, we really appreciate your joining us today. We wish you Godspeed, good luck, and we know that you will do a very successful job at what you are elected or what you are nominated here today, confirmed to do.

Thank you for joining us. Good luck.

(Applause.)

Senator Spano.

SENATOR SPANO: Can you please

have the Secretary call Calendar 562.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar 562.

THE SECRETARY: On page 23, Calendar Number 562, by Senator Larkin, Senate Print 3652, an act to amend the General Municipal Law, in relation to the operation of games of chance by authorized games of chance lessors.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Larkin, an explanation on Calendar Number 562 has been asked for by Senator Paterson.

SENATOR LARKIN: Mr. President, This bill would provide for nonprofit corpor ations to host games of chance or Las Vegas Nights at locations not owned by the not-for-profit organization. This authorizes games of chance to be conducted which are not owned. For example, a fire company convention, games of chance could be held at the hosting. All profits are to go to the not-for-profit organization.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, Senator Padavan had risen.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President. First, Senator Larkin and I did have the opportunity of discussing this bill before, and I related to him some of my concerns which I would like to share with the members. I can understand the motivation that the sponsor has with respect to fire rescue companies seeking to raise money for their services that they provide in localities, particularly in rural areas around the state, and if this bill were restricted to such entities, my concerns would not be what they are. However, the bill goes far beyond that in terms of its impact.

The notion that churches, temples, fraternal organizations, who now have authorization to operate Las Vegas nights on their premises a certain number of times a year and under certain restrictions can now export that activity to any commercial establishment,

the main ballroom of a large hotel in New York City or any other place that is able to accommodate it, that enlarges the potential which is not hypothetical or academic of the kinds of problems such activities have already experienced in urban centers such as the city of New York; and so what we do is expand the venue of the problems related to criminal elements, problems of teenage gambling, problems of illegal gambling that have already been something we live with on a regular basis.

You may have read an article in the New York Times a week ago about a house of worship that ran Las Vegas nights which is now taken over, infiltrated by others, operating totally outside the law, illegally, clandestinely, and that's just one article about one circumstance which is a problem. But with this legislation, that kind of problem has a potential to go just beyond the point we want to see it go to.

So I would urge the sponsor to attempt to focus his legislation in response to

his constituency groups that have problems that could be addressed without causing the kinds of things that we're faced with and will be faced with in an enormous way should this bill become law.

ACTING PRESIDENT KUHL: Chair recognizes Senator Gold.

SENATOR GOLD: Thank you.

Will the sponsor yield to a question?

ACTING PRESIDENT KUHL: Senator Larkin, do you yield to Senator Gold?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, I'm - I'm trying to figure out. I see the amendments -- the amendments basically take out some words here and there. I'm trying to find the exact portion which deals with having it done off the premises.

SENATOR PADAVAN: Paragraph 13.

SENATOR GOLD: 13?

SENATOR LARKIN: It just allows them to hold it, Senator Gold, off the premises; but the conduct of the game is by the person who holds the license and they must operate the game.

SENATOR GOLD: Senator, I understand exactly. In other words, your memo is very, very clear. I don't have a problem with the memo. I'm trying to relate the memo into the language of the bill; and while Senator Padavan is very knowledgeable in this area, and I appreciate it, I'm just trying to check it myself.

Where is the specific language that talks about holding this at a different premises?

SENATOR LARKIN: I think if you read on Section 13, Senator, I think that encompasses it all right there.

SENATOR GOLD: All right. All that you do in paragraph 13 is take out a sentence. Am I correct?

SENATOR LARKIN: Right. So we left all of the other in there.

SENATOR GOLD: All right. Senator, will you yield to a question?

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR GOLD: As Senator Padavan pointed out, under the existing law, there are problems; and there are places which in order to make money for the charity have opened their doors and there are people doing illegal things, and your bill certainly does not condone illegal conduct, and I'm sure you don't condone illegal conduct; but, Senator, isn't it easier for the illegal conduct to happen if we now not only have the games at the particular premises -- in other words, if you are dealing with a church or synagogue or whatever, you know, you've got to talk about having organized crime, or whatever it is, coming into these places, and somebody can get a little itchy.

Now, if you're talking about them running the game and it's not even in the church

or synagogue, it might be uncomfortable but not quite as uncomfortable. Don't you think we're making it a little easier for those groups that might want to get into that to -- you know, make it a little less inconvenient for them?

SENATOR LARKIN: Talking to people who've asked me to consider this, Senator, it was a clear indication that some of our upstaters small volunteer ambulance, fire companies, and that, that are nonprofits feel that they needed some place because the equipment that they are buying today and trying to remove the burden on the taxpayers, because all of the money that's raised at this event goes to the person that holds the license, and these licenses still have to be issued by the Racing and Wagering Board.

We don't see that as a problem. I mean I visit a lot of them in my district, and the main complaint is adequate space. We need a bigger place to hold it and, as I said before, the cost of all of the equipment and everything else and trying to hold it down.

They don't seem to -- I did pose the question that you have because when we talked about this last year I refused to put it in last year because I thought we needed to look at it. I looked in my own district and surrounding districts and talking to these various not-for-profits, and they feel it's their responsibility as the holder of the license and there are inspectors that go around to these facilities and would continue to go on even if its held in a different location.

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT KUHL: Senator Larkin, do you yield to Senator Gold?

SENATOR LARKIN: Yes, sir. Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, just so I understand it. Let's say that the volunteer fire department and this group and that group got permission to do it and there was one place

in town, a movie theater, an abandoned movie theater, and somebody takes over the theater or the area, catering hall, under the existing law or the law as you amend it, could an individual take it over and actually set it up as a Las Vegas Night type of operation and then be available if the volunteer fire department wants to come in and use that and then maybe the next week have it available for a church and the next week have it available for a synagogue?

SENATOR LARKIN: There is a restriction now on how often they can hold one of these events.

SENATOR GOLD: No, I understand that, but the restriction is on the church, synagogue or volunteer fire department; is that correct?

SENATOR LARKIN: Yes.

SENATOR GOLD: What I'm trying to find out is, under your bill, can somebody set up a place and then the church might come in there on a Monday, and then the following Monday it might be a volunteer fire department and the

following Monday it might be a synagogue, and the following Monday it might be a different group, each group living within the law of their own license and not doing it more times a year than they are allowed but, in essence, having a gambling hall that's open almost continuously? Why under your bill would that not be a possibility?

SENATOR LARKIN: Because of the way the license is issued. The license would be issued for using it at that specific location for that specific group.

SENATOR GOLD: No-no, no-no. But, Senator -- no, no, no, Senator. Senator, let's go back a step. The way the law is now, as I understand it -- and I'm certainly willing to be educated if I'm saying something wrong. Senator, if I'm saying something wrong, you tell me. But as I understand the law today, if they want to hold a Las Vegas Night at a church, synagogue, or whatever, they can do it at their premises. They can set it up, do it at their premises and the license limits them the number

of times a year they can do it. Is that correct?

SENATOR LARKIN: Yes.

SENATOR GOLD: All right. If your bill becomes a law, my understanding is that they don't have to do it at their church or synagogue but they can do it at XYZ Hall which is a different location. Is that correct?

SENATOR LARKIN: Yes.

SENATOR GOLD: Now, they contact XYZ Hall -

SENATOR LARKIN: Mr. President. Senator Gold. But one part here is that they still have to have the approval of the local governing body to hold that.

SENATOR GOLD: Well, Senator, let me ask you a question. When you say the approval of the local governing body, is the approval of the local governing body required for each time they run the event?

SENATOR LARKIN: Yes, and also for the establishment of the hall.

SENATOR GOLD: Where is that in

your bill?

SENATOR LARKIN: That's in the existing law, Senator, that the local governing body has to give approval.

SENATOR GOLD: So, Senator, let me ask you this question. In one of your little towns, villages or whatever, the local volunteer fire department goes to the local board and says we want to hold this and we can't do it at the fire station and there is Bailey's Hall, or whatever it's called, and we want permission - Bailey's Hall asks the local board for permission to run games for the volunteer fire department.

SENATOR LARKIN: But you've reversed it.

SENATOR GOLD: What?

SENATOR LARKIN: The fire department asks the local government, "We want to have games of chance, and we want to have it at XYZ facility." Local government can say no.

SENATOR GOLD: I understand what you are saying, but what I'm getting at is there

are different issues here. There are zoning issues. There are different issues, and you are the one who pointed it out a moment ago, and what I am asking you is, there is this hall. We'll call it the XYZ Hall, and the volunteer fire department wants to hold them and it says, "We want to hold it at that hall." One question, I assume, Senator, is the zoning question, isn't that so?

SENATOR LARKIN: Yes.

SENATOR GOLD: All right. So they go to the zoning board, and the zoning board says, "All right. We will allow games of chance at that hall." Now, they have approved that and the zoning issue is finished, isn't it?

SENATOR LARKIN: It's still up to the Board to give approval. Right now -- I don't know how it works in your area, but when our fire companies go to it, you will notice it's on a town board meeting that they are going to give approval for a Las Vegas Night at a volunteer company on such and such a day.

SENATOR GOLD: In other words, the question I'm asking you is under existing law, do they have to get the local approval under existing law each time they run the function?

SENATOR LARKIN: No.

SENATOR GOLD: Then, Senator, what you said two seconds ago is not accurate.

SENATOR LARKIN: Utilization of the facility, Senator.

SENATOR GOLD: Well, Senator - Senator Larkin, I appreciate your courtesy.

On the bill.

ACTING PRESIDENT KUHL: Senator Gold on the bill.

SENATOR GOLD: First of all, I know that everything we say in this chamber is weighed very, very carefully, but I'm personally delighted that if I make a remark that I know it's going to be scrutinized extra special today because Senator Libous is back and listening very carefully, so -- I can only speak for myself, but I'm delighted to see it.

Mr. President, on the bill. I hear Senator Larkin, and I think that if it were up to Senator Larkin everybody would be honest and everybody would be patriotic, and I happen to admire Senator Larkin. But, unfortunately, it's just not the way things work, and with all due respect, I'm not so confident about every answer I got from Senator Larkin on this bill.

If you have a local small place and the local fire department, which everybody belongs to -- I think Senator Connor is famous for that remark: You don't know what you're talking about. You're one of those guys that thinks volunteer fire departments are for putting out fires, and everybody knows that these are great social clubs; and they do a wonderful job. I'm not trying to put any one of them down. But everyone in town supports and wants to do everything for the local volunteer fire department, and I can't believe in my wildest imagination that if the local volunteer fire department wanted to hold Las Vegas Nights they wouldn't get approval to do it in XYZ

Hall.

I know people in upstate New York and around the place. These are good, religious, God-fearing people; and if the church decides it might be easier because, "Look, they are going to XYZ Hall and if the hall gets set up, you know, we'll have our night" and the next thing I know, as far as I know, people get to know that you are at XYZ Hall every Monday or Thursday night, whatever it is, because it's either the church, the synagogue, the volunteer fire department, whatever, and that's where the charities are going to make their money, and when you give the approval to the volunteer fire department, I don't know how you tell the church they can't do it, and I don't know how you tell the Girl Scouts, "You can't do it," and, in my opinion, I think it causes an awful lot of problems.

Why? Not because of the organizations; because when you start to talk gambling, no matter what happens, you're talking big money, and there are people who you and I

would not like to go to dinner with who somehow or other wind up getting involved in these functions, and I have seen it.

I think that Senator Padavan and I may or may not but I think we do have some common feelings about the directions that we may be going when it comes to trying to run this state and run religious organizations, or what ever on the backs of gambling, and everybody shrugs their shoulders and says, "What can we do. It's the only way we raise money." I'm really at my limit for that.

I think it's dangerous. I think Senator Larkin's motives are honorable, totally honorable, but I think it's a mistake.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: Mr. President. My comments are directed to Senator Larkin.

Senator, as you look around this

chamber, you see that for a variety of reasons a good number of our members are not here, and I really think this is an important piece of legislation, and I don't think anyone wants to call a quorum call or slow roll call because I don't want to, and I don't intend to, but I would ask you, as a matter of courtesy, that you might want to lay this bill aside so that more members can be here and have an opportunity to be heard and cast an intelligent vote on this issue.

SENATOR LIBOUS: May we have the last section read, please.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 5. This bill shall take effect immediately.

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Chair recognizes Senator Leichter to explain his vote.

SENATOR LEICHTER: Thank you, Mr. President. I think Senators Padavan and Gold

made some very valid points. What we're doing here is more and more eroding the prohibition against gambling. Now, if we want to have gambling in this state, maybe we ought to put it to the voters. But this really opens the door so wide to conducting gambling in so many facilities throughout the state, I think as Senator Gold pointed out, there is really no limitation or restrictions on a particular place having more than one, having in fact a number of these licensees use that facility. It's just like having a full-time casino in a community. It just seems to me it's wrong. I don't want to see us go towards legalized gambling; but maybe if that's what the people of the state want, we ought to do it, but we certainly shouldn't do it in this fashion, chipping away, eroding away the prohibition against gambling.

I vote in the negative.

ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the negative.

Senator Gold to explain his vote.

SENATOR GOLD: Mr. President.

Senator Larkin, I really was not going to ask for a slow roll call; but when I see the hands go up around the chamber on both sides, I really think it's unfair, as Senator Padavan pointed out very well. I wouldn't want people tomorrow to find out that they cast a vote which they're uncomfortable with, and I really think Senator Larkin that, if people want to support this, I respect it, and there are some people on my side who are supporting it and some on yours, and some on both sides opposed to it.

So I really think, Mr. President, that we ought to have a slow roll call, or at least put it over as Senator Padavan suggested, but if that can't be, I would ask for a slow roll call on this.

ACTING PRESIDENT KUHL: Senator Gold is asking for a slow roll call. Are there five members in the chamber, who -- would they rise? There are five standing.

The Secretary will call the roll slowly.

SENATOR LIBOUS: Mr. President. Do you want to lay that bill aside, please.

ACTING PRESIDENT KUHL: Senator Larkin, your desire to lay the bill aside?

SENATOR LARKIN: Lay the bill aside until tomorrow.

ACTING PRESIDENT KUHL: Okay. The bill is laid aside at the request of the sponsor.

Senator Libous.

SENATOR LIBOUS: Mr. President. Would you please recognize Senator Larkin again for a committee announcement.

ACTING PRESIDENT KUHL: Senator Larkin.

SENATOR LARKIN: Mr. President. There will be an immediate meeting of the Local Government Committee in Room 332.

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

Senator Libous.

SENATOR LIBOUS: Mr. President. Would you recognize Senator Montgomery, please.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I would like unanimous consent to be recorded in the negative on Calendars 671 and 674.

ACTING PRESIDENT KUHL: Without objection and hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 671 and 674.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President. I would like to put a sponsor's star on my bill, Calendar 732, Senate 3362, please.

ACTING PRESIDENT KUHL: At the request of the sponsor, a sponsor's star will be placed on Calendar Number 732.

Senator Libous.

SENATOR LIBOUS: We can go back to regular order, Mr. President.

ACTING PRESIDENT KUHL: Secretary will continue to call the controversial calendar.

THE SECRETARY: On page 19, Calendar 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.

ACTING PRESIDENT KUHL: Senator Levy, an explanation had been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR LEVY: Yes. Senator Paterson, unfortunately we have discussed this bill annually almost since 1985 when we enacted a law to require -- what we did was to pass a bill which became law to require the finger printing of school bus drivers. Omitted from that law were school bus attendants; and, unfortunately, due to that omission, children in this state have paid the price, because using Long Island as an example, we've had a number of incidents on Long Island when felons who were on parole wound up being school bus attendants, and

we've had children sexually molested on school buses, including children with disabilities and handicaps.

If the fingerprinting of school bus attendants was not omitted in 1985 from that important law that had the end result of disqualifying people from operating school buses, I dare say that those incidents would not have taken place because those people would not have been working as school bus attendants. This bill cures the omission from the law in 1985.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Levy raises an issue that has evidenced itself in conduct by employees of the school system that have manifested great harm to young people who attend our school systems, and many of the cases on Long Island I read about, Senator Levy.

My question for you is why are you asking the school attendants to pay for

their own fingerprinting prior to their employment? Don't you think that attaches a stigma to the acts perhaps of others and makes the entire class feel the burden of what a few may have done?

ACTING PRESIDENT KUHL: The Chair recognizes Senator Levy to respond to a question from Senator Paterson.

SENATOR LEVY: Senator, we would be doing with school bus attendants exactly what we are doing with school bus drivers.

SENATOR PATERSON: Mr. President, what I'm interested in is that there have been a number of crimes committed by a number of personnel employed by the school system. Would Senator Levy believe -- if he would yield for a question -

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

SENATOR PATERSON: -- that it might just be a better idea to establish a standard for all employees of the school system?

SENATOR LEVY: Senator, with this bill, we only have the power to deal with those people who come within the purview of the Vehicle and Traffic Law, and I'm trying to deal with the specific omission from the 1985 law. If somebody else obviously chooses to have a wider application of the concept that is in the law today with school bus drivers, fine. It's up to them to initiate that legislation. This bill is under the V&T, and it only deals traditionally with school bus attendants.

SENATOR PATERSON: Under the 1985 law, then, Senator Levy, you are restricting this to comply with the transportation of the children back and forth from school?

SENATOR LEVY: Yes, it is, Senator Paterson.

SENATOR PATERSON: Thank you, Senator Levy.

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.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 453 are Senators Connor, Gold, Leichter, Markowitz, Montgomery, Nanula and Santiago. Ayes 52. Nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: On page 30, Calendar Number 652, by Senator Saland, Senate Print 2336, an act to amend the Executive law and the Education Law, in relation to providing security information to prospective students.

SENATOR OPPENHEIMER: Explanation.

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

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is the Security Information Act for institutions of higher education. It's a bill which has been passed, I believe, on at least two prior occasions in this house. It deals with providing information to college students, their parents, those who have an interest in security on college campuses, such as employees of college campuses. It endeavors to fill some of the gaps that were left open when the federal government got into this particular venue a couple of years ago.

This bill is modeled in part on legislation that was introduced originally in Pennsylvania in response to an awful tragedy on a campus down there, which sort of became the model by which other states throughout the union have endeavored to provide more information.

Unfortunately, when someone visits a college campus perhaps in a summer or spring trip or receives the materials that are sent out by a college campus, they see this rather idyllic setting, looks sort of like an

oasis of tranquility; and far too often, unfortunately, our campuses are the scenes of crimes that reflect the communities, perhaps, in which they are located or the reduction in awareness of the potential for crime on college campuses.

This bill would basically require reporting, reporting of some crimes that are not provided for in the federal legislation and would also provide some specific reporting with respect to certain security practices to, again, provide a level of comfort for those who might be interested in attending and working at this campus that this, in fact, is a safe place.

The reality is, as I mentioned earlier, that the last thing in the world that campuses are about to do is to advise people of whatever mis... criminal misfortunes may have occurred on their campus. This is an attempt to provide, in effect, disclosure or notification to anybody having an interest.

It basically says, when you are considering whatever campus you may be going to,

if campus X and campus Y perhaps are similar academically and if one of the two seems to have a disproportionately high rate of crime, that's something that you should know and should be factored into your decision-making processes.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: Would Senator Saland yield for a question?

ACTING PRESIDENT KUHL: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR OPPENHEIMER: This looks similar to a bill I had in which would require providing the information on security personnel. I think that this does not have a piece that -- let me question.

Is this information to be provided to anyone that makes application to the

college for admission or to anybody who is employed by the college? Will they be sent this information or must they request this information?

SENATOR SALAND: They will be advised that the information is available upon request, which, again, is the same tack that's taken, I believe, in the federal legislation.

SENATOR OPPENHEIMER: Uh-huh. Thank you, Senator. It would be my strong preference to see that this information -- since it's already been complied with, that it be generated to everybody who is making application. Since we have already done the work, they should know the statistical information; but I certainly will support this. I just wish it did not have to be requested, that it would simply be available.

ACTING PRESIDENT KUHL: Secretary will read the last section.

Senator LaValle to explain his vote?

SENATOR LAVALLE: Yes. Yes, Mr.

President.

ACTING PRESIDENT KUHL: To explain your vote or -

SENATOR LAVALLE: I rise really to comp...

ACTING PRESIDENT KUHL: Senator LaValle, to explain your vote -

SENATOR LAVALLE: Yes.

ACTING PRESIDENT KUHL: -- or on the bill?

SENATOR LAVALLE: I was going to go on the bill, but I could just as well -

ACTING PRESIDENT KUHL: Your choice. We're on the bill.

SENATOR LAVALLE: I'll explain my vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator LaValle to explain his vote.

SENATOR LAVALLE: Thank you, Mr. President. I rise really to compliment Senator Saland, who has put in a lot of work, has held a number of information meetings, has reached out to all parties, with the Assembly, to really bring this bill to a conclusion and a completion which it should be.

The members of the committee have worked on this bill in the Higher Education Committee, and I think it's a bill that parents and students really support. The higher education community, I think, has warmed up to the idea that this kind of information and disclosure is not only in the best interest of the students who are on their campus but also for the institutions that they run; and I hope that this year the Assembly will embrace the Saland legislation and that we'll see this become a chapter. I know that Senator Saland has been at it for a couple of years, and we

hope this is the year it will become the law.

ACTING PRESIDENT KUHL: Senator LaValle in the affirmative.

Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to explain my vote.

I also want to compliment Senator Saland on this bill, and I know how much you worked on it, but I also know that since this is really not a Republican idea or a Democratic idea -- this is a good idea -- and I know that Senator Oppenheimer worked very hard in this area, held some hearings throughout the state a few years back; and, therefore, I would say that this is really an Oppenheimer-Saland bill.

So I vote yes.

ACTING PRESIDENT KUHL: Senator Montgomery in the affirmative.

Announce the results.

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President. Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There is no housekeeping at the desk, Senator Libous.

SENATOR LIBOUS: Mr. President. There will be no, and I repeat, no Republican conference today, but there will be a Republican conference immediately following session tomorrow.

And, Mr. President, being that there be no further business, I move that we adjourn until Wednesday, May 17th, at 10:00 a.m.

ACTING PRESIDENT KUHL: Republican conference is adjourned until tomorrow. Repeat: Adjourned until tomorrow after session.

Without objection, the Senate stands adjourned until tomorrow, May 17th, at 10:00 a.m.

(Whereupon, at 1:32 p.m., Senate adjourned.)