ALBANY, NEW YORK

May 25, 1995

10:00 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 places, the staff their places. Ask the members in the chamber to rise with me and say the Pledge of Allegiance.

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

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

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, May 24th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The prayer by the Rabbi Cecil Walkenfeld, Spiritual Leader of the Clearview Jewish Center, Whitestone, New York. The Journal of Tuesday, May 23rd, was read and approved. On motion, the Senate adjourned.

ACTING PRESIDENT KUHL: Hearing

no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Levy, on page 24, I offer the following amendments to his bill, Calendar Number 728, Senate Print 973-A, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Bruno, we have a couple

of substitutions. Would you like to take those? The Secretary will read.

SENATOR BRUNO: Take the substitutions, please.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: On page 30, Senator Volker moves to discharge from the Committee on Rules, Assembly Print 6592 and substitute it for the identical Third Reading 807.

On page 47, Senator Cook moves to discharge from the Committee on Local Government, Assembly Print 3421, and substitute it for the identical Calendar Number 1025.

ACTING PRESIDENT KUHL: The substitutions are ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we ask for an immediate meeting of Rules in Room 332?

ACTING PRESIDENT KUHL: At Senator Bruno's direction, there will be an

immediate meeting of the Rules Committee in the Majority Conference Room, Room 332, an immediate meeting of the Rules Committee.

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

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

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

THE SECRETARY: On page 4, Calendar Number 79, by Senator Levy, Senate Print 384-D, an act to amend the Vehicle and Traffic Law, in relation to requiring school bus and other motor vehicle drivers involved in personal injury accidents involving school buses to submit to a breath test.

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

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

September.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 254, by Senator Levy, Senate Print 1411, an act to amend the Public Service Law, in relation to utility rates.

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

ACTING PRESIDENT KUHL: Lay it aside for the day.

SENATOR BRUNO: Calendar Number 475, by Senator Cook, Senate Print 4140-A, an act to amend the Education Law, in relation to establishing a suspension period for students determined to have brought a weapon to school.

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

THE SECRETARY: Section 4. This

act shall take effect immediately.

ACTION PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 589, by Senator Levy, Senate Print 327, an act to amend the Vehicle and Traffic Law, in relation to requiring suspension and revocation of a driver's license.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 34, nays 1,

Senator Kuhl recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 606, by Senator Leibell, Senate Print 3681-A, an act to amend the Private Housing Finance Law, in relation to the definition of a limited profit mutual company.

SENATOR PATERSON: Lay it aside, please, Mr. President.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of the Acting Minority Leader.

THE SECRETARY: Calendar Number 683, by Senator Spano, Senate Print 1044, an act to amend the Civil Service Law, in relation to hearing officers for disciplinary hearings.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTINGT PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 700, by Senator Stafford, Senate Print 1261-B, an act -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 845, by Senator DeFrancisco, Senate Print 1146, an act to amend the Vehicle and Traffic Law, in relation to license plates of rental vehicles.

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

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTION PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 884, by Senator Padavan, Senate Print 3091, an act to amend the Executive Law, in relation to cooperation between police agencies and the United States Immigration and Naturalization Service.

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

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

SENATOR PATERSON: Lay the bill aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of the Acting Minority Leader.

THE SECRETARY: Calendar Number 914, by Senator Bruno, Senate Print 1860, an act to amend the Tax Law, in relation to the inspection of tax records.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1014, by Senator Holland, Senate Print 68, an act to -

SENATOR PATTERSON: Lay it aside.

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

THE SECRETARY: Calendar Number 1015, by Senator Cook, Senate Print 259, an act to amend the Real Property Tax Law, in relation to certain state lands subject to taxation in Sullivan County.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1016, by Senator Cook, Senate Print 293, an act to amend the County Law, in relation to review and approval of names for rights-of-way.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1018, by Senator Padavan, Senate Print 670, an

act to amend the Penal Law -

SENATOR PATERSON: Lay it aside.

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

THE SECRETARY: Calendar Number 1019, by Senator Sears, Senate Print 1177, an act to amend the Criminal Procedure Law and the Education Law, in relation to the appointment of security officers with peace officer status.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1020, by Senator Farley, Senate Print 1378, an act to amend the Penal Law, in relation to restitution and reparation.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1021, by Senator Sears, Senate Print 1396-A, an act to amend the Penal Law, in relation to authorizing counties to impose and collect a drug penalty and mandatory surcharge.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1022, by Senator DeFrancisco, Senate Print 1967, an act to amend the Criminal Procedure Law, in relation to the collection of court imposed financial obligations.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1023, by Senator Hoblock, Senate Print 2352, an act to amend the Penal Law, in relation to increasing the penalties for sale of controlled

substances.

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

THE SECRETARY: Section 6. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1024, by Senator Hoblock, Senate Print -

SENATOR HOBLOCK: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1025, by Member of the Assembly Pordum, substituted earlier today, Assembly Print 3421, an act to amend the General Municipal Law, in relation to authorizing the New York Planning Federation to make purchases.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1026, by Senator Larkin, Senate Print 3065 -

SENATOR LARKIN: Lay it aside for the day.

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

SENATOR BRUNO: Also, Calendar Number 1018, please, for the day.

ACTING PRESIDENT KUHL: Lay aside Calendar Number 1018 at the request of the Majority Leader, for the day.

THE SECRETARY: Calendar Number

1027, by Senator Sears, Senate Print 3331, an act in relation to authorizing the town of Lee, county of Oneida, to release certain parklands.

ACTING PRESIDENT KUHL: Lay it aside for the day.

THE SECRETARY: Calendar Number 1028, by Senator LaValle, Senate Print 3737, an act to amend the Town Law, in relation to screening facilities in the town of Southampton in the county of Suffolk.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1029, by Senator Hoblock, Senate Print 3867-A,

an act to amend the General Municipal Law, in relation to allowing for the use of fire training centers.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1030, by Senator Cook, Senate Print 3960, an act in relation to authorizing the dissolution of the Fallsburg Park District.

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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1031, by Senator Maziarz, Senate Print 4169, an act to amend the Town Law, in relation to residency of the court clerk of the town of Hamlin, Monroe County.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1032, by Senator Stafford, Senate Print 4217, an act authorizing the town of Dannemora, Clinton

County, to discontinue use as parklands certain lands.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar beginning with Calendar Number 606.

THE SECRETARY: On page 18,

Calendar Number 606, by Senator Leibell, Senate Print 3681-A, an act to amend the Private Housing Finance Law, in relation to the definition of a limited profit mutual company.

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

SENATOR HOBLOCK: Mr. President, I would like to request that Calendar Number 1023, my bill, Senate Bill 2352, be laid aside for the day.

ACTING PRESIDENT KUHL: 1023, Senator Hoblock, previously passed the house. Do you want to reconsider the vote by which the bill passed?

SENATOR HOBLOCK: I'm sorry. Oh, I'm sorry, Mr. President.

ACTING PRESIDENT KUHL: You want Calendar Number 1024 laid aside for the day?

(Senator Hoblock nods head.)

ACTING PRESIDENT KUHL: We'll do that at your request, Senator Hoblock.

The Secretary has called the title to Calendar Number 606, by Senator

Leibell.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Paterson has requested an explanation, Senator Leibell, of Calendar Number 606.

SENATOR LEIBELL: Yes, Mr. President. What this does is a -- is a - current law is under subdivision 2(b) of Section 12 of the Private Housing Finance Law. That provides for a mutual -- where there's a mutual company, such a mutual as a Mitchell-Lama, there's a requirement when there's going to be a conversion that at least 80 percent of them, of the tenants, agree to that conversion. The provisions here will change that cap from 80 percent to 50 percent of the residents who would like to own shares in the mutual company.

The purpose of this bill is to encourage the conversion of the existing Mitchell-Lama rental developments to cooperative ownership. We have found that in implementing that public policy, the 80 percent cap is just

too high, that the 50 percent cap is more reasonable.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, I have an amendment that has been served. I would waive its reading if you would inform me as to whether or not it has been received.

ACTING PRESIDENT KUHL: Senator Paterson, there is -- your amendment is at the desk. We'll waive the reading of that and you are now afforded the opportunity to explain it.

SENATOR PATERSON: Actually, Mr. President, first I want to thank Senator Leibell for putting this bill over a couple of times to accommodate those of us in the Minority. We wanted to bring this amendment to ensure that those individuals who do not purchase are still protected from eviction or other circumstances.

So, in other words, we're just asking for a non-eviction of those individuals who do not purchase and are part of the new threshold, which is 50 percent as opposed to 80

percent, where Section 12.2(b) is going to be, in a sense, altered by Senator Leibell, and we have no objection to that. We just want to make sure that those remaining tenants are allowed to stay, and the Commissioner of the Department of Housing and Community Renewal will promulgate these resolutions -- I mean, these regulations, but we're not totally sure whether or not it really covers those individuals, and that's why we submit the amendment.

I know I've lost 16 in a row, Mr. President, but it's a new day.

ACTING PRESIDENT KUHL: Senator Leibell.

SENATOR LEIBELL: If I may just -

ACTING PRESIDENT KUHL: Senator Leibell on the amendment.

SENATOR LEIBELL: If I might just respond briefly to Senator Paterson, and -- and I -- I find I've had more success myself in - in this chamber than I have in the other house, but I would note, Senator Paterson, that we

share your concern in terms of those people who are renters and would choose not to participate in the ownership.

We feel, however -- and this question was brought to us by your staff the other day -- that this amendment is unnecessary because the renters who are protected now with the 80 percent cap will have the same protection that will be under the new cap of 50 percent. In other words, there will be no change in protection because we're lowering the cap. The renters who choose not to participate would be just as protected as they would with the 80 percent cap, which is the current law, and for that reason I would suggest that there's no need for this amendment.

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

(Response of "Aye".)

All those opposed, signify by saying no.

(Response of "No".)

Another tough one to determine, but I think the noes have it. A very, very close vote. The amendment is defeated.

Sorry, Senator Paterson. You'll have to continue. You got what, 21 left now?

Continuing on the bill. The Secretary will read the last section.

Senator Mendez on the bill.

SENATOR MENDEZ: If Senator Leibell will yield for a question.

ACTING PRESIDENT KUHL: Senator Leibell, do you yield to Senator Mendez? The Senator yields.

SENATOR MENDEZ: It is my understanding that today we have statutes that I -- whenever there is a rental building that wants to go into a co-op or a condominium, that we have now non-eviction plans. If that's the case, will that also -- also apply to Mitchell-Lamas?

SENATOR LEIBELL: I'm not exactly sure which plans you're referring to, but under the current law with Mitchell-Lama and under the

bill we have in front of us here, those tenants who would not participate would be protected. They would receive the exact same protections under this change in the cap, from 80 percent to 50 percent, as they had received previously.

SENATOR MENDEZ: I was wondering about the protection that some tenants had whenever a private building is going to be made -- whenever a private building is going to be converted into a condo or a co-op, there is protection in the law for non-eviction. Would that apply -- because that law is there. Would it apply in the conversion process of the Mitchell-Lama?

SENATOR LEIBELL: That's my understanding.

SENATOR MENDEZ: Oh, I see. Thank you.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 50, nays 5, Senators Abate, Kruger, Mendez, Paterson and Smith recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 700, by Senator Stafford, Senate Print 1261-B, an act to amend the Insurance Law and the General Obligations Law, in relation to limiting liability for property owners.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Stafford, an explanation has been asked for of Calendar Number 700, by Senator Paterson.

SENATOR STAFFORD: Thank you, Mr. President.

I would add -- or not add. I

would say first that this is not really plowing new turf. We now have this available for many purposes. And what do we have available?

For owners of land who voluntar ily agree to permit public recreational use of their land and water, there is limited liabil ity. This simply says for any recreational use.

Now, for those of you who get into the country, and I know all of you do, some live there, and those who live there, many let people come onto their land for recreational use. Your speaker is one of them. We think it makes sense to give them this limited liability.

Mind you, people are coming onto private land. They can post it but no one goes on, and I will say that posting is becoming more prevalent and when this happens, the average person -- excuse me -- the public is not able to have the advantage of this land for hunting, for many -

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Mr. President, I rise hopeful that Senator Stafford will yield for a question.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield for a question from Senator Paterson? The Senator yields.

SENATOR PATERSON: Senator, I was thinking about a scenario where there might be a bridge that the landowner constructed over a pond, and over a period of time the bridge falls into disrepair and then some individual who is visiting on property goes across the bridge, the bridge breaks and the person is injured.

You don't think that there's limited liability there that, in a sense, could inure to the detriment of the individual who's on the property, even though the property is owned by the individual that constructed the bridge?

SENATOR STAFFORD: Anything that would be covered under common law of negligence -- if -- that, of course, goes to the heart of

the question. Part of the issue, Senator Paterson, always is if it is something that the landlord or the owner should know about and it is -- could cause harm, it is covered under the common law of negligence.

ACTION PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Stafford would yield, and I would move into a different area.

ACTION PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: I'm moving to a different area on the private property. In a situation where there is a lessee, who is covered between the lessee and the owner should an action be taken by some visitor? What is the relationship between the lessee and the owner in terms of the protection that this legislation provides?

SENATOR STAFFORD: This, of course, is something that is considered every day because, as many of you may know or not know

-- and it's always good in these debates that we keep people informed -- these vast acres of land that are owned by mostly corporations, but some individuals, they have what they call hunting and fishing clubs, and they pay the taxes. That's what that -- but when a club has it, it is then posted, so then the public cannot go in and have the advantage that people have here.

I would say this, that people who go into these lands, in the wilderness or not in the wilderness, you have to make sure yourself that the situation is safe. Now, I would suggest -- and I'm not by any means trying to be anything other than very open -- anyone who goes across a logging bridge in the woods and they don't know whether it's safe or not, they better not go across it. I never do. They'll go down toward the river as the people did who went west 80 -- more than that -- many years ago.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: But, Senator,

it's -- things are not always as they seem. That's how I would answer that. In other words, I assume that people who understand the woods would attempt to do that, but I don't know that it's always successful.

I just have one last question. The answers have been quite informative, and the question relates to the duty -- comparing the duties of the individual to post the sign as opposed to the duty of the individual that openly invites someone onto the property. It seems to me that a person who openly invites someone onto the property has a lesser duty than the individual who posts the sign, is that correct?

SENATOR STAFFORD: Well, this is -- this is true. Again, this gets back - again, your questions are very well taken and I understand exactly what you mean, but I have to emphasize, what we're doing here is we're trying to keep more land open.

Now, I would suggest that there are organizations supporting this, the memo. I

will not go into it but, you know, when it comes to knowing -- hiking in the wilderness, going up on one of the lakes, ponds, unless people are experienced and unless they have been there and unless they understand exactly what they're doing, there's actually nothing more dangerous, and I think everyone has to understand -- you asked about the lessee and the lessor. It depends on the lease, but I will tell you from one who has leased over 4,000 acres for the past 30 years -- I can't believe it's 30 years -- the landowner is the one who's responsible, no matter how you look at it.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTION PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: That's good advice that Senator Stafford has -- has allowed us to hear, and I'm glad to see that he's still open to negotiation from the questions that I

asked.

It's clear that some of us feel that the bill needs to be reworked a little bit, but it is in negotiation and we're comfortable that Senator Stafford will be -- will be willing to review some of those procedures.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Stafford yield to a question?

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to Senator Dollinger? The Senator yields.

SENATOR DOLLINGER: Senator, you used the example about the bridge on the private property and you pointed out that no one should use the bridge; they should ford the stream. My question is -- and I just read this bill at length for the first time and I'm troubled by part of it, but if you have a bridge on your property and the bridge is there as an invitation for someone to walk across it, does

the landowner have no liability to inform the potential invited guest that the planks in the middle of the bridge are 250 years old and are maybe well rotted and may fall apart if they're subject to human weight?

SENATOR STAFFORD: I would suggest that someone on Braniff Parks -- the owners who are supporting this from Rochester, they're -- well, you know, it doesn't make any -- you know, that's the same area. Again, I have to emphasize, I'm not saying anyone even is inviting people to come. Some people are still generous enough, frankly, to let people come on their land. I shared with you that if anyone crosses a bridge, no matter how many times they have been in the woods, and they don't know exactly whether it's safe, hasn't been proven to them, they better not cross it. They're just - they're just there because they'd like to go on; they're not necessarily invited.

Now, if we want to have more posting of land, I suppose we can -- we can do that. I suggest that that's a step in the wrong

direction but, you know, in this country -- in this country, you know, people have the right to own land and they have a right to say that other people will not come on their property, and when these people are allowing -- not inviting, but allowing; you don't see any invitations -- but allowing people to go on the property, then I think this comes right into these -- the list of exceptions we have, and do you know the -- do you know what -- what they are when you go on property and you -- the landlord has limited liability?

SENATOR DOLLINGER: I'm generally familiar with them under the common law and under this section of the law. If you'd like to provide me with further edification, I would appreciate it.

SENATOR STAFFORD: Hunting, fishing, organized gleaning, as defined in Section 72 -- 71(y) of the Agriculture and Markets Law, canoeing, boating, tracking, hiking, cross-country skiing, tobogganing, sledding -- now here's one, speleological

activities, horseback riding, bicycle riding - it says "hang gliding". They missed there; it should be h-a-n-d, hand gliding -- motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes, training of dogs, and we're just saying "or for other recreational uses".

So, as I said earlier, we're not really plowing any new turf here.

SENATOR DOLLINGER: That's the section of the law -- again through you, Mr. President, if Senator Stafford will continue to yield.

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

SENATOR DOLLINGER: That's the section of the law that says if they come on your land without permission, he has no liability for the following -- for all those activities, but Section (b), which says "an owner who gives permission to another does not

thereby extend any assurance that the premises are safe," and it used to say -- or at least under the current law it says "constitute the person to whom is granted an -- is granted an invitee to whom a duty of care is owed."

We -- your bill would change that to say, in essence, that if you are given permission to come on the land, there is no liability of the landowner to the invited guest on the property, none.

SENATOR STAFFORD: Well, Mr. President, I think we've -- we've pointed this out.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: For the people to have the advantage of open space, we are saying that there will be limited liability other than common law of negligence. I think it makes a great deal of sense. I think that anyone who is questioning this doesn't really understand the situation and, as I say, people aren't being invited; they're being allowed.

There are no invitations. If people are -- had the opportunity to use your open space, then they realize or they have to understand that the owner has limited liability.

Now, I could go -- the hiking clubs or clubs that are involved in this area are supporting this. They understand this. They know what it's like to have land posted. Once it's posted, you don't go on it anymore.

SENATOR DOLLINGER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: If this bill provided some form of limited liability for landowners, I could see the wisdom of Senator Stafford's counsel. I read it, however, to provide no liability, none, on the part of landowners who allow people, with their express permission, to use their land. That means if there's a guy wire across the trail, they have no liability. That means if the bridge is 150 years old and it looks perfectly okay -- and

Senator Stafford said, "Well, you should find out whether the bridge is usable or not", how do you find out? Someone goes out and starts to tiptoe across the bridge to see whether it's strong enough to hold your weight, no requirement that the landowner post any of these potential deficiencies.

What would happen if there were mil... it was an old military firing range and there were land mines or there were mines, there were exploded -- unexploded shells on the property, it had been a drop zone in a war? It was up in Senator Wright's part of the world where they practice at Fort Drum, and we're going to let people walk around with no obligation on the part of the landowner to tell them or advise them of any deficiencies on the land, the risk in the land. They have no liability at all to post any information for these invited guests.

While I think that perhaps some additional protection, some additional limited liability for landowners might be appropriate,

in this circumstance it goes too far because it leaves landowners carte blanche and creates no liability -- not limited liability, no liability on the part of the landowner.

For that reason, I think we'd be doing an injustice to those invited guests if we made this bill into law.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Hoffmann.

SENATOR HOFFMANN: Would Senator Stafford yield for a question, please?

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to Senator Hoffmann? The Senator yields.

SENATOR HOFFMANN: Senator Stafford, upon reading the bill, just as Senator Dollinger was referring to the bill as eliminating total liability -- I don't want to misquote you, Senator Dollinger -- but I believe in the original bill, the unamended print, if you could clarify this for me, Senator Stafford, that on line 35 there is a reference to -- well, I'll read directly from the bill. "This shall

not be interpreted or construed as a limit on liability for acts of gross negligence in addition to those other acts referred to in subdivision 2 and 3 of this section."

What would -- help me clarify this, then. In the case that a landowner had a bridge -- since we're talking bridges here - was well aware of the fact that the bridge was not in good condition and had not made any main tenance on it over some period of time and that bridge was readily accessible by the public, either by invitation or without invitation, would that constitute gross negligence?

SENATOR STAFFORD: I -- well, yes, but you have pointed it out. I said earlier -- and I said negligence, really - really, gross negligence, if it's determined it's there, obviously you're not limited and you're certainly liable.

I would say this: Exactly what gross negligence is, I didn't want to be -- make any errors and say that I knew exactly what would be determined as gross negligence. If

someone had a bridge on their property that they had used only to -- used for logging and it was done, you know, 40, 50 years ago, I suggest that people who go on that property should make sure that that's -- make sure that that's safe.

Now, it could be argued that that's gross negligence. That would have to be determined by a court, but you're exactly right. Common law of negligence is still there as far as liability is concerned for gross negligence.

SENATOR HOFFMANN: Thank you, Senator Stafford.

Mr. President, if Senator Stafford would continue to yield.

ACTING PRESIDENT KUHL: Senator Stafford, would you continue to yield? Senator Stafford -

SENATOR HOFFMANN: I -- I'm very -

ACTING PRESIDENT KUHL: Senator Hoffmann, excuse me just a minute.

Senator Stafford, I'm sure that

the stenographer is having as hard a time as I am hearing you. Could you just kind of slide back so you can speak into that microphone?

Thank you.

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

Senator Stafford, I -- I appre ciate your clarification on the issue of gross negligence and I think that most property owners would willingly accept their responsibility to maintain their property for their own use and, obviously, to prevent the possibility of any lawsuits, they would not want to be guilty of gross negligence. If we can make an assumption that landowners in this state -- and I think I would like to refer specifically to farmers - are by and large not inclined toward gross negligence, but there are unique circumstances, and your bill has done an excellent job of outlining those circumstances, under which people do enter someone else's property with or without invitation.

Now, I'd like to ask you to -- to

clarify for me if the following situation would be covered under your bill. Bear with me one second.

As you know, it's common practice in hunting after -- after a hit, to track an animal. Theoretically, someone could be hunting on state-owned land during bow season, hit a deer and have to track it a mile through the woods, during the course of tracking enter private property, possibly unknowingly, because with thick woods it's not always possible to see the posted signs and bearing in mind that the person is more inclined to be watching the ground for signs rather than trees -- for posted signs, and well aware of impending dusk there would be some -- some matter of urgency to move quickly onto other land.

Under such a circumstance, it's possible that a hunter might enter private property unknowingly. That private property could have been previously fenced and have over grown barbed wire fence. It is a very frequent type of accident and usually a relativly minor

one for a person to stumble over or be tripped or hung up somehow on old wire in the woods. Would such an in... such an occurrence be considered gross negligence by the landowner or would the landowner be absolved of responsi bility to compensate a hunter tracking an animal on private property under these circumstances?

SENATOR STAFFORD: First, Mr. President, I would ask Senator Hoffmann whether the land is posted they go on.

SENATOR HOFFMANN: The land could theoretically be posted, but knowing how posted signs come down, or in large amounts of property the legal definition of posted may not have been met. The intent may have been there at one time, but I think for discussion's sake, I would like to know the answer for both posted land and non-posted land.

SENATOR STAFFORD: First, I would say to you, as I'm sure Senator Sears would agree, wounding that deer and going onto private land is one of the old, old stories that everyone always does when they want to do a

little hunting on some private property. I'd say it's about 50-50, but if every deer had been wounded that people have wounded so they could go on private property, we wouldn't have many deer left.

Now, if the property is posted, the case law is such that you don't have to have every single postmark there. It's in the Conservation Law and it's what every -- how many feet does it have to be? Somebody must know. Anyway, there's a -- there's a law there where you have to have the sign and you have to have who owns it and the address of the owner.

SENATOR HOFFMANN: That's correct.

SENATOR STAFFORD: And it's going to be, from now on, you also have to have the telephone number.

The interesting point is usually people have some club that you have no idea who the club is, or they post it in such a way that it's going to take you a long time to find out who it is, I guarantee you. I'm just trying to

be very open on this.

Getting near barbed wire, I would say people better be very careful because a high percentage of hunting acc... hunting accidents are crossing fences. Over 50 percent are - some are smiling at that, but I think that we're discussing all of this, I think it's a good thing to be mentioning.

Now, I would suggest in case law, if that property is posted and it's known as posted land, whether for agriculture or logging -- and, of course, logging you and I know is agriculture and we got to start getting logging into reasonable -- into a reasonable area as far as paying workmen's compensation and that type -- it is not something just out there and - and we have it at the present time, so it's almost impossible for these people; but if it's posted, I would suggest that the landowner probably will be held not responsible because of the land being posted.

Now, you see those of us who have been involved in these issues -- you know,

what's a "reasonable man"? If I ask every person -- pardon me?

SENATOR HOFFMANN: Reasonable person, a reasonable man or woman, Mr. President.

SENATOR STAFFORD: A reasonable person.

SENATOR HOFFMANN: Thank you.

SENATOR STAFFORD: They taught it incorrectly when I was in law school and your point is very well taken, and I have been corrected by members of my family on these issues.

Now, what's a "reasonable person"? Well, here we go again, barbed wire. Are people responsible for going out and clearing all the fences around their land? I'll tell you one of the most dangerous -- it's worse than barbed wire hunting, there are old stone fences, because when you step on them, you know there's moss around them and they -- I'm not saying they've gotten smaller but they aren't together anymore. These people could make these

things in an arch... they were good architects; you know, they went a certain way and you could walk on them. I think there are some poems about that, but if you cross a stone fence, that can be dangerous.

Would the person be responsible for clearing all these stone fences? I don't think -- I don't think they -- I don't think they would, and I -- it's the issue of gross negligence. I could see -- I could see cases that you could take and even if -- even if a property was -- even if the property was posted -- see, I don't even like to use the word, I mean, because it just cuts off all these opportunities for people. I can see, even if property was posted, if something was grossly negligent -- if someone had gone and dug something, say they were looking for certain - certain things on their land and they dug a big hole and it wasn't marked -- I mean, this is all reasonable. This is all reasonable.

SENATOR HOFFMANN: Mr. President.

ACTING PRESIDENT KUHL: Senator

Hoffmann.

SENATOR HOFFMANN: I -- I -- I appreciate Senator Stafford's response, and I believe I understand the distinction between the posted and the non-posted liability, and I would compliment Senator Stafford and ask one additional question, if Senator Stafford would continue to yield.

ACTING PRESIDENT DeFRANCISCO: Senator Stafford, will you continue to yield?

SENATOR STAFFORD: By all means.

ACTING PRESIDENT DeFRANCISCO: He will.

SENATOR HOFFMANN: Senator Stafford, following this -- this train of thought, and I'm sure for many of our colleagues who are not familiar with the joys of hunting and the experience that one might have in tracking a deer, or a bear in your district, not too many in mine, that there are unique circumstances that one would be aware of, and I I want to make sure that we're clear on the intent of the bill, the current status of law

and what ultimate negligence would be under certain circumstances.

The intent of the bill, as I understand it, is to encourage more public participation with less risk to property owners, is that correct?

SENATOR STAFFORD: Correct.

SENATOR HOFFMANN: Thank you, Senator.

SENATOR STAFFORD: Correct, Mr. President.

SENATOR HOFFMANN: Thank you.

The -- the risks to property owners, of course, are many, and in this very litigious society we have, all property owners, whether they have many thousand acres or a few hundred or a few acres that could, in fact, be used by other people with -- with or without invitation compels them to take some pains and -- and recognize this, but the process of maintaining one's land and having it adequately posted is very burdensome, I'm sure you'll agree.

If a property owner had at one time posted land and decided that this law would provide -- this bill, assuming it's passed into law -- would provide some measure of protection, then we would, in fact, have served a rather significant public purpose here in increasing public access.

ACTING PRESIDENT DeFRANCISCO: Do you yield to that question, Senator?

SENATOR STAFFORD: Yes, and the Senator is exactly right.

SENATOR HOFFMANN: Thank you.

On the bill, Mr. President.

Thank you, Senator Stafford -

ACTING PRESIDENT DeFRANCISCO: Senator Hoffmann on the bill.

SENATOR HOFFMANN: -- for clarifying these matters. There are many property owners who, out of a sense of fear that they are at risk for lawsuits, have taken measures to prevent access from their land by posting the land, by trying to maintain those posted signs. Posted signs are darned

expensive. They have to be weatherproof because there isn't a single type of ink that will last more than a season, and after you write your name and your address on a couple hundred posted signs, go out and spend a few days -- and do I mean a few days in many instances -- affixing them onto trees on wooden backers so they will stay up there, it's very frustrating to come back a few months later and discover that half of them are gone and almost all of them are obliterated because the ink has washed away.

This means that a landowner is, in fact, in violation of the law relative to posted signs and, more importantly, is subject to negligence standards under the existing statute.

So it becomes a burden. I want to emphasize that. It becomes another burden on people engaged in agriculture in this state to maintain posted land. So there is a tremendous benefit to the public for greater access to the land as well as a benefit in terms of peace of mind to people who are engaged in agriculture.

Now, when you think of a farm, it's very likely that some people in this chamber think in terms of neatly plowed fields and rows of corn and pastures and fields of hay, but a farm can include much more. In fact, under DEC definition, much of the wetlands that are in the possession of agriculturalists or waste land as it's often classified, is very, very difficult to traverse. To top it off, there are portions of this state -- Senator Stafford's district is well-known, but mine as well -- which include ravines, gullies, mountainous areas. There are people in my district who have to literally rappel down ravines to traverse one side to another of a gorge to legally affix the posted signs at the distances required by the law.

So if we can provide some relief for such individuals to avoid going through this onerous burden and at the same time allow hunters the satisfaction of knowing that they can, in fact, track an animal following a hit so they can successfully conclude the hunt, not

allow that animal to suffer and make sure they have completed their task without risk of any violation of law for covering private property, we will have accomplished something very worthwhile.

This is all necessary, sadly, because of the lawsuits, in this very litigious society. I'm a little disappointed to see that there is some opposition from the Trial Lawyers Association here, but I am confident that the Trial Lawyers would be as ingenuous following the passage of this bill as they are today in determining gross negligence when, in fact, gross negligence exists. This is simply a matter of relieving property owners of yet another onerous burden and creating greater access for the common good.

So I would support the bill. I will urge all of my colleagues to do the same.

ACTING PRESIDENT DeFRANCISCO: Senator Marchi.

SENATOR MARCHI: Mr. President, my understanding of this legislation is that

there would be no immediate effect and there would be a requirement when the Superintendent of Insurance -- to make recommendations within a period of 18 months.

The fact that it has as its objective the limitation of liability on people utilizing the land not for a consideration, there's a certain assumption of risk in anything you do in life or -- unless -- I wouldn't even characterize gross negligence, but wanton negligence, where you put traps in or you create deliberate hazards, and even a trespasser is, of course -- if they walk into a pit and there's spikes at the bottom of the pit, you have a pretty bad situation.

The opposition of the New York Trial Lawyers Association, I think, is a reflex action of trial lawyers, negligence lawyers on anything that might impede run-away judgments on allegations of negligence. It would seem to me that it's -- it's good public policy given a study by the Superintendent of Insurance, which presumably would include certain safeguards in

which we are free to accept or reject, to introduce a climate that will allow for greater utilization and encourage the disposition of the landowner to allow this use, as is now the case as Senator Stafford has informed us, and I don't see how -- I don't really see that going much further than that, other than really to invite the owners of public property to post trespass signs and to bring on a wholly negative attitude on the use of land that's open for recreational use, considerations on both sides, but I think that the pendulum definitely swings towards Senator Stafford's bill which provides, I think, for the -- the protections that -- a modicum of protections and the limitation of liability at the end of a period of review which we are free to accept or reject and at the same time not lead to situations where increased use may take place as the population increases and there's a greater propensity for using open space.

I think this bill favors - favors the kind of activity which is now taking place and which is laudable, so I think it's a

reasonably safeguarded piece of legislation, and I don't think we should go to the barricades just when trial lawyers object because it may interfere with some run-away judgment.

ACTING PRESIDENT DeFRANCISCO: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I rise in support of Senator Stafford's bill. I know Senator Stafford's interest in Section 9103 certainly is long-standing. He has introduced legislation over the years attempting to expand the categories covered by that particular section, and I commend him for his continuing efforts and I don't view this bill somehow or other as being a ticking time bomb. I think, as the Senator has pointed out, it's certainly something that would be welcomed by the sportsman's community, by the agriculture community; but let me also suggest to you that recreational users, people who want to access things such as the Hudson Valley -- Hudson River Valley Greenway, would be

greatly pleased to have this legislation on the books. It's -- it's an invitation to open land, to permit others to have access to the land, and while there are issues that may be raised by way of litigation, there are issues for which this bill certainly does not shut the door. It makes it clear that issues of gross negligence are still subject to a proceeding if, in fact, someone believes that that particular type of behavior has occurred.

So I don't view this as being onerous; I view this as being welcomed. I view this as opening land, giving people access to land. I view it as people being encouraged, owners of property, to let others come upon their property for a multitude of recreational purposes, and I think as time progresses and as fewer and fewer people have access to the kinds of beautiful parcels that -- and the types of parcels that really give us the opportunity to expand our quality of life, to enjoy the kinds of things in our day to day life we're generally denied, this bill sends the right message.

I wish Senator Stafford well in his negotiations with the other house and we'll certainly do everything I can to bring his message back to my district as well.

Thank you, Senator Stafford.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

SENATOR STAFFORD: Mr. President, very quickly.

ACTING PRESIDENT DeFRANCISCO: Senator Stafford.

SENATOR STAFFORD: I would just point out that -- I should have pointed out the study which will be conducted by the Superin tendent of Insurance, and I would point out that that will be conducted and we would hope they will review and assess ways for -- for instance, group policies to limit the cost of such property and liability coverage on these lands, but I would point out this is concurrent. This will take place along with the legislation.

Thank you.

ACTING PRESIDENT DeFRANCISCO:

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, would Senator Stafford yield to just one more question?

ACTING PRESIDENT DeFRANCISCO: Senator Stafford, would you yield?

SENATOR DOLLINGER: It's a relatively easy one. My question through you, Mr. President, is if you had a piece of land owned by the state and you have a piece of land owned by the state relatively adjacent but you have a section, a strip in between, that's owned by a private property owner, and the -- this bill passes and there's a bridge that runs from the state land to the other part of the state land and goes over the property held by the private property owner, isn't it a fact that, if you pass this bill, if a person fell on the state land because the bridge was defective, they would have a claim against the state, but if they fell on the land that is owned by the private property owner under this bill, they would proceed at their own risk and, therefore,

they would have no claim?

ACTING PRESIDENT DeFRANCISCO: Senator Stafford.

SENATOR STAFFORD: Mr. President, I for one -- and I hope everyone here in the room and all within the sound of my voice, I hope that they understand that state land is different than private land. Now, if we don't, I think we're in real trouble.

Now, I have stated continuously here that this is private land and people are allowing people to go on it, and it's much different than the state land that I have in my district. Some of the towns have 75 to 80 percent state land in their towns. That is much different than private land. It can be used and we all own it. We're talking about land here that is owned by an individual or corporation or it could -- it could be land that they're using so that they can provide -- provide produce for supermarkets. It could be used for anything in the private sector, and private land is different than state land, and I would suggest

that we have to -- have to understand that.

I would ask the Senator this, Mr. President, if he would yield. Was he saying that this was just a strip of land between two -- between two private -- between two state owned -

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger, would you care to restate the question?

SENATOR DOLLINGER: I will restate it. My point was you have a piece of state land, you have another piece of state land, you got a strip in between which is owned by a property owner -- and I appreciate the difference between those ownerships but as the individual walks from the state land -- from one part of the state land to the other part of the state land, there's nothing necessarily telling him that he's now on private land, so he assumes that the protection that the state gives him on its own property extends through private land until he gets to the other piece of state land. He's not put on notice, "Oh, wait a second. I'm

now on private land and I proceed entirely at my own risk, and have no presumed protection for the condition of the land as I would have on the state property."

ACTING PRESIDENT DeFRANCISCO: Is there -- Senator Dollinger, is there a question there?

SENATOR DOLLINGER: I believe - Mr. President, I believe I was simply asked to clarify my question, so the other question stands.

SENATOR STAFFORD: I will clarify the question by stating, there are differences. I would ask -- I will point this out and then I will attempt to answer the question.

If one has damages -- is damaged on state land, they can have a trial and there's only a judge. If you're damaged on private land, you can have a trial -- exactly -- and you can have a judge and jury. We can point out differences.

There are going to be situations where, obviously, as I stated -- I stated this

earlier, that if this was a piece of land that was there and people were going across it all the time, even though it was private land, I could see that you could probably get to the point of gross negligence if certain things weren't corrected. All I'm saying is we're making it possible to open this land, and I'm sure that all of us -- all of us can think of reasons that possibly it isn't really the way it should be. It could be this way; it could be that way.

Again, if we want to have this land just posted, that's one thing and that's been pointed out here, but I suggest that also on this strip of land that was being suggested, you know, anybody -- anybody who has spent time in the woods and knows an area at all, you know where the state land is, you know where the private land is, and if someone is out in the woods without someone who understands that, they shouldn't be there. They shouldn't be there, but there are thousands and thousands of people that like to hike, fish, hunt, camp and I would

say that it's -- certainly makes sense for us to make this available, and I would again say anything that can determine -- be determined that it's gross negligence, it's covered under the negligence common law.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Just briefly on the bill.

I think Senator Hoffmann brings up many good points. I think Senator Stafford brings up many good points, although I go back to the position advocated by Senator Marchi, which is this is a balance. It's a balance between making the land available and immunizing the landowner from possible litigation versus the right of someone, first time -- the problem with gross negligence is it may require the first person to fall through the bridge before the landowner could be accused of gross negligence. The first person who gets hurt won't have a claim, and I think that shifts the balance in this state, which I think was

reasonably struck by this Legislature before, shifts it in favor of the landowner and against what could be an injured person, and I -- I - although I understand the reasonableness in how -- to quote another law school phrase, Senator Stafford, that you and I are are familiar with. This is one about which reasonable minds can differ, I believe, and I think there's a difference between the two of us on how this balance should be struck and it's a very, very finely tuned balance that we're dealing with.

So with all due respect, both to -- Senator Hoffmann I thought had some good points as well, I'm going to be voting in the negative.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

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

ACTING PRESIDENT DeFRANCISCO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT DeFRANCISCO:

Results when they're tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 700 are Senators Babbush, Connor, Dollinger, Paterson and Waldon. Ayes 43, nays -- also Senator Gold. Ayes 42, nays 6.

ACTING PRESIDENT DeFRANCISCO: The bill is passed.

Continue reading the controversial calendar.

THE SECRETARY: Calendar Number 884, by Senator Padavan, Senate Print 3091, an act to amend the Executive Law, in relation to cooperation between police agencies and the United States Immigration and Naturalization Service.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DeFRANCISCO: Explanation is requested.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

This bill mandates that when a

person is arrested in this state, when there's some indication of illegal status as an illegal immigrant, that cooperation between that law enforcement agency and the Immigration and Naturalization Service should take place.

ACTING PRESIDENT DeFRANCISCO: Senator Men... Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Padavan yield for a couple of questions?

SENATOR PADAVAN: I would.

SENATOR PATERSON: Thank you.

Senator Padavan, some years ago Mayor Koch issued an executive order denying the agencies in the city the opportunity to ask vital questions relating to status. Under your legislation, does it supervene any executive order by the state legislation that would deny any law that -- any laws to be enacted that would actually diminish the thrust of your legislation?

SENATOR PADAVAN: What you're referring to, Senator Padavan, is Executive

Order 124 -- Senator Paterson.

SENATOR PATERSON: You're Senator Padavan.

SENATOR PADAVAN: You're talking about Executive Order 124 issued by Mayor Koch a number of years ago, and there was a section of that executive order that if literally interpreted would preclude the police department from inquiring of a person who is involved in a criminal act anything relevant to his immigra... or his immigration status.

During the course of our work over the past two years, we've had a lot of contact with the mayors's office, a lot of correspondence, a lot of dialogue. He indicates -- his office indicates that with regard to criminal activity, that portion of Executive Order 124 has been amended, so that if someone is arrested or involved in a crime and there's any indication of unlawful entry into this country, contact with INS would take place.

The trigger for that determination occurred approximately a year

ago. One illegal immigrant was arrested in the Bronx for selling drugs. No inquiry was made at that point in time relevant to the individual's immigration status or anything else relevant to that issue. He was allowed out on his own recognizance. During the following two weeks, he shot and killed a police officer. When he was rearrested, it was determined that he was an illegal immigrant, in this country unlawfully and, of course, all of the things relevant to that particular determination took place.

The issue became, if the police department had done what the mayor's now directing them to do, in that instance at the very outset, that individual would not have had the opportunity of killing the police officer, who, by the way, anecdotally, parenthetically, the police officer was a naturalized citizen having at one time also been an immigrant. So that is the genesis of this in one regard.

I could also share with you some other things as well that might be pertinent, but I hope I have answered your question.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Yes, Senator Padavan has answered my question.

I was thinking in addition, I can certainly understand the circumstances that you're addressing, but what about schools and the Health Department and that kind of thing? Would those executive orders be overruled?

SENATOR PADAVAN: This particular bill relates specifically and only to persons arrested in the commission of a crime.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Padavan would continue to yield.

ACTING PRESIDENT DeFRANCISCO: Will you continue to yield, Senator Padavan?

SENATOR PADAVAN: Yeah.

SENATOR PATERSON: Senator Padavan, the other day Senator Espada asked you

something about xenophobia, which he described as -

SENATOR PADAVAN: -- dialogue.

SENATOR PATERSON: Fortunate -

SENATOR PADAVAN: Unfortunate dialogue.

SENATOR PATERSON: You thought that was unfortunate dialogue? Well, you know, it's one of those phobias like claustrophobia, hydrophobia, agrophobia, which is fear of heights -- what -- unfounded fear of strangers, and there's agoraphobia, which we seem to have here, fear of going outside.

Senator Paterson -- Senator Padavan, did you know -- I really want to be Senator Padavan, then I could really get rid of this bill, but do you know what hotephobia is?

SENATOR PADAVAN: I'm sorry. What?

SENATOR PATERSON: That's fear of travel.

SENATOR PADAVAN: Travel. Okay.

SENATOR PATERSON: Then there's

Hi-de-phobia; that's fear of Cab Calloway, but that's another issue.

What we are really trying to avoid in this kind of legislation, Senator, is the abuse, particularly the number of incidents that have been documented by a number of organi zations where individuals have been harassed at our borders, feeling that the police are already cooperating with Immigration not to have the situation -- particularly farm workers who come into this country that don't speak the language.

It's often hard, as Senator Leichter described the other day, to produce the proper identification and, really, although there's an understanding of trying to generate better cooperation between our law enforcement and our Immigration Service, we're really trying to avoid the potential for abuse in that area.

Do you care to comment on that at all?

SENATOR PADAVAN: Yes. I think my response would be simply to read the bill,

the very beginning, the very first paragraph:

"Every police agency in this state as defined in law shall fully cooperate with the United States Immigration and Naturalization Service regarding any person who is arrested under state law."

Any person who is arrested under state law. That is the focus of this bill and the entire issue relevant to the bill. So this person has committed a crime and has been arrested, and what we're saying, from that point forward, issues relevant to the legal status - legal status in this country.

I might refer you to something that we discussed yesterday that I brought up in the President's address to the nation on May 6th. Much of his presentation dealt with the issue of illegal immigrants in terms of deportation and immigrants who have been involved with criminal acts. One of the things he said -- and I'll read it to you. This is the President of the United States.

"If they're sentenced to jail,

they should go to jail, but after jail they should be removed from the United States. And when there is a plea bargain, I want deportation to be part of the deal." That's the President.

Now, if there's no contact between the law enforcement agencies that have jurisdiction and INS, I don't see how the President's admonition and request could ever take place.

SENATOR PATERSON: Senator -

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: The President's edict, I think, is well taken and I'm glad that that you cited it, but specific to your legislation and -- as reflected in the Supreme Court case of Filer v. Dow in 1982, don't you think that -- I don't think this particular legislation does this, but don't you think some of this legislation that we're looking at that relates to immigration is going beyond the scope of the state's authority?

ACTING PRESIDENT DeFRANCISCO:

Senator Padavan.

SENATOR PADAVAN: This particular bill certainly does not. If, by virtue of administrative directive or simply by virtue of inaction, any local jurisdiction, police in the state of New York, that fails to cooperate, one, when it is appropriate to do so, in my view, is negligent, and this bill would seek to address that. Certainly it's within our authority to ensure that if someone who has committed a crime and is in this country illegally, they're referred to any other jurisdiction. In this case INS, so that whatever can take place, particularly with regard to deportation, should take place, and if there's any plea bargaining that goes on that INS is involved in, and so on -- and in reading what the President said, I'm simply attempting to highlight the simple fact that, if we are to accomplish what he wishes to have accomplished, then cooperation between states and the federal government is essential as it is in many other areas, investigations of drug activity, and so on, and so on.

So, therefore, to answer your question directly, it certainly not only is within our authority, but I think it's part of our responsibility to do this.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Would Senator Padavan be willing to define for us the use of the term "appropriate"? I know it's subjective, but I think it's very important. It is his bill, and what we're really addressing is the fact that people are getting arrested. People are getting held over. Often they don't have any legal services, and in the end it's actually determined that they're not illegal immigrants.

ACTING PRESIDENT DeFRANCISCO: Senator Padavan.

SENATOR PADAVAN: The word is subjective and, if they're not illegal immigrants, then the bill doesn't apply.

SENATOR PATERSON: Senator Padavan, what I'm trying to eliminate is for a

large number of people who would maybe be released later having to go through the humiliation, if you will, of being American citizens, for instance, and at the same time being challenged every place they go because they seem to resemble individuals who may be illegal aliens.

Now, it's a difficult situation. I understand that we're really trying to address this issue, the President is, you are, and it's probably a good time for us to actually do that, but what I'm saying is that, at the same time, we have citizens in this country who are certainly perceiving that many of the laws that we're enacting are going to be applied specifically to their situation and they are either legal permanent residents or one of the other 13 categories of legal residency or they are American citizens. I just hope you're sympathetic to the problem that they feel.

SENATOR PADAVAN: I am very sympathetic, but I have to bring you back to where we began, Senator. The only place that

the people covered by this bill have been brought to is to a jail. They have been arrested for committing a crime. We're not talking about other things and other venues, people being inappropriately denied because of perceptions and things we talked about yesterday, no point to go over all of it again. We're talking about somebody who has been arrested, is in jail, the district attorney's involved. Certainly it's very easy, on making a referral to INS if that person himself can't produce documentation, to determine whether they're here legally in this country.

Now, if they're not, then the kind of cooperation that the President is calling for -- and I think serves us well if it were implemented. Florida is doing it very effectively. Last year they deported over 1,000 illegal immigrants who were in their criminal justice system. I needn't remind you of the cost savings involved, to say nothing of other issues.

And so that kind of cooperation,

I think, serves us well and should be -- should be facilitated, it should be encouraged and, in this particular case by virtue of this bill, be mandated.

ACTING PRESIDENT DeFRANCISCO: Senator Padavan -- excuse me, Paterson.

SENATOR PADAVAN: You too?

ACTING PRESIDENT DeFRANCISCO: You got me doing it.

SENATOR PATERSON: He's doing it too. I -- as I said, really aspire to be Senator Padavan one day.

Actually, Senator Padavan raises some very relevant issues. We are beset with a number of economic problems in this state. We don't need them exacerbated by the presence of illegal aliens who are driving up costs for taxpayers who reside in this state, and yet at the same time we think that some of the proposals that Senator Padavan is making are actually causing a number of American citizens, people who are proud to live in this country, to pay a very high price because, as American as

they may be, they may in some respects resemble those who are not.

ACTING PRESIDENT DeFRANCISCO: Senator Mendez.

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

ACTING PRESIDENT DeFRANCISCO: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes.

SENATOR MENDEZ: Senator Padavan, last year during the summer we conducted some hearings pertaining to the situation of -- of the agricultural workers, the farm workers, and I was very interested in one situation that is happening in some counties, upstate New York, and that is, it was reported to me and the task force that there are some towns where you might find that four or five farm workers, they get on a car and they go to the village to buy, or whatever, and that without there being any reasonable cause for them to be stopped by a - by an officer -- a police officer. In fact,

they have been stopped; they have been questioned what are they doing; they have been demanded documentation to prove that they are citizens, and on top of that, some of them have been taken to local jails where they have paid or stayed for two or three days.

Now, my question to you is the following: I know what you're trying to do and I agree with you that -- that people -- first of all, people who are illegal, they shouldn't be here. Secondly, people who are illegal and commit a crime, I mean that's a little bit too much for anybody to stomach, but my concern is in your bill the process of finding out when that person is an illegal alien will be when that person is inside the jail? Is that the point, when the local authorities will be finding out if that person is an illegal alien, once that person is arrested and in that jail?

SENATOR PADAVAN: That's the only time you could do it, Senator.

SENATOR MENDEZ: I'm sorry?

SENATOR PADAVAN: I can't think

of any other way to accom.... let me respond to you. You gave this -- this dissertation or you shared with us your views by virtue of experience. I would tell you that we are under a federal mandate to some degree right now to do this.

As a matter of fact, in a report that I got not too long ago, the Justice Department has submitted an amendment to the omnibus crime bill, you recall, that was adopted lowering funding to cities, and I quote -- this is a quote -- "That you have a policy of non-cooperation with INS." So they're saying to us, "You want to participate in this -- these funds for crime prevention and criminal justice, you're going to have to cooperate with us."

Now, that amendment was not adopted at that time, but it still represents, I think, an expression on the part of the Justice Department as well as the President to say that everywhere in this country we should cooperate to whatever extent possible.

ACTING PRESIDENT DeFRANCISCO:

Senator Mendez.

SENATOR MENDEZ: I have a meeting of the minds with you in terms of what you want to do in this bill. What bothers me is that at present in today's world there are areas in New York State where people are being apprehended, maybe because they look different or for whatever reasons, and taken to jail, so that I have -- although I agree with the need to do this and your bill does, I am trying to find some way whereby innocent people who are minding their own business and that they are either legal residents like most farm workers are - excuse me.

SENATOR PADAVAN: Let me -- let me make some -

SENATOR MENDEZ: Excuse me. Excuse me.

ACTING PRESIDENT DeFRANCISCO: Excuse me, Senator Padavan.

Continue, Senator Mendez.

SENATOR MENDEZ: Thank you. Thank you. Thank you both of you -- and that

they're minding their own business and they might be citizens.

See, farm workers, 15 percent of the farm workers are Puerto Ricans like me. 60 percent are Central and South American and Mexicans and other Hispanics and they come from Central or South America or Mexico, and then the rest of the percentage, they could be African Americans or of African descent from the islands, you know, from the Caribbean, so -- but if they're farm workers, as a bill, they are - because of immigration rules, they are legal residents.

So in your bill, since this situation is occurring now, what -- then this will legitimize something that is illegal, occurring now because of the good cause that you want to, don't you think?

ACTING PRESIDENT DeFRANCISCO: Senator Padavan.

SENATOR PADAVAN: That was a long question, ending with the question, "Don't you think?"

What I think is basically, Senator, with all due respect -- and you realize I have a great deal of respect -- everything you said is not applicable. The bill says very specifically -- listen to me -- persons who are arrested in violation of state law. So the person had to commit some type of criminal act.

SENATOR MENDEZ: My question is that at present there are some people that they have not committed a crime, and yet because they look different, they have been searched, the clothes have been searched. They have been taken to jail and wait two or three days when they have not committed any crime. This is what I'm trying to -- I see the merits of your bill, but already because of this existing situation, I have to be concerned.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Padavan.

SENATOR PADAVAN: In response to your question, Senator, that is wrong. It would be wrong without this bill. It would be wrong

on the face of it.

SENATOR MENDEZ: Correct.

SENATOR PADAVAN: This bill doesn't encourage that nor does it exacerbate that. It is totally irrelevant to that problem which should be addressed in other ways, and to say, however, because of that kind of abuse that occurs, whenever it occurs, we should not do what this bill says is -

SENATOR MENDEZ: Senator Padavan.

SENATOR PADAVAN: Excuse me. Just to finish answering your question -- is to suggest that a negative justifies not doing a positive, and I don't agree.

SENATOR MENDEZ: Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Mendez.

SENATOR MENDEZ: That is the wrong interpretation, Senator Padavan, about the wrong -

SENATOR PADAVAN: Let me answer.

SENATOR MENDEZ: Hold it.

That's the wrong interpretation.

What really should be done is that maybe your bill -- you yourself could amend your bill to include something to the effect that officers are not -- that people who are unjustly apprehended or with no relationship to a crime or something, that somebody will be fined or to prohibit that other harassment that is totally unnecessary, to find a way to protect that situation, to do something about that situation so that I wouldn't be -

SENATOR PADAVAN: Will the Senator yield?

SENATOR MENDEZ: Yes.

SENATOR PADAVAN: Senator, is that not already in our laws, that if someone is arrested by a police officer inappropriately for reasons that are not allowed by law, that penalties would be imposed, both administrative and other? Are these not part of our laws in the state of New York already?

ACTING PRESIDENT DeFRANCISCO: Senator Mendez.

SENATOR MENDEZ: Thank you.

Senator Padavan, you are from New York City. I am from New York City. There are many laws -- many laws that are in the books and that yet are not followed by the office -- are not enforced by the criminal justice system, and there are others unfortunately that are being enforced when they -- it's against the law to do that, and in this instance, what's happening to some of these farm workers is a reality and, by law, they should -- that shouldn't happen.

So I have no problems with what the President said in terms of as part of the plea bargaining, to have deportation for illegal aliens. No problems at all, Mr. President, with the issue of -- illegal aliens shouldn't be here, because illegal aliens shouldn't be here, and on top of if, it that illegal alien commits a crime, why should we pay for his incarceration? But I do have great problems with the kinds of injustices and denial of rights that are being done today, in today's world, with people that are just workers who are trying to make a living and that many of them

don't even speak the language and they don't have any interpreters. They are stunned when they are stopped in a car, and the car is searched. All that is against individuals' rights or because of that concern that I have, I think, in a way, this will be -- this bill, which you are not directing at that situation because it's not your purpose to do so, but this bill will, in fact, as I see it, legitimize that -- those wrongdoings that are occurring at the present time.

Thank you.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLINGER: Mr. President, will Senator Padavan yield for one question?

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Padavan yield to a question?

ACTING PRESIDENT DeFRANCISCO: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes.

SENATOR DOLLINGER: Senator, is it currently a crime to give the people alien in this state or in this country some penalty?

SENATOR PADAVAN: Senator, people illegally in this country, the penalty is de portation.

SENATOR DOLLINGER: So under your bill, as you say, you simply haven't linked what they can do to every other address. That determines whether they can -- what they can do.

SENATOR PADAVAN: Says it right here.

SENATOR DOLLINGER: So what this says, if I understand it, that the police says if this burglar had attempted to burglarize other houses, they would attempt to determine if he was that other house burglar. Your bill says if they're arrested for burglary and you think they may be violating the immigration laws, that they would simply go out and determine that those laws have been violated.

SENATOR PADAVAN: That's correct, and it says that word or words in paragraph two of the bill, in violation of the laws.

SENATOR DOLLINGER: A question, Mr. President. What happens, Senator Padavan, after the notification to the INS occurs, the deportation process would be commenced if there was evidence?

SENATOR PADAVAN: Those would vary with the circumstance. That will vary with the circumstance, certainly, and if you had the benefit of various situations that we've collected over a period of a year or so, you would see that the circumstances vary.

One case we talked about a police officer being killed; another we found situations of cooperation that eventually took place involving exploitation of illegal immigrants where they were violating the labor laws, all kinds of things, health and safety laws, federal and state, and it was through cooperation between all law enforcement agencies and INS, bringing everybody else into the act,

that action was finally taken. So it would depend on what the arrest was for, the circumstances surrounding the individual, as to what the final outcome would be, and I really can't give you any definitive answer.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

I think this bill, as Senator Padavan correctly describes it, simply alerts the police agencies in this state to the fact that, if there's reasonable suspicion of the illegal entry into this country, that they should check out and determine whether this accused is an illegal alien.

I see that as something that we should be doing in this state. I see it as something that we want our police authorities to do, which is when someone is arrested for Crime A, and there's reasonable suspicion that they are committing Crime B, that we should require them to determine whether Crime B has been

committed or not; so I don't see this bill as a significant departure from what we're doing currently, although I do think it has value because it alerts our police agencies to be aware of the illegal immigration problem and people who are arrested, if there's reasonable suspicion, should be required to produce evidence that they are in this country legally.

We talked yesterday when we did the immigration bill with respect to education, that I think the concern is of many people in this chamber about what constitutes reasonable suspicion. I believe that if you've got someone who's arrested, reasonable suspicion has to be based on more than just surnames. It has to be based on more than just color, but I think our Constitution provides standards under which reasonable suspicion can be analyzed legally.

We have constitutional protections even for illegal aliens that would protect them and allow them to both assert the defense of probable cause when they're arrested and assert the defense of reasonable suspicion

at the time they are held over or investigated for violation of the immigration laws.

So I see this bill as a good step. I'm going to vote in favor of it. As we continue to try to deal with this difficult problem of illegal immigration, it seems to me this is a good step.

ACTING PRESIDENT FARLEY: Anybody else on the bill?

Senator Waldon, I guess I got you on the list, and did you, Senator Abate, did you want to -

SENATOR ABATE: Yes.

ACTING PRESIDENT FARLEY: Senator Waldon.

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

Senator Padavan, would you yield to a question, please.

ACTING PRESIDENT FARLEY: Senator Padavan, would you yield to a question from Senator Waldon?

SENATOR WALDON: Senator, are you

familiar with the arrest cards -- I don't know about the state, but are you familiar with the arrest cards of the city of New York?

SENATOR PADAVAN: I'm sorry. I didn't hear you.

SENATOR WALDON: Are you aware of the arrest card form utilized by the New York City Police Department?

SENATOR PADAVAN: I know such a thing exists.

SENATOR WALDON: Thank you very much. On the bill.

ACTING PRESIDENT FARLEY: On the bill, Senator Waldon.

SENATOR WALDON: The arrest card that I asked Senator Padavan about basically requires the officer to seek the information which would codify what this bill is attempting to do. You must tell -- you must try to find out the person's name, birth place, citizenship, et cetera.

On its face, at first blush, this bill is not -- is not a danger, but in the city

of New York under the current administration, police brutality charges are up in excess of 40 percent.

Many of these police brutality situations are the result of illegal stops, illegal searches and seizures, and I can speak definitively about this because I've witnessed two of them personally. I just happened to be at a place where they occurred, but I can tell you, my colleagues, that literally hundreds of people are coming to my office and to the offices of Senator Smith and the Assembly people and Congress people who represent Southeast Queens, to complain that the police are now taking license to do whatever they want to do in terms of stopping people. All too often and most regrettably, the people they stop look like me. The people they stop are from the Caribbean. The people they stop speak Spanish and are from Puerto Rico or Venezuela or another Spanish speaking nation in the western hemisphere, and I think that is abhorrent, and so my fear about this legislation that it will

extend -- and I will conclude momentarily -- it will extend the opportunity for police departments to illegally stop -- illegally search and find something after they've done this to someone, and make an arrest and exacerbate this problem and, for that reason, I'm extremely troubled by this legislation and, therefore, will vote against it.

ACTING PRESIDENT FARLEY: Senator Abate.

SENATOR ABATE: Yes. Will Senator Padavan yield to a question?

ACTING PRESIDENT FARLEY: Senator Padavan, would you yield to a question from Senator Abate?

SENATOR ABATE: This is a point of clarification.

ACTING PRESIDENT FARLEY: I think he will.

SENATOR ABATE: Clearly, in order to arrest someone, clearly an officer must have probable cause, and then the burden that you outline in this legislation to go further is

reasonable suspicion that someone may be an illegal alien.

Why not, because we're talking about a separate crime, it's not incident to the first crime -- let's say I'm a defendant. I'm arrested for burglary. I'm searched, clearly incident to that burglary charge, and now you're saying I'm in custody that all the police need is reasonable suspicion. Why can you not drop the probable cause to believe?

SENATOR PADAVAN: Because, Senator, the issue relates only to reporting. There's no penalty. There's no other further action under our penal code. The reasonable suspicion only relates to the requirement of reporting to INS, nothing more. So there is no law in the way you've outlined.

SENATOR ABATE: So there's obviously a lesser burden on the police -

SENATOR PADAVAN: It's purely an administrative one.

SENATOR ABATE: All right. Now, how would they get this information? Is there

anything indicated by the statute that the defendant is required to give or provide this information?

SENATOR PADAVAN: I'm sorry.

SENATOR ABATE: I'm sorry. Is there anything in the statute that compels the defendant to give this information?

SENATOR PADAVAN: No, no, nothing that compels them other than what existing law provides for already. I don't know how we could go beyond what existing law indicates. You know, I was disturbed by the previous question, I'd like to, in answering your question use it as a vehicle to do so, when we talked about abuse.

You may have heard about this terrible tragedy recently uncovered where 30 young women from Thailand were smuggled into this country, the idea, of course, of their being here and benefiting as immigrants, but when they got here, they were put into slavery as prostitutes. They were told they had to have sex at least 400 times before they could be

released.

Now, here's the part of the story I'd like to read to you. It says, The brothel was discovered when one of the alleged captives told investigators from the Mayor's Task Force on Midtown Enforcement that she was being held against her will. A three-month investigation followed, involving INS agents, officers from the Police Department's Public Morals Division and Downtown Manhattan 5th Police Precinct.

That is an example of what we want to see done. If INS hadn't been involved -- and the whole story here goes into great detail how they then determine who the people were who were also illegal immigrants who are running this, operating this venture, and so on, and so on. So these -- these situations become very involved, very, very convoluted, but there has to be a starting point.

The starting point here was contacting INS after the local police were given information by one of the victims.

SENATOR ABATE: There's just one

other question that I have. You may not be aware, but there is a practice in certain cases by the police, I mean obviously we need to ensure speedy arraignments, and the arraignment time does not begin, that someone has to be, under the law, arraigned within 24 hours of the arrest, but sometimes the police -- and I'm afraid there could be abuse here and you may - we may need to refine this down the road or, if you amend this, is that this should not delay the speedy arraignment because I would not like to see as an excuse that someone is arrested and then the police say they have to continue to investigate, to keep someone down at central booking for many, many hours, maybe days, before they bring them over to arraignment, investigat ing whether someone is an illegal alien, and that would be, I think, an abuse of the intent of this statute.

Now, do you think this -- the way it's written -

SENATOR PADAVAN: This statute, in no way, offends, contradicts, subverts,

undermines any existing statute such as the ones you outline. Nor could it, so it's not a question of interpretation. It's a matter of law. The requirements you properly articulated remain in law and are not at all affected by this required procedure involving federal notification.

SENATOR ABATE: May I suggest, if this bill is ever amended, that there would be language that would say that no defendant for the purposes of investigation should be unnecessarily detained in order to get this information, and I think that's very important to be included in the legislation.

I ask you, Senator, to maybe consider that, if this does not pass, become law this year.

SENATOR PADAVAN: I'm not quarreling with you; I'm just saying it's already law, but keep one thing in mind. If, after notification to a federal authority, it's determined that person is here illegally, then the federal law is kicked in automatically in

terms of detention which, as you remember the story I told you earlier about the policeman that was killed, if that had taken place he wouldn't have been killed, so I think we have to be careful when we deal with that issue but, to restate existing law, I have no problem with it except that I'd want to make it clear that this does not in any way violate existing law.

SENATOR ABATE: Maybe, let me just clarify. What happens now is the police will say, we did not make an arrest at 1100 hours because we were still investigating. We made the arrest later, so the clock does not run on the 24 hours, and I would hate to see that, as the officers are doing their continuing investigation, the arrest occur much later, maybe days later, when people are necessarily helped for long periods of time.

SENATOR PADAVAN: Mr. President, to answer your question. If you read the bill, everything required here takes place after the arrest, so the clock is ticking.

SENATOR ABATE: That's -- O. K.

Thank you very much.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th 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 884 are Senators Connor, Gold, Paterson, Smith and Waldon. Ayes -- also Senator Mendez. Ayes 43, nays 6.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Abate, why do you rise?

SENATOR ABATE: Yes. I'd like to be recorded -- I ask for unanimous consent to be recorded in the negative on Calendar 700.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection -

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: -

Senator Abate will be recorded in the negative on Calendar Number 700.

Senator Gold, why do you rise?

SENATOR GOLD: Yes. I got confused on the last bill because of the sponsorship. Could I be recorded in the affirmative, please.

ACTING PRESIDENT KUHL: Senator Gold will be recorded in the affirmative on the last calendar calling, on Calendar Number 884.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, the house just passed Number 884. Senator Santiago, who was excused today due to the unfortunate illness of her son and will not be back with us for about ten days -- and we extend our best wishes to Senator Santiago and her entire family for the speedy recovery for her son -- but I just wanted to explain why she will explain why she would have voted in the negative on Calendar Number 884. Just want to make a

record of that.

ACTING PRESIDENT KUHL: All right. We will make a record of that. We'll look forward to her comments when she returns. Our best wishes to her son.

Senator Libous.

SENATOR LIBOUS: Would you call on Senator Holland, please.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: Yes, I would request that the sponsor's star be removed from Calendar Number 727.

ACTING PRESIDENT KUHL: Sponsor's star will be removed from Calendar Number 727 at the request of the sponsor.

Senator Libous.

SENATOR LIBOUS: Would you please bring up Calendar Number 1027.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 1027.

THE SECRETARY: Calendar Number 1027, by Senator Sears, Senate Print Number

3331, an act in relation to authorizing the town of Lee, county of Oneida, to lease certain park lands.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: There is a home rule message at the desk. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, is there a Rules report at the desk?

ACTING PRESIDENT KUHL: Senator Libous, I'm informed by the Secretary there is.

SENATOR LIBOUS: Could we have it read, please.

ACTING PRESIDENT KUHL: Would you like it read? We'll return to reports of

standing committees. Secretary will read the Rules report at the desk.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 2678, by Senator Rath, an act to amend the General Business Law, in relation to hotel rooms;

1218, by Senator Present, an act to amend the General Municipal Law, in relation to municipal contingency and tax stabilization reserve funds;

1354, by Senator Sears, an act to amend the General Business Law, in relation to barring discriminatory practices by consumer reporting agencies;

2210, by Senator Skelos, Senate -- an act to amend the Tax Law, in relation to exempting from sales and use taxes receipts from sales of photocopies;

2365, by Senator Volker, an act to establish a moratorium on requiring any disconnection from the Letchworth State Park

water line;

2561, by Senator Leibell, an act to amend the Tax Law, in relation to restoring the former corporate tax procedure for refunding overpayments of tax;

2664, by Senator Velella, an act to amend the General Business Law, in relation to price gouging;

3077, by Senator Kuhl, an act to amend the Environmental Conservation Law, in relation to permitting the discharge of a fire arm for the purpose of killing certain rabid animals;

3119, by Senator Kuhl, an act to amend the Environmental Conservation Law, in relation to the definition of angling;

3133, by Senator Johnson, an act to amend the General Business Law, in relation to limitations to certain contracts involving social referral services;

3989, by Senator Stafford, an act to amend the Tax Law, in relation to investigating lottery sales agents and

applicants for lottery sales agent licenses;

4796, by Senator Rath, an act to incorporate the Voluntary and Exempt Firefighters Benevolent Association of the city of Tonawanda, Incorporated;

5069, by Senator Present, an act authorizing the county of Chautauqua to discontinue for reforestation purposes the use of certain lands;

5179, by the Committee on Rules, an act to amend Chapter 590 of the Laws of 1993, amending the Public Authorities Law;

And 5197, by Senator Nozzolio, an act to amend the Penal Law, in relation to adjudication of an unlawful escape for -- by a person under 16 years of age.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills reported directly to third reading.

Senator Libous.

SENATOR LIBOUS: Mr. President, I

move to accept the Rules report.

ACTING PRESIDENT KUHL: Motion is to accept the Rules report.

All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Rules report is accepted. Bills reported directly to third reading.

Senator Libous.

SENATOR LIBOUS: Mr. President, is there any housekeeping?

I believe Senator Marchi maybe.

ACTING PRESIDENT KUHL: Chair recognizes Senator Marchi.

SENATOR MARCHI: Thank you, Mr. President.

I wish to call up my bill Print 772 recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar 770, by Senator Marchi, Senate Print 74, an act to amend the Real Property Law, in relation to modifying the real estate continuing education requirement.

ACTING PRESIDENT KUHL: Senator Marchi.

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

ACTING PRESIDENT KUHL: Do you want to reconsider the vote by which that bill passed the house, Senator? Motion is to reconsider the vote by which the bill passed the house. Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: Bill is before the house.

Senator Marchi. Want to offer up the amendments?

SENATOR MARCHI: I offer the

amendments.

ACTING PRESIDENT KUHL:

Amendments are received and adopted.

Chair recognizes Senator Marchi.

SENATOR MARCHI: On page number 33, Calendar Number 860, Print Number 3499, I offer the following amendments and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL:

Amendments received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Marchi.

SENATOR MARCHI: And on page 28, I offer the following amendments to Calendar Number 779, Senate 4853, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL:

Amendments to Third Reading 779 received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President, is there any other housekeeping?

ACTING PRESIDENT KUHL: That completes the housekeeping, Senator Libous.

SENATOR LIBOUS: Mr. President, I have a couple of announcements.

There will be a Majority Conference at 2:00 p.m. in Room 332 and, there being no further business, Mr. President, the Senate will be at ease until 2:30.

ACTING PRESIDENT KUHL: There will be a Majority Conference in the Majority Conference Room at 2:00 p.m. Senator DiCarlo will not be taking attendance.

Senate will stand in recess until 2:30.

(Whereupon at 12:10 p.m., the Senate recessed until 2:30 p.m.)

(The Senate reconvened at 2:50 p.m.)

ACTING PRESIDENT NOZZOLIO: Senator Libous.

SENATOR LIBOUS: Mr. President, there being no further business, I move that we adjourn until Tuesday, May 30th, at 3:00 p.m.,

intervening days to be legislative days.

ACTING PRESIDENT NOZZOLIO:

Adjourned until Tuesday, May 30th, at 3:00 p.m.

(Whereupon, at 2:51 p.m., the Senate adjourned.)