ALBANY, NEW YORK

June 1, 1995

10:06 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 take their places, staff their places. I'd ask everybody in the chamber to rise and join me in saying the Pledge of Allegiance to the Flag.

(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 31st. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Tuesday, May 30th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. The Chair recognizes Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on my behalf, please remove the sponsor's star on Calendar 195.

ACTING PRESIDENT KUHL: At the request of the sponsor, the star will be removed on Calendar Number 195.

SENATOR DiCARLO: On behalf of Senator Goodman, please place a sponsor's star on Calendar 98.

ACTING PRESIDENT KUHL: Calendar Number 98 will be starred at the request of the sponsor.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on page 46, I offer the following amendments to

Calendar Number 494, Senate Print 3155, and ask that said bill retain its place on Third Reading Calendar on behalf of Senator Cook.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 494 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Seward, I wish to call up his bill, Print Number 2016, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 197, by Senator Seward, Senate Print 2016, an act to amend the Tax Law, in relation to eliminating the expiration of provisions.

ACTING PRESIDENT KUHL: Senator DiCarlo.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: Senator DiCarlo.

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

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Farley.

SENATOR FARLEY: Mr. President, on behalf of Senator Velella on page 48, I offer the following amendments to Calendar Number 764, Senate Print 2587, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 764 are received and adopted. Bill will retain it place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: On behalf of

Senator Seward, Mr. President, on page 9, I offer the following amendments to Calendar Number 307, Senate Print 2825, and I ask that that bill retain its place.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 307 received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: Mr. President, on behalf of Senator Holland, I wish to call up his bill, Senate Print Number 32, which was recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 565, by Senator Holland, Senate Print 32, an act to amend the Highway Law, in relation to increasing bonded indebtedness in the town of Ramapo.

SENATOR FARLEY: I now move to reconsider the vote by which this bill was

passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 35.

SENATOR FARLEY: I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Seward, I wish to call up his bill, Print Number 3827A, which was recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 743, by Senator Seward, Senate Print 3827A.

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

ACTING PRESIDENT KUHL: Secretary

will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 38.

SENATOR FARLEY: I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Hoblock.

SENATOR HOBLOCK: Mr. President, Calendar Number 736, Senate Bill 1633, I'd like to star that, please.

ACTING PRESIDENT KUHL: Calendar Number 736 is starred at the request of the sponsor.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we call an immediate meeting of the Finance Committee in Room 332.

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

Conference Room. Immediate meeting of the Senate Finance Committee, Room 332.

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

SENATOR DiCARLO: Mr. President, I have a privileged resolution at the desk. I waive the reading.

ACTING PRESIDENT KUHL: Senator DiCarlo, there is a privileged resolution at the desk. I'll ask the Secretary to read the title.

THE SECRETARY: By Senator DiCarlo, Legislative Resolution, commending the Bay Ridge Community Council at the 44th Annual Dinner Dance, June 2nd, 1995.

ACTING PRESIDENT KUHL: Question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Wright.

SENATOR WRIGHT: Mr. President, I would request that a sponsor's star be placed on Calendar Number 730, Senate 2258.

ACTING PRESIDENT KUHL: Calendar Number 730 will be starred at the request of the sponsor.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time recognize Senator Maziarz for a resolution. Would you please read the title?

ACTING PRESIDENT KUHL: There is a privileged resolution by Senator Maziarz at the desk. I'll ask the Secretary to read the title.

THE SECRETARY: By Senator Maziarz, Legislative Resolution praising the value of the Niagara Falls Air Reserve Station and memorializing the Base Realignment and Closure Commission to remove the station from its list of bases being considered for closure or realignment.

ACTING PRESIDENT KUHL: Senator Maziarz, on the resolution.

SENATOR MAZIARZ: Mr. President, on Saturday, the base -- federal Base Closure Commission is going to be meeting in Boston, Massachusetts, to consider the closure of some six bases in the United States, one of which is the last remaining Air Force base in New York State which is located in Niagara Falls, New York, more specifically in the town of Niagara in Niagara County, and I know that Governor Pataki plans to appear before that commission along with myself and several of the Assemblymen from the Niagara region to convince the commission that this base is an important employer and an important base for the security of the whole northeastern United States, and I would move its adoption, Mr. President.

ACTING PRESIDENT KUHL: Question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time read the title of a resolution by Senator Michael Hoblock.

ACTING PRESIDENT KUHL: There is a privileged resolution by Senator Hoblock at the desk. Secretary will read the title.

THE SECRETARY: By Senator Hoblock, Legislative Resolution commending Very Reverend Archbishop Daniel Donovan, Pastor of St. Basil Orthodox Church, Maplewood, Watervliet upon the occasion of his designation for special honor on June 4th, 1995.

ACTING PRESIDENT KUHL: Question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Bruno, that brings us to

the calendar.

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

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

THE SECRETARY: On page 6, Calendar Number 164, by Senator Marchi, Senate Print 2198A, an act to amend the Not-for-Profit Corporation Law, in relation to not-for-profit corporations formed to construct, develop, plan, site, lease, operate or own municipal facilities.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 198, by Senator Larkin, Senate Print 2655A, an act to amend the Tax Law, in relation to the timing of consideration of mortgage recording tax revenues.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 402, by Senator Kuhl, Senate Print 2314.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 423, by Senator Johnson, Senate Print 1987, an act to amend the Domestic Relations Law, in relation to visitation rights to infant grand children.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 424, by Senator Saland, Senate Print 2107, an act to amend the Domestic Relations Law, in relation to making a technical change with respect to conferring visitation rights.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect 90 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 425, by Senator Saland, Senate Print 2113A, an

act to amend the Family Court Act, in relation to authorizing the court to permit a petitioner or respondent in cases involving family violence.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 427, by Senator Saland, Senate Print 2594, an act to amend the Social Services Law, in relation to child abuse and maltreatment hearings.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 428, by Senator Saland, Senate Print 3474, an act to amend the Social Services Law and the Domestic Relations Law, in relation to venue and termination of parental rights.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

592, by Senator Wright, Senate Print 2261, an act to amend the Education Law and the Mental Hygiene Law, in relation to education regarding alcohol and drugs.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect September 1st.

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 605, by Senator Hannon, Senate Print 3540, an act to amend the emergency -

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 634, by Senator Levy, Senate Print 320, an act in relation to authorizing a review of current drug-impaired driving education and establishing

a public information campaign for pedestrian safety.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 43, nays one, Senator Rath recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 658, by Senator Cook, Senate Print 3154, an act to amend Chapter 564 of the Laws of 1994 relating to the creation of a temporary state coordinating council.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 659, by Senator Volker, Senate Print 3579, an act to amend the Executive Law, in relation to the community services block grant program for the distribution of funds.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

710, by Senator Rath, Senate Print 3904A, an act to amend the State Administrative Procedure Act, in relation to model plans or documents.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 731, by Senator Wright, Senate Print 3266, an act to amend the Executive Law, in relation to the drug abuse resistance education program.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Farley.

SENATOR FARLEY: Mr. President, I'd like to be recorded in the negative on 634.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Farley will be recorded in the negative on Calendar Number 634.

Secretary will continue to call the non-controversial calendar.

THE SECRETARY: Calendar Number 745, by Senator Kuhl, Senate Print 3909A, an act in relation to authorizing the city of Elmira, county of Chemung, to transfer a portion of Diven Park.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

747, by Senator Kuhl, Senate Print 4218, an act in relation to authorizing the city of Elmira, county of Chemung to transfer park land.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 770, by Senator DeFrancisco, Senate Print 4228.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 789, by Senator DeFrancisco, Senate Print 3649A, an act authorizing the town of Camillus to discontinue use as park lands certain lands

heretofore acquired for park and other public purposes.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 791, by Senator Kuhl, Senate Print 4116A, an act to amend the Real Property Tax Law, in relation to providing an exemption from real property taxation.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR DOLLINGER: Is that 790.

ACTING PRESIDENT KUHL: That's 791; is that the bill you wished to lay aside?

SENATOR DOLLINGER: Yes.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 803, by Senator DiCarlo, Senate Print 4635, an act to amend Chapter 993 of the Laws of 1981 relating to senior citizens employment.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 815, by Senator Kruger, Senate Print 1871, an act to amend the Criminal Procedure Law, in

relation to the definition of auxiliary police officer.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 926, by member of the Assembly Vitaliano, Assembly Print 2225, an act to amend Chapter 929 of the Laws of 1986, amending the Tax Law, relating to the Metropolitan Transportation Authority.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 936, by Senator Goodman, Senate Print 4002, an act to amend the Public Buildings Law, in relation to deleting the value limitations on contracts authorized to be let.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 946, by Senator Leibell, Senate Print 2614, an act to amend the Executive Law, in relation to

providing and maintaining alarms.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 949, by Senator Saland, Senate Print 3470, an act to amend the Domestic Relations Law, in relation to confidentiality of records.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the non-controversial calendar.

The Chair recognizes Senator Rath.

SENATOR RATH: Yes, Mr. Chairman. I'd like to be recorded in the negative on 926.

ACTING PRESIDENT KUHL: Without objection, and hearing no objection, Senator Rath will be recorded in the negative on Calendar Number 926.

Senator Bruno.

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

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, a point of order. We have several committee

meetings going on at the point that we are now in deliberation on controversial bills and yesterday we adjourned at a point that we started committee meetings running and we had members who were unable to vote on this side for legislation to which they were opposed.

Unless we are going to stand at ease at the end of the session for a considerable period of time to give those members the opportunity to come back here and vote no, then I have to object to taking up the calendar, the controversial calendar, at this time, because it is limiting the opportunity for those who want to express their disagreement because they are attending committee meetings.

ACTING PRESIDENT KUHL: Senator Bruno, would you like to speak to that?

SENATOR BRUNO: Mr. President, we're very conscious of some of the changes in schedules for the day and for the most recent days. I think presently we have a Finance Committee meeting. We're trying, based on the lateness of the hour in terms of doing a state

budget, we're trying to move the process along towards our date by calendar of June 15th which is our adjournment day in this house, and unless we do more in terms of committee meetings, holding sessions, we will be here in September, never mind July.

So all of us recognize that we want an orderly procedure. We want to be in formed. We want to be able to vote and we want this chair to be cooperative in that.

But I would appreciate my colleagues understanding that we are contending with some very complex and difficult times and an extra day in keeping this budget from the people of this state is not in the best interests of the majority of the people of this state. So that's all that we're trying to do, Mr. President, is move the process forward, and I appreciate my colleague, Senator Paterson, in his concerns and we will recognize those and we will defer to those whenever we can because we're both interested in the same things, an orderly process giving members an opportunity to

vote and know what they're voting on. We totally concur in that.

ACTING PRESIDENT KUHL: Senator Paterson, does that take care of your concern? I think the Majority Leader has indicated he wants to be cooperative, but he also wants to meet a regular schedule. He wants to make sure that you get home on June 16th to be with your family.

SENATOR PATERSON: Well, Mr. President, that's actually a very good idea, and all we were suggesting, we're not really objecting. The process -- as a matter of fact, the process this year has been far more orderly than at any time and we've started and adjourned and it has made it a lot easier for schedules and we'd really like to commend the Majority Leader for that, and in raising this what we - what I actually did, rather than the sort of pedantic sense of just complaining, I offered an alternative which is that had we just stood at ease rather than adjourned to give the members time to come back and cast their votes

yesterday, that would have been quite sufficient.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, we will accept that, and that's a valid recommendation and we will do that for those of you that are aware, that have to be at committee meetings, and can't be in two places, we will keep the calendars open for those specific purposes so people can vote at an appropriate time, and if that doesn't work for any reason, then we'll talk about it and make whatever adjustments are necessary to accommodate the members.

ACTING PRESIDENT KUHL: Secretary will -- Senator Paterson, I assume now that you are agreeable to that, to your suggestion? The Majority Leader has indicated he will do that.

SENATOR PATERSON: Absolutely, Mr. President, without a doubt, without any reservation -- excuse me.

THE SECRETARY: On page 6,

Calendar Number 164, by Senator Marchi, Senate Print Number 2198A, an act to amend the Not-for-Profit Corporation Law, with relation to not-for-profit corporations formed to construct, develop, plan, site, lease, operate or own municipal facilities.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, may we lay that aside just temporarily for Senator Jones, who is out of the chamber.

ACTING PRESIDENT KUHL: I think Senator Marchi is at a Senate Finance Committee also, so we'll lay the bill aside.

SENATOR PATERSON: Would you recognize Senator Montgomery who has a committee meeting and would like to cast a vote on a previous bill.

SENATOR MONTGOMERY: Thank you. Mr. Chairman, Mr. President, I would like to be recorded in the negative on Calendar Number 427.

ACTING PRESIDENT KUHL: Without objection and hearing no objection, Senator

Montgomery will be recorded in the negative on Calendar Number 427. Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I would request unanimous consent to be recorded in the negative on Calendar Number 634.

ACTING PRESIDENT KUHL: Without objection, and hearing no objection, Senator DeFrancisco will be recorded in the negative on Calendar Number 634.

Senator Holland, why do you rise?

SENATOR HOLLAND: May I also be recorded in the negative on Calendar Number 634, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Holland will be recorded in the negative on Calendar Number 634.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 402, by Senator Kuhl, Senate Print 2314, an act to amend the General Obligations Law, in

relation to the liability for negligence of owners or operators of pools.

SENATOR PATERSON: Explanation.

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

Senator Bruno.

SENATOR BRUNO: I believe, Mr. President, there is a resolution by Senator Gold. Can we have it read at this time and move its adoption.

ACTING PRESIDENT KUHL: We'll return to resolutions and motions. There is a privileged resolution by Senator Gold at the desk. I'll ask the Secretary to read the title.

THE SECRETARY: By Senator Gold, Legislative Resolution, commemorating the 25th Anniversary of the OHEL Children's Home and Family Services and honoring Ruth Schoenfeld on the occasion of her designation for special commendation.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Return to the controversial calendar. Secretary will continue to read.

THE SECRETARY: Calendar Number 605, by Senator Hannon, Senate Print Number 3540, an act to amend the Emergency Tenant Protection Act of 1974 and the Administrative Code of the city of New York.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Hannon, an explanation has been asked for of Calendar Number 605.

SENATOR HANNON: This bill, Mr. President, would amend the city administrative code to provide that when a foreclosure action on a mortgage has been taken to its conclusion on a cooperative building and cooperative ownership status, that instead of the building reverting to a rent controlled status -- rent stabilized status, that instead the building

would not revert to rent stabilized status.

This bill does not apply to tenants who are still rental tenants. It only would apply to the units that are cooperatives. This is designed to make sure that the law does not work in an unfair fashion and it is designed to, in essence, reverse the holding in a case in state court called DiSantis, as well as a holding in federal court, Federal Home Loan Mortgage versus the State Division.

And why this drastic thing is important? It's because every cooperative in the city and the state has been adversely affected by the status of these cases. How have they been adversely affected? Well, the value of those mortgages, if these cases continue, has to be much less than were previously supposed and if the value of those mortgages are much less, the banks don't want to hold them, and furthermore, the banks don't want to give any further loans to those cooperatives.

Now, the net effect is not because we love the cooperatives so much, but

rather we want to be fair to the individuals who purchased those cooperatives and have an equity stake in them and through no fault of their own perhaps a downturn in the real estate market, the building itself has gone to foreclosure. So this law is designed to work a fairness towards the owners of these cooperatives.

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

SENATOR PATERSON: A minute.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, I'm sorry. I thought an announcement was going to be made.

SENATOR HANNON: Could we finish the bill, Mr. President, if that's possible.

SENATOR BRUNO: We're going to just announce a committee meeting in Room 123, the Elections Committee, called in behalf of Senator Maltese.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Elections

Committee in Room 123 of the Capitol, immediate meeting of the Elections Committee in Room Number 123 of the Capitol.

Thank you for the interruption, Senator Paterson. Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President, and if Senator Hannon would spare just a brief question.

ACTING PRESIDENT KUHL: Senator Hannon, do you yield to Senator Paterson for a question?

SENATOR HANNON: That I will.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, there are two cases that apply to this particular legislation that you're probably familiar with, DiSantis versus White Rose and FHLMC, Federal Housing Loan Mortgage Corporation versus New York State Division of Housing, and if I'm not correct, it would appear that they cover pretty much what's being set forth in your legislation, and so the only question I have would be that

which would alleviate my confusion as to where this legislation goes beyond the court dicta to establish any new law that has already been resolved in those previous cases.

SENATOR HANNON: Well, this is to change that law. This is to say that the valuation -- first of all, directly it's to change the law so that you don't have the reversion and, by the way, those cases are probably correctly reasoned given the current phrasing of the statute, but it is to change that law directly, and second, in the federal court case, there was dicta that said all of the existing mortgages on co-ops must be -- will be valued in a certain way, which had the net effect of decreasing the value of those mortgages and that means those banks holding that portfolio have no desire to (a) hold the portfolio and (b) to grant any new mortgages, so that this is a -- it is dicta, but it is a disruptive factor in the entire co-op market in the city of New York.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Mr. President, I'm going to yield to allow us to read the last section and allow Senator Smith, who has an elections Committee to cast her vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR SMITH: No.

ACTING PRESIDENT KUHL: Senator Smith will be recorded in the negative. Roll call is withdrawn. Senator Paterson to continue on debate? Senator Paterson.

SENATOR PATERSON: No further questions, Mr. President.

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.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 605 are Senators Abate, Connor, Espada, Goodman, Kruger, Markowitz, Onorato, Paterson and Smith. Ayes 42, nays 9.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 770 by Senator DeFrancisco.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 770.

THE SECRETARY: Calendar Number 770, by Senator DeFrancisco, Senate Print 4228,

an act to amend the Lien Law, in relation to notice of lien on account of public improvements.

ACTING PRESIDENT KUHL: Secretary will read the -

SENATOR PATERSON: Just a moment. Explanation.

ACTING PRESIDENT KUHL: Senator DeFrancisco, an explanation of Calendar 770 has been asked for by Senator Paterson.

SENATOR DeFRANCISCO: Yes. This leg... this bill would provide for a change in the notice requirement, the filing requirement for a notice of mechanic's lien on public improvement projects -- public improvement projects only.

The reason is that current law provides that a contractor has to file a lien to preserve any type of security in the fund that is being used to pay subcontractors within 30 days after the completion of the job.

What has happened in practice is that, because of this very short window, those

subcontractors who are the last ones on the job site virtually have to file a lien as a matter of course, whether or not they ultimately get paid because the window is so short to determine whether or not payment is likely to be had within that 30 days. It's an incredible burden on the subcontractors and it becomes a -- an unnecessary process if you can expand it and provide the subcontractors with a reasonable opportunity to file a lien, to make sure they're going to get paid properly rather than just as a matter of course filing a lien because of the short period of time.

So it's just an opportunity to have subcontractors have reasonable security and a reasonable opportunity to make a decision whether that lien is necessary or not.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. Presidents, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: Senator DeFrancisco might want to comment on this, but I really don't have a question.

I'd just like to make the point that the General Building Contractors of New York have an objection to this legislation feeling that by the time the 90-day period has expired that the fund may have been deleted of all payments that could have been used to pay the subcontractor, so although Senator DeFrancisco is right that the original window is very small, and I can understand what he's trying to address, the fact remains that, with the additional 60-day period, you might have a situation now where the subcontractor will now be going against the contractor and you don't have any protection to the subcontractor because the funds have been deleted.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: On the bill.

ACTING PRESIDENT KUHL: On the

bill.

SENATOR DeFRANCISCO: I would like to comment on that.

That may be what the memo sounds like. It isn't really what the general contractors are concerned about.

If there's a 90-day window, the only way that the public fund can be depleted is if the general contractor gets the whole fund and doesn't pay the subcontractors and that's what we're concerned about, the subcontractors, making sure that they have an ample opportunity to file the lien during that period of time when there is a fund and the only way a fund is going to be depleted is if the general contractors don't pay the subs, that the city pays the general and they don't pay the subs, and that's the problem.

They acknowledge in their memo that -- that this defensive posture, namely automatically filing liens is better than not filing a notice of lien at all. That's fine, but it's -- it's a process that would be

unnecessary if they have time to get paid properly. It says, in other words, the subcontractor or supplier needs to make a hard business decision for each and every project and should not be concerned about the feelings of the general contractor.

Believe me, I'm sure subs don't care about the general contractors' feelings. They just want to get paid and -- and I think that these objections are misplaced, and I think it's an adequate balance and gives the subcontractor an adequate time to make that reasonable business decision that general contractors seem to be concerned about.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill

is passed.

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Please call up Calendar Number 710.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 710.

THE SECRETARY: Calendar Number 710, by Senator Rath, Senate Print 3904A, an act to amend the State Administrative Procedure Act, in relation to model plans or documents.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Rath, an explanation of Calendar Number 710 has been asked for by the acting Minority Leader, Senator Paterson.

SENATOR RATH: Yes, Senator Paterson. This bill is, as you look at the history of it, something that has been here several times.

It has changed substantially by way of language to go along with the discussions

that we've had with Assemblyman Seabrook. There is a memorandum in support, I'd like to read just a little bit from it. But let me just basically tell you.

The bill, upon request, asks on the request of a regulated party, asks that a guidance document be prepared and submitted such as a model document, because so often we have found that not only municipalities but the regulated public submits what they think the state is asking for, but indeed it isn't and it goes back and forth any number of times until the correct kind of document is presented and so what people have asked for is a model document and the support of this bill by the New York State Conference of Mayors says quote, "This bill represents an extremely practical approach to assist municipalities in complying with what -- with what would otherwise be a regulatory mandate, and so their final comment is that for the above reasons and for a number of them, their members strongly support the bill and urge that it would be endorsed by the Legislature.

If you have other questions regarding some of the specifics of the bill, I'd be more than glad to answer them.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Rath would yield for a brief question.

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

SENATOR RATH: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator Rath, there is a concern that this legislation would put an unnecessary burden on the agencies, rendering the agencies really incapable of any kind of supervision. I just wanted to know what your feelings on that were.

SENATOR RATH: Yeah. We see this, Senator, as actually a cost savings because the agencies as they send out model documents will not have to go through a

continuous dialogue by mail or by FAX machine or however the correspondence might occur in order to get what they really need from the regulated public, and so a good deal of personal time and energy will be saved not only by the agencies but by the regulated public.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Just one question for Senator Rath if she'd yield.

ACTING PRESIDENT KUHL: Senator Rath, would you yield to Senator Dollinger?

SENATOR RATH: Surely.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: In reviewing the legislative history of this bill, it was vetoed apparently by a former governor in 1993.

SENATOR RATH: Yes.

SENATOR DOLLINGER: What was the basis for that veto?

SENATOR RATH: Well, there was some discussion actually on the floor last year. I recall Senator Gold questioning that and there was what some people felt was confusing language. That has been changed and adjusted along with Assemblyman Seabrook, who is the Assembly sponsor, and it appears that there is no problem with it any more.

SENATOR DOLLINGER: O.K. So that the objections of Governor Cuomo have been taken care of with respect to the language of that?

SENATOR RATH: Yeah.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

791, by Senator Kuhl, Senate Print 4116A, an act to amend the Real Property Tax Law, in relation to providing an exemption from real property taxation.

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk.

SENATOR DOLLINGER: Which bill is this?

ACTING PRESIDENT KUHL: This is 791, Senator Dollinger.

SENATOR DOLLINGER: This is just one question of the sponsor.

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

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I'd like to remind the members that there is a Health Committee meeting at 11:00 a.m., Room 123, the Capitol.

ACTING PRESIDENT KUHL: There's a Health Committee meeting at 11:00 a.m. in Room 123 of the Capitol.

The Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, the house will stand at ease.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT KUHL: Before the house stands at ease, the Chair recognizes Senator Waldon.

SENATOR WALDON: I was out of the chamber. In regard to Calendar 605, I respectfully request unanimous consent to be recorded in the negative.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Waldon will be recorded in the negative on Calendar Number 605.

SENATOR WALDON: Thank you.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: Yes, Mr. President. On behalf of Senator Cook, I would like, on page number 5, to offer the following amendments to Calendar Number 108, Senate Bill 1538A, and ask

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

ACTING PRESIDENT KUHL: Amendments to Calendar Number 108 are received and accepted. The bill will retain its place on the Third Reading Calendar.

SENATOR RATH: Mr. President.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: On behalf of Senator Lack, I would like to call up his bill, Print Number 3632, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 397, by Senator Lack, Senate Print 3632, an act to amend the Public Authorities Law, in relation to authorizing the Dormitory Authority to construct and finance all necessary and related facilities.

ACTING PRESIDENT KUHL: Senator Rath.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: Senator Rath.

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

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

On page 12, I offer the following amendments to Calendar Number 420, Senate Print Number 2601, and ask that said bill retain its place on Third Reading Calendar. Thank you.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 420 received and

accepted; the bill will retain its place on the Third Reading Calendar.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, in fairness to all the housekeeping, the house shall stand at ease pending the report of the Finance Committee.

ACTING PRESIDENT KUHL: The house will stand at ease pending a report of the Senate Finance Committee.

(Whereupon at 10:53 a.m., the Senate stood at ease until 11:07 a.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT KUHL: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I understand there is a report from the Finance Committee at the desk.

ACTING PRESIDENT KUHL: There is. I'll ask the Secretary to read.

THE SECRETARY: Senator Stafford,

from the Committee on Finance, reports the following nomination:

Frank A. Nocerino, of North Massapequa, member of the Republic Airport Commission.

ACTING PRESIDENT KUHL: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I'd like to move the nomination.

ACTING PRESIDENT KUHL: Motion is to confirm the nominee, Frank Nocerino, as a member of the Republic Airport Commission. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed. Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Charlotte C. Geyer, of West Babylon, member of the Republic Airport

Commission.

SENATOR LEVY: Yes, Mr. President. I move the nomination.

ACTING PRESIDENT KUHL: Motion is to confirm the nomination of Charlotte Geyer as a member of the Republic Airport Commission. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, without any malice at all toward the nominee who I'm voting for and have read the nominee's resume, which is extensive and the nominee seems well qualified and I would venture to suggest that no one on this side feels that the nominee is not qualified, but again, I would just like to raise the point that we have very few members in the chamber. We have committee meetings that

are in process right now, and I just feel that it does a disservice to the nominee for us to be taking up this and other nominations at this time at a point that we are considering other pieces of legislation. In a sense, we're doing two things at the same time in a seasonable way to try to speed the process as much as we can, but I think that there does come a point that we supersede our own process and actually in many ways lose the real impact of confirming the nominees, and I just wanted to put it on the record.

ACTING PRESIDENT KUHL: Thank you, Senator Paterson.

Secretary will continue to read the report.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Thomas J. Murphy, of Latham, Director of the Facilities Development Corporation and member of the New York State Medical Care Facilities Corporation.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Hoblock.

SENATOR HOBLOCK: Mr. President, I move the nomination of Thomas J. Murphy for both positions, Director of the Facilities Development Corporation and as a member of the New York State Medical Care Facilities Finance Agency.

ACTING PRESIDENT KUHL: Motion is to confirm the nominee, Thomas J. Murphy, as a Director of the Facilities Development Corporation. All those in favor of the motion signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Anthony C. Imbarrato, Esq., of Garden City, member of the New York State Employment Relations Board.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Mr. President, am I -- I guess I would say I'm starting to sound like a broken record but they don't have records any more. I guess I'm starting to sound like an infected CD, but the point that I'd like to make is that the Finance Committee, from which these nominations have arisen, is still meeting, isn't it?

ACTING PRESIDENT KUHL: I don't believe so, Senator Paterson. I'm informed by the members at the desk that the Finance Committee has concluded its work. The only committee meeting right now would be the Health Committee, and I see that Senator Hannon is here, so that committee must be concluded too.

SENATOR HANNON: No, it hasn't started.

ACTING PRESIDENT KUHL: Hasn't started yet, so there's no reason why the full body should not be in the chamber at the time, Senator Paterson.

SENATOR PATERSON: Well, Mr.

President, where are the Finance Committee members?

ACTING PRESIDENT KUHL: Senator Skelos?

SENATOR SKELOS: I'm a member of the Finance Committee, and I'm in the chambers ready to vote on the confirmation.

SENATOR PATERSON: But isn't it true that the Finance Committee is still going on?

ACTING PRESIDENT KUHL: We have the entire report at the desk, so I'm told by the clerk, Senator Paterson, so if the entire report is here, I assume that the business has been concluded.

SENATOR PATERSON: Well, I'm not trying to be antagonistic, Mr. President. I am just saying that we have members that would like to discuss this particular nomination and they're not in the chamber, and I would assume that they are out of the chamber because they were in the chamber previously and I would assume that they're out of the chamber -- upon

information and belief and what they just told me, Mr. President, Senator Gold who right now is acting as the ranking on Finance, asked Senator Stafford, who is the chair of the Finance Committee, to please hold the nominations until the Finance Committee had adjourned and neither Senator Gold or Stafford are here, so I -- I just assume that it's not over, and I'm making the point because it would appear that we're just taking up nominations where members would like to speak at a point that we really aren't affording those members the opportunity to express their viewpoint.

ACTING PRESIDENT KUHL: Senator Paterson, you're scoring very heavily today. Senator Bruno acknowledged your first point and was -- opened up a roll call. We're going to acknowledge the fact that Senate Finance Committee is still meeting, so I stand to be corrected, but what we would like to do with your permission would be to let Senator Hannon speak on this particular confirmation, and then I assume -- I think I'm getting direction from

the Majority Leader -- that we'll hold this waiting for those members of the Finance Committee to come back to the chamber so that they can speak on the nomination also.

Now, do you have any objection to Senator Hannon speaking on the nomination so he can then go and conduct his Health Committee meeting?

SENATOR PATERSON: Mr. President, when Senator Hannon speaks, we all listen, and that's why we are able to determine how we feel about the actual nominee. What will happen is we will have members who are speaking on the nomination in the dark because they haven't had the benefit of Senator Hannon's speaking.

Senator Hannon has never made any records, has no CDs on the market, so we have no way of knowing what Senator Hannon really is about to tell us, so I would suggest that with Senator Hannon's indulgence, that we wait until all the members are here before we take up one nomination so that we don't have members coming in and going out during the actual nomination

or, Mr. President, I've got a better idea.

ACTING PRESIDENT KUHL: Would you like to hear Senator Hannon twice rather than have him return and talk again?

SENATOR PATERSON: Why don't we stand at ease, Mr. President, let Senator Hannon go ahead and conduct the committee, the Health Committee, and then when he's finished he can come back and he can address us and we will all be in attendance.

ACTING PRESIDENT KUHL: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, by consultation with Senator Hannon, because it's very difficult for him to be in two places at once, because he wishes to speak on this nomination, and because the Health Committee has been scheduled to meet off the floor, he's asked the desk, the Chair, to ask this body to stand at ease until he can conclude the Health Committee agenda, so we would respectfully request we hold this nomination.

ACTING PRESIDENT KUHL: We will

hold the nomination aside temporarily. Senator Nozzolio, we do have a Calendar Number 791 that there was an objection that has now been removed that we could take up if you want to do that. Also I see Senator Levy is standing. He would like to say something.

Senator Levy, why do you rise?

SENATOR LEVY: Yes, Mr. President I was out of the chamber when the nomination of Frank Nocerino came before the body and was approved. I'd like to the record to reflect that the nomination was confirmed on my motion.

ACTING PRESIDENT KUHL: The record will so reflect.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I'd like to call up Calendar Number 791.

ACTING PRESIDENT KUHL: Ask the Secretary to read the title of Calendar Number 791.

ACTING PRESIDENT KUHL: Calendar Number 791, by Senator Kuhl, Senate Print 4116A, an act to amend the Real Property Tax Law, in

relation to providing an exemption from real property taxation.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll. There's a local fiscal impact note at the desk. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I'd like to announce an immediate meeting of the Committee on Cities in Room 332.

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

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, the Senate should stand at ease.

ACTING PRESIDENT KUHL: The Senate will stand at ease.

(Whereupon at 11:18 a.m., the Senate stood at ease.)

...At 11:21 a.m....

ACTING PRESIDENT KUHL: The Senate will come to order.

The Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. I'd like to call up Calendar Number 164.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar 164.

THE SECRETARY: Calendar 164, by Senator Marchi, Senate Print 2198A, Not-for Profit Corporation Law, in relation to not-for profit corporations formed to construct.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Marchi, an explanation has been asked for by

Senator Paterson, also Senator Stachowski.

SENATOR MARCHI: Mr. President, under local laws, certain municipalities are required to subject their land to certain land use requirements before starting to construct certain city facilities.

Under a parallel arrangement non profits are, by bringing it -- by moving through non-profits, they evade the application of this requirement. The law that is proposed here that if there is ten percent or more of the proposed cost of the improvement, that it then must comply with the law.

I realize that there are a number of -- a number of entities that object, the city of New York, the Federation of Protestant Welfare Agencies, the New York State Catholic Conference, but nevertheless, I don't see and I understand that their motives are of the highest but, on the other hand, I don't see dispensing government or even ecclesiastical activities with the highest motivation to be dispensed from the operation of the law.

The law -- the law is for all of us -

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR MARCHI: -- and believe it should -

ACTING PRESIDENT KUHL: Senator Marchi, would you suffer an interruption? It's awfully noisy in the chamber, lot of discussions going on. Could we quiet it down, please. You have discussions you have to have, take them out of the chamber.

SENATOR MARCHI: So the circumvention of the law -

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR MARCHI: -- by making - going through or utilizing a non-profit agency, even though the bulk of the money is and the actual functions being carried out under public auspices is a circumvention which I don't think operates fairly, and I believe that if we have public policy governing planning, operating and

purchasing and construction of what is, in essence, city facilities that they shouldn't be able to circumvent the plain and direct intent of the law.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT KUHL: Senator Stachowski.

SENATOR STACHOWSKI: Will Senator Marchi yield for a question or two?

ACTING PRESIDENT KUHL: Senator, do you yield to Senator Stachowski?

SENATOR MARCHI: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR STACHOWSKI: Senator I am -- I understand that you're concerned about bringing these not-for-profits into the same plans that the city goes through now if they wanted to build a facility. However, since it's not that all these not-for-profits have a tremendous amount of problem with this and that they consider this a terrible burden and since

these not-for-profits provide a tremendous service to their localities by taking care of all these different groups that they deal with, the poor people, the disabled, et cetera, what if, because of this burden these not-for-profits then decide not to build these facilities in these municipalities and just say, We're not going to build these facilities? We may have to withdraw our services and let the cities, states, towns, villages of the state of New York who desire to put this extra burden on us, provide those services themselves.

SENATOR MARCHI: If we -- if we want to adopt our public policy to -- to promote the very concerns that you're deciding, then we ought to have legislation which is available to everyone. The non-profits are exempt, and they remain exempt under this act, but if ten percent or more is -- comes from them, why not repeal the whole thing, that there is no requirement if the city is exempt from these regulations?

I don't think anybody here wants to urge that, but it's this use of the

non-profit agency to escape the -- the dispositions that have been made on planning, operating and purchasing. It just -- it just doesn't add up.

SENATOR STACHOWSKI: Would the Senator yield for another question?

SENATOR MARCHI: Yes.

ACTING PRESIDENT KUHL: Senator continues to yields.

SENATOR STACHOWSKI: Is this bill the result of some sort of problem we're having with the not-for-profits doing things out of code, doing things that would be considered are not on the up and up, doing things that possibly would border on illegal or some other gross misconduct situation that we suddenly have to bring them under this regulation that seems to be causing them so much trouble that they're all against it?

SENATOR MARCHI: Well, there are a number of -- for instance, local sites that have been picked out for various purposes, public purposes -- housing -- and at least an

opportunity under the provisions of this act that there would be a requirement to respond to a hearing and to -- but to do this surreptitiously and circumvent the purposes of the law now -- why do we put those strictures on -- on state and on the cities now? I mean then all of a sudden a device is developed that, if you just go through a non -- a fictitious or quasi-fictitious strategem of a non-profit agency, they circumvent the law.

They have -- it makes hash of the law that we have today that where a city or a public entity has to respond. They have to justify it by -- through a hearing process and the rest of it. I understand -- I understand your position. I mean I'm not unsympathetic to it, but exemption certainly makes for a lot of bad blood. Many communities feel aggrieved. They've had no opportunity to respond.

I think it's just a bad situation at this point. There may be other approaches which might accommodate both of our concerns, but this certainly, the present arrangement does

not, because a community has no way to respond and something takes place which would otherwise go through a hearing process, is plainly unfair, I think, to the resident community and that resident community is so essential to the success of any planned introduction of a facility in their midst, this is not the way to serve that purpose.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT KUHL: Senator Stachowski.

SENATOR STACHOWSKI: If Senator Marchi will continue to yield to me for one more question.

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

SENATOR MARCHI: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR STACHOWSKI: Senator Marchi, maybe if you could give me an example of some sort of facilities and what it was the

facility was to do that was put in, maybe a community that you represent that circumvented this process, and you can give me an example of what it was, how they did it, something of that nature, maybe I'd get a better understanding of why you'd find it necessary to do this legislation because somehow I'm missing it.

SENATOR MARCHI: You may have a halfway house for drug rehabilitation, you may have it for substance abuse, so to circumvent any possible objection to it, a public entity will use the subterfuge of a -- of a -- some clips here. Plan to Move Recovering Substance Abusers into a New Springfield House Has Some Residents There in Surrounding Communities in an Uproar.

The Project Hospitality proposal to expand its traditional housing program into an area by purchasing a two-family home got a cool reception from Community Board 2, and so forth. I have some of that are near my area and I've encouraged it, but plainly, I think that should we -- should we open the door to all

state, all municipalities and to avoid this process by just going through the non-profit? I mean, that's what we're doing in effect.

It's a device, a device because the law operating on its own would require a public hearing if it's introduced by a public entity. By merely getting a -- a not -- a non-profit instrumentality, they get around it completely. All that -- the only bar is the ten percent here that does provide for -- for a ten percent of those circumstances where they're under ten percent, but if they're over ten percent they're -- this would be barred and then you would have to live by the law that we have.

Maybe we ought to repeal all the restrictions that we have on city planning and municipalities. Then we would face the problem realistically and then we can debate it, but to do it by trick and device, I don't think is good government. You automatically alienate people in that fashion.

Candor -- candor would be the answer. In other words, cities are prohibited

from doing it, they must go through a process, a ULURP process that is the law today, but with this little subterfuge, with minimal participation by the non-profit, all of a sudden they're out from under. I don't -- I don't see any justification for that.

You want to abolish the whole thing and let the city do what they want, assuming that the democratic, small "d", process will keep it within bounds, that's something else, but this is just a device to get around existing law. It is a device to get around the plain and simple meaning of the existing statutes and laws.

SENATOR STACHOWSKI: Well, Mr. President.

ACTING PRESIDENT KUHL: Senator Stachowski, can I interrupt you just a minute?

The Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, on behalf of Senator Leibell, I'd like to call an immediate meeting of the Housing Committee in

Room 332.

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

Senator Leichter, why do you rise?

SENATOR LEICHTER: Mr. President, on a point of information. I don't know the extent to which this has been raised. I know a lot of people have been talking about it in the cloakroom, but it's extremely difficult to conduct the business on the floor with committees being called all the time.

I -- I don't happen to be on the Housing Committee, but yesterday I was running around to three different committees while the Senate proceeded. There were bills I wanted to be recorded on; I didn't have the opportunity to do it, and I would suggest that if important committees have to be held, that we recess while they have their meeting.

ACTING PRESIDENT KUHL: Senator Leichter, your point that you've raised was raised just about 45 minutes ago by Senator Paterson. The Chair would, just as a point of information, the last meeting that we called is going to be the last committee meeting for the day at this point, so if you can just bear with us, we'll try to move through this.

Senator Gold, why do you rise?

SENATOR GOLD: Well, because I think that the information you gave us is very important and very significant and adds to the significance of what Senator Leichter said. Since we will not have any other meetings and we will not have this problem any more, then I would suggest that we do now, in fact, recess. We'll only be doing it once, we won't have to do it any more, and let the people go to their Housing Committee and then come back and deal with the bills. I can not feel that the members of the Majority believe that the legislation that they are putting out, since they control the calendars, is that insignificant that it

doesn't deserve full attention of all of the members, so I would suggest that at this point we do a simple small standing at ease, let our members go to the meeting and then we'll be able to return uninterrupted for the rest of the day.

ACTING PRESIDENT KUHL: Senator Nozzolio.

SENATOR NOZZOLIO: Please, Mr. President, call on Senator Markowitz in terms of voting.

SENATOR MARKOWITZ: I agree with Senator Gold one hundred percent. However, since I'm the ranking member of the Housing Committee, I have no choice but to vote at this time in the negative on Number 164.

ACTING PRESIDENT KUHL: Secretary will read the last section of Calendar 164.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Yes, Senator Gold. Why do you rise? Senator Markowitz, don't leave yet.

SENATOR GOLD: Well, I would just

say, Mr. President, that there is a technique which basically says that, if you don't like the question, you don't answer it, just ignore it and go on, so let's do it a different way. I would, with most respect to the Majority Leader, move that we now stand at ease for a very short but indefinite time until the Housing Committee completes its work.

ACTING PRESIDENT KUHL: Do you want to let Senator Markowitz vote first before you make your motion?

SENATOR MARKOWITZ: I'll yield to Senator Gold on the vote.

ACTING PRESIDENT KUHL: All right. The motion is to stand at ease.

SENATOR SKELOS: Point of - point of order. I don't know where in our rules book there's such a thing as a motion to stand at ease, so I would respectfully submit to the President that Senator Gold's motion is -- is totally out of order.

SENATOR GOLD: Mr. President, Mr. President.

SENATOR SKELOS: If Senator Gold would request that perhaps we get a total picture of what's happening right now that the Senate stands at ease that's a lot different than making a motion that we stand at ease.

SENATOR GOLD: Mr. President, speaking to the Chair, I appreciate the remarks of Senator Skelos, and that's what I was trying to do before I made the motion. Unfortunately, the -- the Deputy Majority Leader did not respond until this point.

I don't want to make the motion. I would rather have it be the initiative of the Majority to understand a problem which has been articulated by our Deputy Minority Leader and by Senator Leichter, and have us stand at ease for a very short time. At your insistence, we'll give you the credit. The record will indicate you get the credit, but let's do that, and I don't have to make motions. We don't have to have points of order. We don't have to have people debating for nothing, and we do it in the orderly business way that you would like to do

it.

SENATOR SKELOS: Senator Gold, I'm not looking for credit, but we can stand at ease temporarily. Are we voting on Senator Marchi's bill?

SENATOR NOZZOLIO: Yes. We have not voted.

SENATOR SKELOS: Senator Markowitz, do you want to vote on this bill?

SENATOR MARKOWITZ: Not if I don't have to.

SENATOR SKELOS: Not if you don't have to. Perhaps -- perhaps what we can do is we can continue the debate on Senator Marchi's bill. Senator Markowitz could vote on it since it's -- it's the practice of the house on relatively non-controversial bills to continue the session rather than breaking every time and certainly if there is a major committee meeting and many of you wish to come back into the chamber such as the request was adhered to by Senator Paterson, that you want to speak on the nomination of Mr. Imbarrato, we held up the

nomination coming before the house.

I think we can proceed. Senator Markowitz can vote. We can accommodate him, proceed with the debate of this relatively non-controversial bill, have a vote, and then we can at that point see whether we should continue to stand at ease or we can go on to some other business.

SENATOR GOLD: Yeah, Mr. President. I don't have any problem with what was just suggested if that's agreeable to Senator Markowitz, other than to clear the record on one item.

Senator Skelos, you said that at the request of Senator Paterson, the nomination was held so that I could speak. I think the record should indicate that the nominee came before the committee and before the committee meeting ended, there was an attempt to bring the nomination to the floor while the members of the committee who had an interest in the nomination were still being held out of the chamber during a committee meeting, so let's not give ourselves

a pat on the back for that procedure.

I appreciate the fact that Senator Stafford was totally cooperative, and made sure that the nomination was held. So let's forget that, but the answer is, if Senator Markowitz wants to vote now, we want to finish this one bill, that's fine with me, but I think that we ought to stand at ease after that.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR MARKOWITZ: In the negative.

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

Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: Just to continue. I have the floor.

ACTING PRESIDENT KUHL: All right. The roll call is withdrawn. Debate on Calendar 164 will continue.

Chair recognizes Senator Stachowski.

SENATOR STACHOWSKI: Thank you, Mr. President.

Just on the bill, I can understand Senator Marchi's problem and that may be very well the case in his area where people are hiding through not-for-profits to put in maybe unwelcome facilities, but it's strange because in our area, at least in my district, it seems like the not-for-profits are more cooperative with the people from the community in educating them, talking to them, maybe relocating the facility -- at least in my district that's been the case -- much more cooperative than any department that is under the state of New York. OMR/DD, OMH in particular don't do any type of educational

process. They hold a hearing where the people that are sent there by the state of New York listen to people talk about the many reasons or problems with putting that facility in that community, and then come -- I normally have the worst of attitudes toward the people testifying, the worst of attitudes towards dealing with the local officials and the worst of attitudes as far as the best interests of the communities are.

They have -- they go under the premise which, rightfully so, the federal law now says that if you want to put a facility anywhere you want to put it, you can put it there because if you try to stop it you're tech nically discriminating against people of a handicapped nature whether -- whatever the physical challenge or mental challenge that those people have and that makes them qualified to live in that facility.

But it seems that, in our area at least or in mine in particular, we get a lot more cooperation from many of the not-for

profits, so it's -- that's why I'm having so much trouble understanding the situation and that's why I asked you for an example. So I mean I wish we could say that the state of New York would have to do a better -- better job of following the laws that they fall under and maybe have a better attitude of dealing with the people, but that's not the bill. The bill is dealing with non-profits. See that these non-profits are against it, and I'm not sure I'm going to be able to support this bill.

ACTING PRESIDENT KUHL: Chair recognizes Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

I certainly would like to ensure and assure Senator Stachowski that his experience with not-for-profits in his district is not an isolated experience. In fact, I think that throughout the state not-for-profits have not only made their name in terms of human service delivery but also in terms of keeping communities intact. Moreover, the economic

impact of not-for-profits is certainly not being taken into consideration. It would be a perceptive glimpse into the obvious to note that we have a fragile economy. It would be worse to not acknowledge the economic contributions of the burgeoning not-for-profit sector which employs millions of people throughout the state. Certainly not enough has been said about the crippling effect that this bill would have on that type of economic positive impact that we're experiencing.

And so for all those reasons, but especially because the impact to the community, we talk about notice and we talk about the rare exception that -- of some horror story of some -- of some substance abuse center or some other horrific thing being placed in our community. The fact of the matter is that the Mayor of the city of New York, the Catholic Conference, the Federation of Protestant Welfare Agencies, Neighborhood Preservation Coalitions throughout the state, have -- who are the people in the community with the impact on services, are

telling us that it's a really bad idea and so, as we're trying to really deregulate government and down-size government, this is the worst thing we can do.

It is, I think, fashionable to take the not-for-profit sector for granted. We would be complicating a horrific error here if we were to pass this bill and leave the market, the laissez faire attitude to prevail. No, I think that there's enough regulation in place. The Mayor of the city of New York, through the charter section 203, already takes impact, local impact, into consideration. This will unduly elongate that process and provide no positive yield.

Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just briefly on the -- Senator Waldon, you want to -

SENATOR WALDON: I'm sorry. I had asked earlier.

SENATOR DOLLINGER: I'll yield to Senator Waldon, Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thanks, Mr. President. I appreciate that courtesy, Senator Dollinger. The kindness of the people in the Rochester area never ceases to amaze me.

Would the kind Senator and learned Senator from Staten Island, Richmond County -

ACTING PRESIDENT KUHL: Can we have a little order in the chamber? Senator Waldon is right next to me, and I'm having a very difficult time hearing him.

Senator Markowitz, could you take your conversation out of the chamber, please.

Senator Waldon.

SENATOR WALDON: Would Senator Marchi, the learned gentleman from Richmond County, yield to a question or two?

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

SENATOR MARCHI: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Thank you, Mr. President.

Senator, when these LDCs are created, are they not subject to the decisions of the local community planning boards? They have to go through the planning board?

SENATOR MARCHI: We are talking not-for-profit. They are subject to your Uniform Land Use Review Process. They are subject to it. There's no problem there. They observe the law and they carry it through so that it, whether it's -- whether it's an LDC or the city of New York or whatever, whatever the municipality, they're all subject to the land review process.

I'm saying that if they are subject to it, the non-profits are not, non-profits are not subject to any of these regulations.

I'm just saying that the city or

the public agency, to circumvent, has 90 percent of the money and everything else going into the construction, that I'm suggesting that at that point they -- they are, in substance, a public agency evading and avoiding the operation of existing law.

Now, we want to propose something else, you know. It's possible that there are other answers to this, other legislation that might be passed, but today it's restriction and the public sees a process take place which would otherwise be subject to a hearing process. All of a sudden, they're deprived of that and I think that the host community is entitled to have a say in it. They do in all other circumstances.

SENATOR WALDON: Mr. President, if I may ask the Senator to yield. If the Senator would yield again.

ACTING PRESIDENT KUHL: Senator Marchi, do you want to yield?

SENATOR MARCHI: Yes, Senator.

ACTING PRESIDENT KUHL: Senator

continues to yield.

SENATOR WALDON: I thank you for your response, Senator Marchi.

What I'm really looking at, though, what I'm trying to discover is who will pay for this process meaning the burden on the local development corporations to conform if this becomes law. Who will pay? Where will the resources come from to pay for this process, this conformance, or will this legislation be amended at some future date and include in it money, because this is mandating action, money so that these local development corporations which are so vital in Southeast Queens don't go under from the burden of paying for mandated, required services to conform, who will pay for it?

SENATOR MARCHI: Well, any improvement that the City introduces or -

SENATOR WALDON: I'm sorry.

SENATOR MARCHI: I say any improvement that the City introduces, or an LDC has to -- the expense has to comply with the

ULURP, the Uniform Land Use Review Process, has to be complied with, that's part of their cost of initiating an improvement.

I'm talking about a situation where they say, Well, we can get around this. We'll get -- we'll get a non-profit organization which will have a minuscule piece of that and with that device they can present the application, and they're exempt from any hearing process.

My suggestion, Senator, is that we -- we could amend, I suppose amend the law so that we're not stooping to devices to deprive people of a hearing which is implicit in the law today. That's not playing fair with the public. If we have -- if we, together, I mean this chamber and the other chamber and the Governor agree that some latitude ought to be given to the City in these processes, well, we can debate that, but I don't see where this avoidance and evasion -- avoidance sometimes is permitted, but evasion, I think it's an evasion of an opportun ity to inform that community. I can't see any

justification for it.

SENATOR WALDON: If I may continue, Mr. President. I apologize for elongating this process in terms of trying to obtain information from Senator Marchi. I just don't know any other way to do it than to ask questions.

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

SENATOR MARCHI: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator Marchi, the reason I'm pursuing this is that I've watched the local development corporations evolve in the communities I serve and if they had to, from the small amounts of start-up money that I've been able to give a number of them with that thing called -- that no-no of today, member items, they wouldn't be able to start up let alone to evolve and exist, and what you're saying is that with this legislation, there would be a requirement -- there would be a

requirement in the evolution or at some point in time regarding structures and -- and buildings to conform to whatever is required by local ordinance, laws, et cetera, et cetera, in terms of this process.

Somebody has to pay for that, and we have organizational structures in Southeast Queens which have little or no money, people who break their backs volunteering, hoping one day to receive adequate money from either the private sector or the governmental sector so that they can truly service, whether it be Meals on Wheels or whatever, to the people of South east Queens.

I foresee this as an unnecessary burden. The -- are these people violating the law so grossly or are they, in fact, violating the law currently? Is that why you propose this? I'm still worried about where will the money come from to pay for the required legal services and/or accounting services and/or any other form of service necessitated to conform to what you want us to pass today?

SENATOR MARCHI: Well, the cost of complying with building requirements, zoning requirements, this is a -- there is a condition that everybody operates under except not-for-profits. You might want to sponsor a bill that -- to exempt LDCs, for instance, from some -- from that very same operation.

The present law today doesn't exempt the City at all. They are commanded to do this, but by this simple device, with only a minuscule participation by the part -- on the part of a -- a not-for-profit, they completely circumvent the law so, you know, if it's a bad law, let's address it on its own terms and do - and do the forthright thing.

ACTING PRESIDENT KUHL: Senator Waldon, you have the floor.

SENATOR WALDON: I realize I'm going around Robin Hood's barn, but we'll come to a closure in just a minute.

Senator, these are fictions created by this Legislature some time ago, meaning the LDCs, to accomplish the purpose that

they've accomplished to date. By that, I mean it was put into law to do what it does so that it wouldn't have to be burdened with the cost that you're talking about, and what you're saying now is you're no longer satisfied with the way in which they operate and you want to change the mode or the modality or the manner in which these not-for-profits operate, but you're not giving them any money to deal with the burden you're putting on them.

I thought you said a few moments ago, Well, we could amend or we could pass some thing that would either give them an exception or perhaps give them some money. Why would we do that in the future when you can just pull this back, amend it, put some dollars in it in a percentage fashion that will take care of this need and then we can look at it again.

SENATOR MARCHI: I yield -- I yield to the Senator, so I might be able to in corporate my feelings here.

SENATOR ABATE: Yes, I'd like to, on the bill, I'd like to address why I think

this is an important bill.

ACTING PRESIDENT KUHL: Senator Marchi -

SENATOR WALDON: You know, out of order.

ACTING PRESIDENT KUHL: Senator Abate, I think Senator Waldon has the floor and Senator Dollinger is next, so -

SENATOR WALDON: I would defer to you.

ACTING PRESIDENT KUHL: Things are confusing enough as they are today.

SENATOR WALDON: I would not like to violate the rules of the house and the -

SENATOR ABATE: All right.

ACTING PRESIDENT KUHL: Senator Waldon, you have the floor.

SENATOR WALDON: Thank you, sir. I asked a question, I believe.

SENATOR MARCHI: Senator, out of my respect for you, and I know that you're totally sincere and genuinely sincere about this, I'll lay this aside for one day, and

examine it from the -- from the point of view of the -- of the LDC. I -- my feeling is that their -- their participation is so minuscule it's not -- because the ones I've seen are - involve state and local agencies, not LDCs that perhaps they might be exempted, you know.

SENATOR WALDON: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Marchi said he's going to lay the bill aside, I believe.

SENATOR MARCHI: I will lay it aside.

ACTING PRESIDENT KUHL: So that will end debate on this matter.

SENATOR MARCHI: Yes, I will lay the bill aside.

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

Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, would you please call up and return to the

report of the Finance Committee.

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

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill, 5236, Budget Bill, an act to amend a chapter of the laws of 1995, entitled an act to provide for payments to municipalities and to providers of medical services.

ACTING PRESIDENT KUHL: We'll lay that aside.

There's another report of Finance dealing with a confirmation. Ask the Secretary to read that.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Anthony C. Imbarrato, Esq., of Garden City, member of the New York State Employment Relations Board.

ACTING PRESIDENT KUHL: Chair recognizes Senator Hannon on the confirmation.

SENATOR HANNON: Yes, Mr. President. I'd like to move this appointment for confirmation by this house and speak briefly in regard to the appointee.

Anthony C. Imbarrato not only is a constituent but has been a respected member of the community, in the central part of Nassau County for a number of years, a father, a practicing attorney, a leader in both civic and political affairs. He's been well recognized as an outstanding individual who, I think that the best thing that can be said as an attorney is he's been a successful attorney, successful attorney in dealing with many individual needs, corporate needs throughout the length and breadth the of the practice of law and, when you do that, you get a chance to be recognized for inherent good judgment, sagacity of -- and wisdom in regard to how you practice fairness in dealing and you don't get to be successful if people don't come back, and obviously people have come back.

In addition to being a successful

attorney, Mr. Imbarrato has been a legislative counsel to Senator Speno many years ago, but at a time when the entire field of transportation in this state was far more nascent than it is now. He was also counsel to the Senate's Codes Committee, and along with a number of other important functions.

When it comes to fulfilling the membership in the Public Employees' Relations Board, this important function in dealing with the labor relations between public employees and public employers requires somebody who has experience, requires somebody who has good judgment, requires somebody who is respected, who can sit for sometimes many long hours with complicated legal issues, with complicated human issues, and to draw those together.

It has been an innovation, the Public Employees' Relations Board under Governor Rockefeller. It has served quite well, has served quite well because of individuals serving on it such as Mr. Imbarrato. I can't recommend anyone more highly to this body for confirmation

than him.

Thank you, Mr. President.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Levy.

SENATOR LEVY: Mr. President, thank you very much, Mr. President. It's really a genuine honor and privilege to have the opportunity to rise and to join with Senator Hannon, and I know many of our other colleagues in moving the confirmation of the nomination of Tony Imbarrato.

I've known Tony and his lovely wife Vicki, who is with us today, for more than 30 years and, when it comes to Tony, as with dealing with other nominees because many times, many times for each of us when the Governor proposes a nominee we don't know the nominee and we have a resume and we get the opportunity to look at a resume or we may have a snapshot opportunity to talk to the nominee at a committee meeting. But unlike that, as I've said I've known Tony for 30 years. I've had the

opportunity to observe him, and I know of my own knowledge that he -- he has outstanding ability and he's an extraordinary attorney with an impeccable reputation, an impeccable integrity.

I've seen him in action as a community leader. He was a distinguished elected official for many years, as a council person in the town of Hempstead and, as Mike Tully said when we were in Finance just a few minutes ago, as young prosecutors, we both had the opportunity to see him in action on the other side of the table and the characteristics that we always saw were a person who was able, experienced, a tough negotiator and he was always fair and balanced.

He brings unique experience and unique ability to this position, and the Governor is to be commended for this out standing nomination.

ACTING PRESIDENT KUHL: The chair recognizes Senator Gold.

SENATOR GOLD: Thank you very much.

Mr. President, I make no pretense of knowing Mr. Imbarrato as closely as the Republican members from Nassau County, and I have no reason to doubt that he is an intelli gent attorney.

I think that the confirmation process places an obligation upon us and that obligation is not very, very broad. It's really pretty narrow. The obligation is not whether we would have selected the individual but whether or not the Governor is presenting to us someone who is qualified. It may not be my person, your person. Is the person qualified? If the person is qualified, be it a Democrat, Republican or whatever, I think the obligation is to give the Governor his or her choice.

I'm only dealing, in my mind, with the issue of qualification, but the issue of qualification for this job is a serious one in my mind. The State Employment Relations Board is a serious board and, as was pointed out by Senator Leichter in the committee, the work of that board deals with laws which have a

specialty unto themselves.

There are people who apply to be judges in specified and specific courts, and we ask legitimate questions. For people who want to be in the Family Court, what is your experience in the Family Court? Have you ever been there? And when people want to be judges in criminal cases, we like to feel that somehow they have some knowledge of the subject.

At any rate, Mr. Imbarrato has been involved in governmental affairs for a period of time, and one thing is very clear from his resume. He is a very loyal Nassau County Republican, and I want to tell you that's something I respect. I respect loyalty; but I think when you're dealing with government, you draw a line sometimes and in Nassau County maybe they draw lines in different places.

So, for example, Senator Levy said -- and I believe Senator Levy -- that Mr. Imbarrato, serving as a councilman in Nassau County, did an excellent job and was an excellent councilman and I am prepared to

believe that. Of course, that being the case, one wonders why he stepped down voluntarily when asked by Mr. Margiotta, the county leader at the time, to step aside and Mr. Imbarrato said, Well, there was a nice up and coming young man named Mondello who they thought might want that job, so Mondello got the job and he stepped aside. That's loyalty. Of course, it's the kind of loyalty that raises some questions in my mind.

Of course, Mr. Imbarrato was not left out in the cold because loyalty should be rewarded, and he became the counsel to the Hempstead IDA, and I guess he held that job, I think, for about ten years if I remember, and we found out some interesting things about that job.

Now, the job gives a retainer and the retainer, I think, was originally 10,000. At one point I think it was 20,000, but it's only a retainer, as against time.

The SIC, which investigated the surrounding circumstances of a transaction

dealing with Roosevelt Raceway, criticized the situation that Mr. Imbarrato was involved with, with receiving an annual retainer as well as transaction fees by project developers. Mr. Imbarrato made an analogy at the committee meeting. He says, Anybody who goes into a bank gets charged by the bank for their lawyer's fees, and I'm sure that everybody here knows that when you get a mortgage, the bank attorney is one of the fees that you deal with and it can be a few hundred dollars, and there is no doubt in anybody's mind that, when you go to a closing at the bank, the bank attorneys -- God bless you.

SENATOR STACHOWSKI: Thank you.

SENATOR GOLD: -- have nothing to do with the mortgage process. They just deal with the closing. I think that it's a little bit different than a situation where you deal with IDAs and in, for example, the Roosevelt Raceway situation, I believe that the amount of money they got was $25,000 from that particular project. It sounds to me like you could be

having a $25,000 project fee here and a 10,000 there and a 5,000 there, and that might not be too bad a job and maybe, if I was a councilman I'd want to give that up if I was going to become the attorney for an IDA who not only got a retainer but on the other side of the coin there was this opening to get project fees as the IDA went along; but at any rate he is a loyal person certainly and he did do that.

I am concerned, though, on the issue of judgment with his handling the job with the IDA, and in asking him some questions at the committee meeting, I unfortunately felt that there was a selective memory that was applied. Now, in all fairness to Mr. Imbarrato, he said that it was a long time ago and if he reviewed some records, maybe he could give better answers, and I suggested that maybe we adjourn the hearing, give him the opportunity to review the records, and Senator Stafford, in his judgment and wisdom, decided no, we are now on the road and we go ahead.

Interestingly enough, however,

when I raised some other issues later in the meeting, his memory was very exact, and let me just suggest something to you. Over the period of time the Hempstead IDA, I'm sure, had a number of matters that it dealt with. I don't live in Nassau County or read the Nassau editions of their papers, but I would be willing to bet that, in the ten years, there wasn't one situation that had as much public attention and scrutiny as the Roosevelt Raceway transaction, and I find it hard as a lawyer that if somebody said to me, Can you remember all your cases, I'd say, of course, I can't remember everything of every case, but you mention one or two cases that I've been involved in and, believe me, I remember a lot of things about them.

In this particular situation, the people who were involved with Roosevelt Raceway filed varying financial forms. They varied in the numbers that were submitted and he didn't remember that, which is possible, and I'll take his word for it, but it had legal effect. If you valued the land at 20-some-odd million

dollars you weren't capable, you weren't qualified to be talking to the IDA whereas if the land was only worth twelve-five, you could talk to the IDA.

So on a piece of paper, they changed the value of the land. The land is out there, nothing happened. You changed the value on a piece of paper and now you become eligible for the loan.

Now, as Senator Hannon and others have pointed out to me and they are accurate, Mr. Imbarrato was not a member of the board and didn't make the final decisions but he was counsel, and I think it would be interesting to know whether, as counsel, he said to the board, Wait a minute, said to the IDA, Wait a minute, something smells here. We're getting different numbers, or whether, as a member, as counsel he said, Look, if these guys change the number on paper, they qualify and we can give it to 'em.

I don't know what he said, but I think what he said is relevant to the issue of competence. I'm not going to review the whole

transaction. Believe me. Don't worry about that, but let's get to the end of it.

In 1988, Roosevelt Raceway closed down, and it remain -- and by the individuals who got the IDA funding going to a private bank and paying off the IDA bonds, they wound up with the land and effectively had this beautiful piece of real estate in the middle of Nassau County which, at the time in 1988, the values thrown around were some $200 million.

Now, somebody pointed out, by the way, that why am I talking about this? The people apparently didn't make any money on the deal, and it didn't work out well, and I think it was Senator Stachowski drew an interesting analogy. If you rob a bank and the bag tears as you walk out of the bank, and you don't have any money when you get finished, it doesn't mean you didn't rob the bank. I like that analogy. At any rate, in 1988, whenever the track was closed, after the track was closed, the district attorney of Nassau County, Dennis Dillon, who at times has been a Democrat and is now a

Republican, wrote a letter to the chair of the IDA saying, under certain provisions of your lease, you can get -- you can get the land back. You can get the Raceway back, maybe even continue it, take care of it for the people of Nassau.

Now, I asked Mr. Imbarrato about that, and I said, you know, What did you advise them? Did you tell them that they could protect that land? and Mr. Imbarrato said to me that that wouldn't have been prudent. There were bondholders out there and to foreclose on the land would have been terrible.

Now, maybe I'm wrong but, when you have $200 million worth of security and you foreclose on it, I think bondholders who have 50 million to worry about are pretty well protected.

I promised you I wouldn't review this too much, and -- and I won't. The -- the SIC mentions Mr. Imbarrato, at page 492 of their report and they mention the taking -- the retainers and the fees and questioning the

practice and, in my opinion, it's a practice that is terrible, but if it was legal at the time, I can not hold that against Mr. Imbarrato and I don't hold that against Mr. Imbarrato, but I was interested in his reaction as to whether or not we, as a Legislature, should do something about it, and apparently it's a matter of philosophy even in 1995. He doesn't see anything wrong.

But the bottom line of all of this, I must say, were questions asked by Senator Leichter because the bottom line is that this is a field of special expertise. I am told that, at the Labor Committee meeting, Mr. Imbarrato made the comment that he does matrimonial law and, if you can settle matrimonial cases, you can settle labor problems and while I have done matrimonial work in my life and still do some of it, and I understand exactly what he said, the fact that in the heat of passion oftentime overrules the law and logic.

This is a field of law that deals

with laws and it deals with complicated issues. I don't have a problem with a Republican governor making appointments of loyal Republicans, particularly from Nassau County where we all know there's a great influence from there, and that doesn't bother me. It's a question of putting round pegs in square holes, and I believe that, based upon his total lack of experience in this field, they are picking the wrong situation for Mr. Imbarrato.

I have my own questions about judgment and how his judgment affected the workings of the Hempstead IDA, and that is a situation where it was "simple real estate", quotes/unquotes. I have grave questions in my mind as to how he would function in this particular situation, and particularly as chairman of the agency -- of the board.

Lastly, there was a situation which involved Roosevelt Raceway where the ticket takers brought an action because they claimed an unfair labor practice in closing the track and that seemed to be the one place where

maybe the county of Nassau, the individuals involved, maybe there would be some justice for the people of Nassau County.

Mr. Imbarrato feels, in his judgment, that the result which he indicates was not favorable to the union was a fair result in that situation. I have to disagree with, again, his judgment.

So, based upon the comments that I've made -- I'm sure the man is a delightful man. I'm sure he's the kind of person who we would all like to have dinner with, and he's a person who may be very, very intelligent, and I understand a successful lawyer. I think he's the wrong person for this particular job, and I intend to vote in the negative.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Tully on the confirmation.

SENATOR TULLY: Thank you, Mr. President.

As you may tell -- as I continue to speak, I'm suffering from a slight case of laryngitis and in most cases, I would not stand

on my feet, but in this particular case, because of the quality of the nominee, I find it most important that my colleagues should know some of the things that I know about him.

First, I might point out that with respect to the comments made by Senator Gold, that I notice the same stenographer who is here present in this chamber was also present during the course of the Finance Committee meeting, at which I thought the nominee handled himself extremely well. He answered all questions cogently, clearly, and with great satisfaction to me, although it may not have been satisfactory to Senator Gold; but I think what the nominee should know is most of my colleagues who know -- who have been in this chamber know that whenever Nassau County is mentioned, Senator Gold seems to think of one place in Nassau County, that great county that we live in, and he thinks of Roosevelt Raceway, and it doesn't matter whether it's a nomination or it's a building. He says the same thing about Roosevelt Raceway and IDA if it's a bill

or a nominee. Now, we're used to hearing it and, in this case, you got to hear it firsthand.

Senator Leichter's comments with respect to the experience of the nominee, his question, I think, was well taken. I think the nominee was very candid when he said his legal practice dealt with the field of matrimony, but he was very humble in not explaining that he was a duly elected official of the largest town in New York State, larger than many of our cities, if not all of the cities except New York City and as an elected official, he served on the board and negotiated contracts with the Civil Service Employees Association of that particular town, the town of Hempstead. He dealt on a daily basis, I'm certain, with people who wanted raises, with people who had objections to certain things that took place in employment, and he had that type of experience in one of the largest municipalities in this state on an ongoing basis.

Is he qualified, Mr. President? I believe he is over-qualified. He is a compe

tent trial attorney, as Senator Levy alluded to, when both he and I were assistant district attorneys and the nominee was on the other side of the fence. He was a legal scholar. When he quotes a case, you know the case exists and you know he's done his homework in that regard.

He's someone, Mr. President, that we're fortunate in having as a nominee because he knows the workings of the Legislature. He worked for one of our great former colleagues, Senator Ed Speno.

I cannot understand why it is that he's accepting this position, but I do believe that all of us will be extremely fortunate after he's confirmed to know that we have someone of this quality serving us in the public sector.

I welcome you back.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Skel... excuse me. Senator Gold, why do you rise?

SENATOR GOLD: Would Senator

Tully yield to one question?

ACTING PRESIDENT KUHL: Senator Tully, do you yield?

SENATOR TULLY: No, I will not, Mr. President.

ACTING PRESIDENT KUHL: The Senator refuses to yield.

The Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I rise in support of this nomina tion. I'm not a lawyer. I have never served with Mr. Imbarrato. I've never seem him in action in the courtroom, but I do know of his reputation in Nassau County.

He's got a fine reputation. It's impeccable. His reputation for integrity and honesty is unquestioned and cannot be questioned by anyone who truly knows the situations and truly knows the issues that have been raised by Senator Gold.

I will support this nomination and I urge all my colleagues to do likewise.

Mr. Imbarrato, I think, will serve with distinction and represent this state well.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Skelos on the confirmation.

SENATOR SKELOS: Mr. President, I'm delighted to rise and join with my colleagues in support of Mr. Imbarrato as a member of the New York State Employee Relations Board. As I mentioned in the Finance Committee, I have known Tony and Vicki for over 20 years and he certainly has been a good advisor to me politically, governmentally and personally over the years.

You know, it's very interesting and in just following with some of Senator Tully's comments, Nassau County is mentioned, and it's almost like the old Abbott and Costello movies with -- with Senator Gold, where they mention Niagara Falls and it's "slowly I turn".

We've been hearing this lecture from Senator Gold for at least the 11 years that I have been in this Senate. Nassau County - "slowly I turn", Roosevelt Field, IDA, on and

on and on, innuendos, and certainly I don't believe being fair to Mr. Imbarrato who is going to be confirmed today, I'm fairly confident, and will be a distinguished member of this board.

You know, as an attorney -- and I know Senator Gold is an attorney, Senator Leichter is an attorney -- we have an obligation to our client and often there's an attorney client privilege where we're not permitted to answer certain questions which I'm sure Senator Gold and Senator Leichter respect the attorney client privilege, but we have an obligation to make certain recommendations as attorneys to our client and then the client makes a decision.

The IDA, which Senator Gold neglected to mention, is an independent body that made decisions. Mr. Imbarrato is not the one that made any decisions concerning the IDA's functioning; the board makes the decisions.

Tony is a bright attorney. He has experience, as Mike mentioned, as a town board member of the largest township in this nation, larger than 12 or 13 states, thousands

of employees that he was involved with, negotiations, having contracts established with the town of Hempstead, and certainly like any attorney, he has -- or bright attorneys, he has the ability to understand an issue, research an issue and then be learned on that issue; and certainly with all of his experience as an attorney, as a town official, no question in my mind that he will be a distinguished member of the New York State Employment Relations Board.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes. Mr. President, my colleagues, I have never met Mr. Imbarrato before today. I found him very engaging. I found him very intelligent, and I think he was forthright in answering questions that were posed to him, but the one question that he answered -- and I'm sure he answered it very honestly, which is going to determine my vote on the confirmation -- when I asked him what experience have you had in Employment Law, in Labor Relations Law, and I think his answer

was "None".

Now, Senator Tully, who's, as we all know, an extremely skillful debater and also Senator Skelos, have brought in suddenly, "Well, he was very active on the town board negotiating contracts," and so on. The nominee didn't mention anything of that sort, but even if that's the case -- and I accept there's probably a certain bit of self-effacement on the part of the nominee, but I assume that as a member of the town board he was involved to some extent in reviewing contracts; and we, as members of the Legislature, in some -- we have some responsibility for labor relations too, but let me tell you, my friends, that Labor Law and Employment Law in the last ten, fifteen years has become such a complex specialty. I know because I was involved in a situation -- my firm where we have some people handle employment law -- and I sat in on a meeting and, frankly, I understood nothing.

Now, Senator Tully goes back to my days as a lawyer. We used to believe that if

you have a law degree, by God, there isn't a legal question that you can't handle, and maybe that was true some years ago, but let me tell you, Senator Skelos, it isn't a matter now, "Oh, well, now I'm going to do employment law. I'll just open the books. I'll look up cases. I'll look under "E", employment law, and read a few cases and I can handle this field."

You can't. It's an extremely complex, intricate field, and I am concerned that we have here a nominee who has back- ground whatsoever in this particular field, I'm sorry to say, but I've seen this Governor send up nominees, frankly, whose main qualification seems to be their activity within the Republican Party. While that should never bar anybody - and some activity in political parties can be very useful in government, but when you are appointed to a position that requires experience, knowledge, skill in a specialized area, it's just not enough to say, "Well, this was a person who was extremely active in the Republican Party in his community. He's a

bright lawyer." That's just not enough.

We have an obligation here to advise and consent, and I think that consent has to be exercised judiciously, carefully, with constraint, but it can't become a dead letter. We're not a rubber stamp here.

It's not enough for me, frankly, that my colleagues from Nassau County get up and say this is a person of integrity, veracity, good intentions. I would assume that, and I accept that from what you say, and I can think of a number of positions where this particular nominee would probably be very well qualified because of these human characteristics and the experience in the community and politics that he has, but we better look at his experience in this particular field, and there the experience he stated in a very honest manner is nil. It just doesn't exist. He's just not qualified for this position.

I understand what Senator Gold said on the ques... the issues relating to Roosevelt Raceway and the judgment of this

nominee, and I think it's a close question, and if that were the only issue, I don't know how I would vote on this nomination; but when the issue becomes background, experience, knowledge, I don't think anybody can say this is a qualified nominee.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger on the confirmation.

SENATOR DOLLINGER: Mr. President, I haven't met Mr. Imbarrato and I wasn't at the Finance Committee. I don't believe that the activities on behalf of the Republican Party disqualify any nominee. We have approved several judges in the last couple of weeks who were active in the Republican Party who might not have views that mirrored mine, but they were qualified for the positions.

I am most troubled by the point that Senator Leichter made, and that is, if you had a case that you were going to litigate before the Public Employees Relation Board, if you were a client and you went to Mr. Imbarrato

and said, "We need to litigate this case before the Public Employees Relation Board; we need a labor practitioner who knows public sector labor law," my question is, would you hire Mr. Imbarrato? And I think he rightfully - right...

ACTING PRESIDENT KUHL: Senator Stafford -- excuse me, Senator Dollinger.

Senator Stafford, why do you rise?

SENATOR STAFFORD: I try never to interrupt anyone, but I'm sure that the speaker would want to be corrected. This is not the Public Employees Review Board. It's the oppo site; it's in the private sector.

SENATOR DOLLINGER: This is the State Employment Relations Board, correct? Okay. Excuse me.

The question becomes -- even if that were the case, would you hire Mr. Imbarrato to do this job, a job to litigate in front of this board? Does he have the qualifications? I think through his own mouth -- and I appreciate

his candor -- I think he rightfully so said, "I don't do this work. I'm a matrimonial lawyer. I divorce people. I go through the difficult, complicated, particular issues involved in a divorce," whether it's devolution of property and divvying up the estate or handling child custody -- very, very complicated issues, all of which he sounds like a very excellent practitioner in.

The question is, is he a practitioner in this particular area?

ACTING PRESIDENT KUHL: Excuse me, Senator Dollinger.

Senator Skelos, why do you rise?

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

SENATOR DOLLINGER; I will, Mr. President, after I'm finished. I'm just going to be a short second.

ACTING PRESIDENT KUHL: All right. He will.

Senator Mendez, why do you rise?

SENATOR MENDEZ: I was wondering

if you would just yield for one question in reference to what you're saying. It's sort of a clarification.

SENATOR DOLLINGER: I would, Senator, but I'd appreciate it if I could finish my statement, then I'd be glad to.

ACTING PRESIDENT KUHL: The Senator refuses to yield at this time, Senator Mendez.

SENATOR DOLLINGER: Mr. President, it seems as though there's a complicated series of specialty issues that could come before this board which Mr. Imbarrato has acknowledged that he has no experience in, so it seems to me that there may be complicated issues that may arise in the Governor's agenda for the future. There may be complicated issues that we face as we change from an agenda set by an administration to an agenda set by this administration with respect to employment law.

There are going to be very complicated and very, perhaps, cutting edge issues; and yet we have a nominee who is a good

man, who he has done good things both as a Republican and as a community service who may be qualified to do all kinds of things in this state. He may be qualified to sit on all kinds of boards but, I think, by his own admission, he is not qualified to sit on this one.

I think we need some level of competence from nominees to particular specialty positions, and under those circumstances I think that this kind of Labor Law practice requires someone who has experience in this area and, therefore, I'm prepared to vote no.

Senator Mendez, I believe I should yield in protocol to Senator Skelos.

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

SENATOR SKELOS: Senator Dollinger, there's a -- often with attorneys, legislators, perhaps yourself, there's a desire to become a judge some day, be a Supreme Court judge. If you become a Supreme Court judge, they handle a whole gamut of types of cases.

Would you say that any Supreme Court judge that perhaps did not actively practice a certain area of the law would totally be disqualified to hear cases that a Supreme Court judge would hear?

SENATOR DOLLINGER: In response, Mr. President, I think that any judge ought to have trial experience. You ought to know what goes on in a courtroom. You ought to know how to make decisions in a courtroom. He ought to have some familiarity with negligence law, with family matrimonial decisions. He ought to have a broad base of legal expertise so that he can handle issues that come before him as a judge.

It seems to me that that's exactly what you would want from someone who sits on the Employment Relations Board. You would want some broad experience in labor law so that they would know the issues, they would have some familiarity with the issues, as they come before them.

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

SENATOR SKELOS: I believe that, Senator Dollinger, it was pointed out, both on the floor and at the Finance Committee, that Mr. Imbarrato, as a town councilman of the largest township in this nation, larger than perhaps 12 or 13 states, where the town board members, the supervisor are actively involved in negotiating union contracts, dealing with employees on an annual basis, thousands of employees, that certainly there is an experience, a more practical experience, that Senator -- that Mr. Imbarrato does have; and you take into account his abilities as an attorney, the fact that he's a bright, articulate person, I think that's more than sufficient in terms of the worldliness you would require of Supreme Court judges, for him to serve on this board.

SENATOR DOLLINGER: Mr. President, I'd just point out, I guess, in response to that, if we were looking for a labor practitioner, someone who would handle labor law cases, we wouldn't go to a matrimonial lawyer.

This is a position where the

familiarity of those base issues, I think, is critically important in handling these cases. This is why the issue of competence -- it's not an issue of his capabilities as a lawyer, his capabilities as a person. It appears as though, based on his resume, he's performed -- and I understand Senator Gold may have some questions, but my evidence is -- and I take the testi monials of both Senator Tully and Senator Levy, that this man has good skills, that this man's an intelligent man. I don't hold any of that against him.

The question is whether he is specifically competent for this particular position and it seems to me that the Governor probably has a whole choice of people who are also good Republicans with the same good community base that Mr. Imbarrato has that would be well qualified for this position.

Now I'll yield to Senator Mendez.

ACTING PRESIDENT KUHL: Senator Mendez, Senator Dollinger yields.

SENATOR MENDEZ: Thank you, Mr.

President.

Senator Dollinger, would you say that a lawyer who is in private practice and goes to court, has clients that are either workers or employers that have practiced law in the labor area by representing clients that are either workers or employers, would that -- would that be experience? Would you say that that person is an experienced lawyer in the labor field if that person has done that consistently in big quantities?

SENATOR DOLLINGER: Mr. President, I would say that a lawyer who represents employees in relationships and in litigation with their employer, whether it's unfair labor practice charges or grievances and arbitrations, discrimination cases, all those relationships that relate to employment is just the kind of foundation that this position needs, and I think that someone with those qualifications would be well qualified for this position.

The problem is that someone who

has a matrimonial background is dealing with a very different set of issues -- legal issues.

SENATOR MENDEZ: This is the point of clarification that I wanted to make.

I was in the Finance Committee. The nominee was asked, "Have you practiced Labor Law?" And he said -- being in his private practice, and he said, "I practice matrimonial law. However," he also added, "I have represented workers and employers" in cases of the clients that he has, so that it appears that that specific detail that he had practiced law representing clients on both sides of being - being -- whether it be employers or workers has been lost in our arguments, and I felt it was very important to clarify that aspect of him, because the point that you're making is a good one.

I understand by -- and everybody has stated so here, and I was in the -- in the -- in the Finance Committee meeting and every body says that he is a very brilliant lawyer, vast legal -- great legal mind and everything

else, but the issue of -- I'm referring to just the issue of qualifications, based only on having practiced, let's say, just matrimonial law versus the other, I wanted, Mr. President and Senator Dollinger, to clarify that point, because otherwise you will be very unfair to the nominee.

SENATOR DOLLINGER: Right. I'd just point out for the benefit of Senator Mendez, divorcing someone from their spouse and defending them when they're terminated from their employer are two very different legal circumstances.

SENATOR MENDEZ: That's why I'm clarifying the situation, so we know why this man is being approved or disapproved as the nominee of the Governor would, in fact, be given a fair chance, because he has practiced law but as a private lawyer, not only just matrimonial law. I think that I have to make that clarification.

Thank you.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, if Senator Mendez would be good enough to yield -

ACTING PRESIDENT KUHL: Actually, Senator Mendez didn't have the floor.

SENATOR LEICHTER: But I'm -- I'm -- I'm asking her now to yield.

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

SENATOR MENDEZ: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, I was interested in what you had to say, because I was the one who asked the nominee about his back ground and you seem to have heard something that nobody else heard, which is very interesting and may be useful because you seem to know things that nobody else heard. You seem to have heard things that the nominee didn't say, and maybe you had some other information -- that's what I

want to ask you, Senator -- that you could help us on, because we have a transcript here. We have a record here, Senator, and we're going to look at the record -

SENATOR MENDEZ: What do you question -

SENATOR LEICHTER: Let me finish, please. Let me finish. Let me finish, Senator.

We're going to look at the -- at the record, the transcript.

Now, are you telling this body that in the Finance Committee that this nominee said, "I have represented workers in court, in employer/employee disputes"?

SENATOR MENDEZ: I am saying, yes, that you -- somebody -- especially you, did ask the gentleman -- was it you who asked the question to him -

SENATOR LEICHTER: Yes.

SENATOR MENDEZ: -- as to whether or not he had practiced labor law, and he said, "No, matrimonial law," but then he added -- and

this is -- look, I know that with the years all of us get a little bit with a -- some loss of hearing. I think that in this case, yours is going to be greater than mine -- and he added that he had represented workers and employers as his clients.

That's what I had -- maybe we could ask some of the other people that were in the Finance Committee to see if they heard the same.

SENATOR LEICHTER: Well, Mr. President -

ACTING PRESIDENT KUHL: You're asking Senator Mendez to continue to yield?

SENATOR LEICHTER: Senator Mendez to yield.

Senator, I think that I had a loss of hearing. I think the one thing that hasn't happened to me with age is that my imagination has grown and that I hear things that weren't said and, in fact, Senator, I did do exactly what you said. I asked a couple members who were in the Finance Committee to

check my recollection and they did not hear what you said. I thought it was interesting that those people on the other side of the aisle, Senator, who were -- who know this nominee and who were defending his background, his record, never mentioned what you thought you heard. So maybe it's a matter of my hearing or maybe it's a matter of your imagination.

SENATOR MENDEZ: But my -- my - my imagination, Senator Leichter, does not work overtime. You're worse because you are such a creative person, is all the time in high gear and working overtime, and we all appreciate that enormously.

I think that there is a record over there and I think that we have to check a little -- maybe we could ask the nominee.

Did you hear that? Excuse me. I'm going to check, Mr. President, with some of the other members that were there. I heard it.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Yes. I just want to make a few comments, if I may.

ACTING PRESIDENT KUHL: Wait just a minute. Senator Mendez had the floor. Can we just wait until she confirms the conversation and then -

SENATOR PATERSON: Mr. President.

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

SENATOR PATERSON: I -- I just wanted to know, Mr. President, who had the floor.

ACTING PRESIDENT KUHL: Senator Mendez has the floor right now. I have been reserving it for her, then we're going to go to Senator Gold.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT KUHL: Senator Mendez, would you like to continue? Senator Mendez, would you like to continue on the floor or would you waive at this time?

SENATOR MENDEZ: Yes.

ACTING PRESIDENT KUHL: Senator

Mendez has the floor.

SENATOR MENDEZ: Mr. President, he said -- he first answered the question by saying that he had -- was practicing matrimonial law, and then he added and he said that he had represented in court employers and workers, but I was told now nothing -- not specifically in labor disputes; but he, in fact, did say that he had clients -- clients, employers and workers, maybe on other matters but not on labor disputes.

Is that an accurate description? Yes.

So, Mr. President, I just wanted for the record to have it straightened out that it is not a question of -- of hearing what has not been said. It is not a question of having a superactive imagination. It is a question of pursuing the subject matter to clarify -- to clarify the situation, and my intervention here was precisely in an effort to clarify that situation that appeared to be -- to me to be - to being given more attention than all the other

qualities that the gentleman -- experiences in the world of work that the gentleman has shown in his resume.

Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold on the confirmation.

SENATOR GOLD: Thank you very much.

I just wanted to clarify something that Senator Dollinger was dealing with, and I think, well -- but I want to expand, because Senator Skelos left a very unfair impression.

If someone is elected to the Supreme Court, Senator Skelos, after that is done, they go to work in the particular department, in a particular area, and there are administrative judges, and just so you know, Senator Skelos, it is the practice in many areas, certainly the ones that I know about in the City, where if there is a condemnation case, it goes to one judge, because that is an area which is his specialty, and there is one judge.

There are areas in the city of New York where they have special calendars for cases involving the city of New York, and it goes to one judge.

There are cases that deal in a very complicated field called matrimonial law, which this nominee knows very well, and this nominee can tell you, Senator, that in many areas there are one or two, maybe three, if the case loads are very large, judges that take the burden of the matrimonial calendar and they develop a certain expertise.

There are judges, Supreme Court judges, who are assigned almost permanently to the criminal calendars of that particular department or district, and there are judges who you wouldn't let near a criminal case and they don't want to be near a criminal case, and although they are elected Supreme Court judges and can do any case, they only do civil cases.

Now, in electing a Supreme Court judge, we elect a judge into a system where there is an administrative judge who will then

find the niche for the judge for the best interests of society, but that's not what's happening here. We're -- we're asked to confirm someone to be, in effect, a judge in a very specific area, and once we confirm this nominee we can't take him and say, "Well, all right. He was confirmed, but we're going to put him in the matrimonial part of the State Employment Relations Board." There is no matrimonial part to that board.

Not only that, it hasn't been mentioned yet, but the Governor says he will make this individual the chair, which means not only will someone who very candidly says he has no experience will be acting in a judicial capacity, he's going to be the head, and he is going to be leading people in an area of which he knows not.

Now, that is nuts.

Now, Senator Levy and Senator Hannon and Senator Tully say that the individual is a man of integrity. If that is true, listen to him. If he tells you he has no experience,

isn't that enough?

And his experience does not come from the machinations of Senator Skelos and Senator Tully who say, "Well, you know, if you were on the board, you had to do this and you had to do that."

If the nominee is as bright as you say, if the nominee is as -- a person of the highest integrity, accept his answer. Accept his answer. He knows nothing of this field. He is in the wrong cubicle, and we should free him of that impediment and vote no.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Levy.

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

I think that the analogy that Senator Skelos raised with the Supreme Court judge really goes right to the core of the discussion here, Senator Gold, and using myself as an example and evaluating what you said, I have to say that at times -- at times all of us become very, very parochial; and when -- when

you talk in terms of the judiciary and how it operates in the city of New York, we certainly can't say that that's the way the judiciary operates all throughout the state of New York where you don't have a huge judiciary.

I have to say, I'm sure some of my colleagues from upstate that don't have the luxury of the talent bank that we have on Long Island, that you have in the City, that sits on a court, that they don't have -- Senator Stafford, I was saying in terms of numbers -- in terms of numbers, we can go, Senator Gold, to parts of this state where we have elected Supreme Court justices who have on occasion come before them the most complicated, involved, complex matters that they never, ever have had any experience, and I'm sure we can look at the record and see judicial determinations by good lawyers who have no experience in a field that will stand as it relates the logic and fairness and quality with any decision, not only in the state, but anywhere in the country, and that's really what we're talking about here.

I've heard -- I've heard in listening to some of the remarks that were made on this floor, at one point, there was some that tried to -- tried to hold the nominee to the standard of making decisions when he wasn't even a member of the IDA board but merely the lawyer for the board and they were his client.

This discussion that we've had here this afternoon, we really -- take a look at what we're talking about. It would almost appear that the argument against the nominee is based upon a set of facts that really is not a true set of facts, and that is, Mr. Imbarrato has been nominated to a board. He's not -- he hasn't been nominated to a position where he is the only person that is going to serve in that position. There is a board. The board has a qualified staff; and as I sat and I listened to the discussion here, I thought of the field that I have responsibility for.

I will be happy to yield when I'm finished, Senator Gold.

My responsibility is

transportation, and I have worked with chairs who have served as -- served as Commissioners of Transportation in this state, and let me just - let me just tell you about three of them:

Number 1, Jim LaRocca. Jim LaRocca was a fine Commissioner of Transporta tion, never did anything whatsoever in the transportation field.

John Egan. I have to tell you that before -- before our colleague, Senator Daly, was nominated to be the Commissioner of Transportation, I hoped that John Egan stayed on as Commissioner of Transportation, and the man had never done anything or had any experience in the field of transportation, and I have to tell you when you look back at his record, albeit it was over a short period of time, he goes down in history as one of the finest Commissioners of Transportation that we've had in this state and he had no experience whatsoever in that field.

And the same thing with our own friend and colleague, Senator Daly, who is now the Commissioner of Transportation, no exper

ience in the field and he's doing an outstanding job.

The bottom line is - particularly when you have a board of the scope of the board that this nominee has been nomin ated to serve on, the bottom line is, are you dealing with a person of ability, a person of experience, a person who has been a negotiator, and the key quality is, is that person fair? Is that person balanced as to all of those qualities?

I have to tell you, on my experience, enthusiastically, this nominee has all of these qualities, and we'll look back after he's confirmed and on the job that he does, I'm sure they are going to think of him the same way that we think about John Egan and the job that he did in Transportation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I am listening to this discussion and I think that some of the points that have been made have

been a little bit misunderstood.

The actual ability of the individual who's being nominated is not a question here, and I think that Senator Gold has stated that and restated that. What we're actually talking about, really, is the process.

Senator Levy is correct, there have been many who have been nominated and served admirably and served with distinction in areas with which they weren't originally familiar, but the nomination itself begs the question when the individual is willing honestly to state that they are not significantly familiar with the area as to why the nomination occurred in the first place. The answer could well be that we take very talented people and we distribute these talented people among agencies and hope that their natural abilities flourish in those agencies; but the reason that we have committees, the reason that we engage in the advice and consent as we are in this chamber today, is on the basis of some assumption that we make that there are a number of talented

people in the pool of those who would have been qualified to serve and among those talented people, there are many who are significantly embellished in the knowledge of this particular area.

I think the point that Senator Gold and Senator Leichter and also Senator Dollinger were trying to make without any malice toward this nominee is that in this chamber we are deliberating as not to whether or not we can forecast what the inevitable results will be of the confirmation of this particular candidate, but whether or not this particular candidate may have been the best that our state can offer.

With a number of individuals who are significantly familiar with the employment area, the question might be asked, why are we passing over them in favor of a highly qualified person who might better serve our state in another area?

That is a valid question. It does not mean that you have to vote against this nomination if you don't choose to, but if it is

a valid question, and it has always been a question that occurs over and over in the selection not only of individuals who have been appointed by the Governor but even in elections, it is the balance between qualification and ability, qualification being the definition of the actual -- the actual accomplishments that the individual may have and the resume and the distinctions that the individual has shown in the past in this particular area as balanced by, perhaps, an individual who shows that they are distinguished in a number of areas and we can then presume that in this case, moving into the labor area, that they would be as adequate as they have been previously; but I think that the discussion is being lost on -- in a sense, a concentration on what would be an individual situation, and as far as this nomination is concerned, we have a nominee who may inevitably have shown the greatest distinction by his honestly answering the question as to compare the anxiety that occurs in matrimonial actions being greater than that in what occurs in labor

disputes, but it's not really the pain test that we're looking for. It's actually the ability to distinguish between the elements of those two separate areas of the law, and I think that what Senator Gold's pointing out is to say that where we can as a government and particularly where administrative judges are concerned and even in law enforcement and in the district attorneys' offices now, there is an attempt to match up cases with the qualities and the abilities of the assistant district attorneys who work on those particular cases.

And so, when we look at this whole situation, I would admonish all of us that it is not wrong to have a problem with a nomination because the individual has not demonstrated a real ability or demonstrated any history of familiarity with a particular area.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

Again, squeaky voice and all,

some question was made with respect to the particular expertise with members of the judiciary and cases being assigned to them but -- because of the their particular expertise in the field, but those of us who are trial attorneys know that in many of our counties - and I speak specifically of Nassau County -- the calendars are so crowded and we have so few judges that many times you have a County Court judge who is well versed in the field of criminal law who is called upon to be an acting Supreme Court justice to sit on cases in the civil sector involving labor relations, involving matrimonial law, involving everything except criminal law in most cases, and they serve well. They do the job. They're fairly competent because of their educational background, because of their knowledge of the law.

I think it's been clearly demon strated that this particular candidate has an excellent knowledge of the law. His background in public service is unparalleled, and I think

it goes without saying that the process being what it is, as we have in the past, we will judge this candidate on the totality of his credentials and his background and we will make the right decision.

ACTING PRESIDENT KUHL: Senator Stafford to close debate.

SENATOR STAFFORD: Mr. President, you, a number of times, have heard me say this since Governor Pataki was elected, that we have had excellent nominees before us.

I again today say that Anthony C. Imbarrato is among the best.

We go back 30 years -- I mentioned earlier today that he was counsel to Ed Speno and those were the days when we weren't paid very well and we always went to Codes because Ed Speno had such a good lunch. We didn't have to eat for a couple of days. I might add that since then a number of -- all, including myself, have carried on that tradition. I assure you when I had it it was not the same as Ed Speno's.

I want to share with my Senator from Harvard. If you sat in on a labor meeting and you couldn't understand it, I suggest you send your degree back to Harvard, because I would suggest that as Harry Wilmer Jones said, who taught contracts and labor law, the whole job is finding the issues. You have to know what has to be decided, then you can always get people to find the law for you, but it's the good lawyers who know what the issues are.

I would suggest that in a practice -- let's look at it this way. You know, we can argue either side; that's what we're trained for. Maybe it's better that we don't put people into specialties where they've practiced. They may have decided which side they should be on. Maybe on purpose we should make sure that we don't put a lawyer -- if he's had a certain practice, maybe he or she shouldn't really be put in that field.

Now, I do say, as has been said here earlier, that with the reputation and those of us who know him -- I had a long talk with the

nominee and his good wife today -- anyone who has had a practice, I suggest that they can go into these fields and do very well, just as Senator Skelos said, just as Senator Levy -- I could go on and on; and I would also say this, that, you know, I'm beginning to really understand -- and this is no criticism of anybody because we have the right to say how we think, how we feel when we're serving in the Senate. If we don't, we're not doing our job; but I would just say to all of us -- to all of us, I think every time had been difficult and, lo and behold, we know that we're now living in a time when we have a situation where sometimes we wonder why anybody wants to serve in public life, why anybody wants to run for office, and I would caution us all that we should always remember that. We should always remember that.

We have here a nominee who through the years has worked in the private sector -- and that's what I like, by the way. That's what I like. We have these people constantly coming before us that have been in

the public sector for their entire life and some -- sometimes don't understand what it's like to -- at the end of a week in a law firm to have more money left than what you spent. I think we need some more of that in government, and that's what we have with this -- with this nominee.

I said today, to close on a lighter vein, we have these various days in Albany. Some days you can pick any bill up and, gosh, you don't seem to have anybody say too much and then we have these rocky days; and I checked with the moon and I -- you know, you sometimes -- you sometimes can find out a lot.

I want to make sure that I join in supporting Anthony C. Imbarrato, and I'm sure he will serve well.

ACTING PRESIDENT KUHL: Senator Stafford, would you like to share with the members what the moon said?

SENATOR STAFFORD: There was an indication last night, but beware in three nights, 4:00 in the morning.

ACTING PRESIDENT KUHL: Thank

you, Senator Stafford.

The question is on the nomination of Anthony C. Imbarrato to become a member of the New York State Employment Relations Board. All those in favor signify by saying aye.

(Response of "Aye".)

SENATOR PATERSON: Slow roll call.

ACTING PRESIDENT KUHL: Are there five members standing who request a slow roll call?

The Secretary will read the roll slowly.

SENATOR SKELOS: Ring the bells too. I know the Minority likes to hear the bells too, so we'll add the bells.

ACTING PRESIDENT KUHL: The bells are ringing, Senator Skelos.

The Secretary will call the roll.

THE SECRETARY: Senator Abate.

SENATOR ABATE: Yes.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

(Affirmative indication.)

Senator Connor.

(Negative indication.)

THE SECRETARY: Senator Cook.

Senator Cook, excused.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

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

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, I'm mindful of the comments made by Senator Levy and others about the competence of a lawyer and the competence of a lawyer that you generally assume can be very broad based, but one thing we look at in determining qualifica

tions is we use past qualifications as a predictor for future competence, and I think that's something we do as lawyers. I think it's something that our clients do as consumers. When they come to us and someone says to me, "I need a matrimonial dispute", I say, "I don't do matrimonial work. I do general litigation. I don't do that. Go to someone else," and I think that what we see here is the past qualifications don't provide, at least to me, an indication of the competence level to be able to handle the following:

Disputes over strikes, disputes over picketing, McKay Radio and the issue of permanent replacements and when they're appropriate, subcontracting issues and whether they constitute unfair labor practices, secondary boycotts -- secondary boycotts is a big issue -- the issues involved in the Hudgins case, that is of the access of labor representatives on private property and balancing private property rights with those - with First Amendment rights to get information

out about union contracting, all of the issues relating to union contracting.

Those are the kinds of issues that this board will hear. That is a very sophisticated -- I practiced in the labor field. Those are very sophisticated, very complicated issues of federal and state labor law, and I think although Mr. Imbarrato has lots of experience as a general practitioner, lots of experience as a matrimonial practitioner, and believe me, there's nothing I've heard today - and I won't -- I won't comment on what Senator Gold -- there's nothing that creates any inference that he isn't a qualified, good man for many jobs perhaps in this administration and as a lawyer, but for this particularly highly skilled area, I don't believe he has the qualifications.

I'll vote no.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Espada.
(Negative indication.)
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Galiber, excused.
Senator Gold.
SENATOR GOLD: No.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
SENATOR HANNON: To explain my vote.
ACTING PRESIDENT KUHL: Senator Hannon to explain his vote.
SENATOR HANNON: Given the standards that we've heard enunciated by Senator Dollinger, Senator Paterson, I think we should be confirming very enthusiastically Mr. Imbarrato, because the very nature of the law to be practiced requires the type of judgment,

intelligence, experience that an individual such as he possesses, and given those standards I could not more highly recommend to this body that we vote in the affirmative, as I do.

ACTING PRESIDENT KUHL: Senator Hannon in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Holland.

(There was no response.)

Senator Johnson.

SENATOR JOHNSON: Yes.

THE SECRETARY: Senator Jones.

SENATOR JONES: No.

THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

(There was no response.)

Senator Larkin.

(There was no response.)

Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: Just briefly, I don't know how we got into this long discussion about judges, and so on, because it's just not analogous to this nominee and the position to which he's being nominated.

This is a board. It does hear cases, but there are also -- particularly since he's going to be the chairman -- administrative functions. It has a certain role to play as far as defining the nature of the dispute, how the matter is going to be handled which are totally different from the way judges handle cases and,

therefore, I totally reject the idea, Well, since any lawyer can be a judge just about, then anybody can serve on the Employment Relations Board. That just is not the case.

Let's look for people who know what they're doing. I think we owe that and this Governor owes that to the people of the state of New York.

I vote no.

ACTING PRESIDENT KUHL: Senator Leichter in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

(There was no response.)

Senator Marcellino.

ACTING PRESIDENT KUHL: Senator Marcellino to explain his vote.

SENATOR MARCELLINO: Mr.

President, to use the words of Senator Leichter before, this nominee possesses the qualities of honesty, integrity and intelligence. What more could you want?

I vote aye.

ACTING PRESIDENT KUHL: Senator Marcellino in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Maziarz.

(There was no response.)

Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.
(There was no response.)
Senator Oppenheimer.
SENATOR OPPENHEIMER: To explain my vote.
ACTING PRESIDENT KUHL: Senator Oppenheimer to explain her vote.
SENATOR OPPENHEIMER: It's going to be a rare occasion but I'm going to take my husband's advice.
I should disclose, I guess, that my husband heads the Labor-Management Department of Proskauer, and his advice has always been that he would much prefer someone who was energetic and intelligent coming into the department than someone necessarily who had a considerable amount of background but did not have that intelligence and that energy that he was looking for.
It seems to me that this gentleman before us, though no -- has no

background in this field and was readily admitting to that fact, that he seems to have the intelligence and the capability that will make him assume this post with -- with considerable skill and energy, and so I'm going to be voting in the affirmative.

ACTING PRESIDENT KUHL: Senator Oppenheimer in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson to explain his vote.

SENATOR PATERSON: Mr. President, I actually lived in the town of Hempstead when Mr. Imbarrato was the councilman between 1969 and 1979. I'm sure that he will do a fine job, and I understand what Senator Oppenheimer is saying.

The reason that I would want to vote no on this confirmation is that, though we

might prefer an energetic person who is intelligent to then just someone who has the experience I'm suggesting that we must somewhere around here have an energetic person who has the experience.

So we may have the brightest, but we may not have the best in the sense that while Mr. Imbarrato is trying to learn, a person that is equally as qualified but more familiar with the subject could be moving forward, but I understand what Senator Hannon said and I understand what Senator Stafford said and I'm voting no, but maybe the moon is influencing me; but the Minority has changed its position, Mr. President. We don't want to hear the bells during slow roll call; we would rather hear a rendition of Moon River by Andy Williams.

ACTING PRESIDENT KUHL: Senator Paterson in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago, excused.
Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: Yes.
THE SECRETARY: Senator Solomon.
(There was no response.)
Senator Spano.
SENATOR SPANO: Mr. President.
ACTING PRESIDENT KUHL: Senator Spano to explain his vote.
SENATOR SPANO: Explain my vote.
As the chairman of the Labor Committee, we have had an opportunity to have

extensive conversations with this nominee.

I have had a chance to have him appear before the Committee, talk to the members of the Committee, and was recommended favorably without any objection to the Senate Finance Committee from that Labor Committee.

He's someone -- I don't have to go through everything that has been said this afternoon. My colleagues have more than adequately spoken about his capabilities, about his background, the fact that he is an established attorney, as a local official certainly has got more than enough background to chair this agency.

I enthusiastically vote yes for this nominee and question, this is one -- I think the only time that I've seen that we are having a slow roll call on an appointment -- on an appointment to the chairman or members of the State Employment Relations Board. Don't quite understand that. There's something else going on here today. Maybe you could share it with us, but I'll tell you, Tony Imbarrato who is up

there, he's a gentleman and will do us all very proud serving the Governor and all of the people of the state.

I vote aye.

ACTING PRESIDENT KUHL: Senator Spano in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Mr. President.

ACTING PRESIDENT KUHL: Senator Velella to explain his vote.

SENATOR VELELLA: Being at the end of the alphabet, I have the luxury of being the 31st vote I understand on this nomination, but let me say, I have listened very intently to the issues that were raised by the Minority, and every single day that we come to work in this chamber, all of us vote on a variety of bills, dealing with the Labor Law, the Banking Law, the Insurance Law, the health codes, a battery of issues.

Are we all pompous enough to believe we are perfect experts on every phase of the law? We take a look at the issues, we examine the bills, we do the research necessary to make an educated judgment. That's all we can ask of any public official. I think we can get that with this nominee.

I vote aye, as the 31st vote.

ACTING PRESIDENT KUHL: Senator Velella in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(There was no response.)
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT KUHL: The Secretary will call the absentees.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Lack.
(There was no response.)
Senator Larkin.
SENATOR LARKIN: I proudly vote yes.
THE SECRETARY: Senator Maltese.

ACTING PRESIDENT KUHL: Senator Maltese to explain his vote.

SENATOR MALTESE: Just very, very briefly, Mr. President.

I am proud to cast my vote aye. As a member of the Sons of Italy, as someone who is active in Italian-American affairs, I think he will make a fine nominee with a balanced, dedicated approach.

I'm proud to vote aye.

ACTING PRESIDENT KUHL: Senator Maltese in the affirmative.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Onorato.

(Affirmative indication.)

Senator Solomon.

(There was no response.)

Senator Waldon.

(There was no response.)

Senator Lack.

SENATOR LACK: Aye.

ACTING PRESIDENT KUHL: Announce

the results.

THE SECRETARY: Ayes 39, nays 14.

ACTING PRESIDENT KUHL: The nomination of Anthony C. Imbarrato is confirmed.

We're very, very pleased to be joined by Mr. Imbarrato and his wife Vicki, who are seated in the gallery to your left, my right.

Welcome. Good luck.

(Applause.)

Senator Skelos.

SENATOR SKELOS: Mr. President, could you call up Calendar Number 1056, Senate 5236?

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Yeah. May I take this opportunity to ask unanimous consent to be recorded in the negative on Calendar 605 and 710?

SENATOR GOLD: Without

objection.

ACTING PRESIDENT KUHL: Without objection, Senator Leichter will be recorded in the negative on Calendar Number 605.

Senator Gold, why do you rise?

SENATOR GOLD: Yes. Without objection, may I be recorded in the negative on Calendar 605?

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Gold will be recorded in the negative on Calendar 605.

Senator Mendez.

SENATOR MENDEZ: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 605.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Mendez will be recorded in the negative on Calendar 605.

Senator Nanula.

SENATOR NANULA: Mr. President, I'd like to request unanimous concent to be

recorded in the negative on Calendar Numbers 605 and 770.

ACTING PRESIDENT KUHL: Without objection, Senator Nanula -- hearing no objection, Senator Nanula will be recorded in the negative on Calendar Number 605 and 770.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, without objection, I should like to be recorded in the negative on Calendar Number 605.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Stavisky will be recorded in the negative on Calendar 605.

Senator Padavan.

SENATOR PADAVAN: Similarly, Mr. President, negative vote on 605.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Padavan will be recorded in the negative on Calendar 605.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Ditto.

ACTING PRESIDENT KUHL: Without objection. No objection being heard, Senator Oppenheimer will be recorded in the negative on Calendar Number 605.

Senator Montgomery.

SENATOR MONTGOMERY: Negative on 605, Mr. President.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 605.

Senator Babbush, without objection. Hearing no objection, Senator Babbush will be recorded in the negative on Calendar Number 605.

Senator Velella.

SENATOR VELELLA: Mr. President, my bill, Senate 2587, Calendar Number 764, would you remove the star, please?

ACTING PRESIDENT KUHL: At the sponsor's request, the star will be removed on Calendar Number 764.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: I was listening attentively to the debate on the nominee just approved but was called away for a moment. May I please, without objection, be recorded in the affirmative on the slow roll?

ACTING PRESIDENT KUHL: The record will reflect, Senator Goodman, that had you been present, you would have voted in the affirmative on Calendar Number -- excuse me - on the confirmation of Anthony Imbarrato.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a report of the Finance Committee at the desk, if we could have it read at this time.

ACTING PRESIDENT KUHL: Ask the Secretary to read the report of the Finance Committee.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill:

Senate Print 5236, Budget Bill, an act to amend a chapter of the laws of 1995 entitled, "An act to provide for payments to municipalities and to providers of medical services under the Medical Assistance Program."

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: At this time, could we please vote on Calendar Number 1056, Senate 5236?

ACTING PRESIDENT KUHL: Without objection, the Finance Committee report is received. The bill is reported directly to Third Reading.

The Secretary will read Calendar Number 1056.

THE SECRETARY: Calendar Number 1056, Budget Bill, 5236, an act to amend a chapter of the laws of 1995 entitled, "An act to provide for payments to municipalities and providers of medical services under the Medical Assistance Program."

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as such chapter of the laws of 1995.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a privileged resolution at the desk by Senator Present. I ask that it be read in its entirety and that it be adopted.

ACTING PRESIDENT KUHL: Senator, there is a privileged resolution by Senator Present at the desk. I'll ask the Secretary to read it in its entirety.

THE SECRETARY: By Senator Present, Legislative Resolution memorializing Governor Pataki to proclaim the week of June 2nd through 9th, 1995 as "Manufacturing Week" in the

state of New York.

WHEREAS, it is the sense of this assembled body that those who give positive definition to the profile and disposition of the communities of the state of New York do so profoundly strengthen in our shared commitment to the exercise of freedom; and

WHEREAS, attendant to such concern and fully in accord with its long-standing traditions, it is the intent of this assembled body to memorialize Governor Pataki to proclaim the week of June 2 through 9, 1995 as "Manufacturing Week" in the state of New York.

Manufacturing provides employment for nearly one million people in New York State.

Manufacturing jobs pay an average of 23 percent more than other jobs.

Manufacturing has a significant effect whereby every 100 new manufacturing jobs creates an additional 135 other jobs.

Manufacturing employment has

fallen below one million for the first time since the turn of the century.

The state has lost more than one-third of its manufacturing employment in the last three decades. In the 1950s, one out of every three jobs was in manufacturing. Now it is one in every eight.

The survival of a vibrant manufacturing sector of the economy enhances the opportunity for an improved quality for the citizens of this region; and

WHEREAS, industry is critical to maintaining a high quality of life in New York State; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations and note that it is the policy of New York State to develop and implement programs and policies that encourage the growth, retention and attraction of manufacturing investment; and be it further

RESOLVED, that this legislative body memorialize Governor Pataki to join with scores of individual communities and proclaim

the week of June 2 through 9, 1995 as "Manufacturing Week" in the state of New York; and be it further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Governor George E. Pataki.

ACTING PRESIDENT KUHL: Senator Present, several members have indicated that they would like to co-sponsor this. Would you like to open it up for sponsorship?

SENATOR PRESENT: Mr. President. I understand that a number of co-sponsors already -- certainly, open it up to anyone who desires.

ACTING PRESIDENT KUHL: Why don't we do as we have in the past. We'll place all the members on as co-sponsors unless they indicate to the desk that they don't wish to be on, okay? That will be done.

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Libous, please remove the sponsor's star from Calendar 938.

ACTING PRESIDENT KUHL: At the request of the sponsor, the star will be removed on Calendar Number 938.

SENATOR FARLEY: On behalf of Senator Velella, on page 7, I offer the following amendments to Calendar 222, Senate Print 2764-A, and I ask that that bill retain its place.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 222 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: On page 22, on

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

ACTING PRESIDENT KUHL: The amendments to Calendar Number 728 are received and adopted. The bill will retain its place on the Third Reading Calendar.

SENATOR FARLEY: On behalf of Senator Trunzo, on page 21, I offer the following amendments to Calendar 692, Senate Print 4057, and I ask that that bill retain its place.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 692 are received and adopted. The bill will retain its place on the Third Reading Calendar.

SENATOR FARLEY: Again on behalf of Senator Trunzo, on page 21, Calendar Number 689, Senate Print 3577, I offer the following amendments and I ask that that bill retain its place.

ACTING PRESIDENT KUHL: The

amendments to Calendar Number 689 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Skelos -- excuse me. Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President.

Please, there will be an immediate conference of the Minority.

ACTING PRESIDENT KUHL: There will be an immediate conference of the Minority in the Minority Conference Room. Immediate conference of the Minority in the Minority Conference Room.

Senator Skelos.

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

ACTING PRESIDENT KUHL: No. We're all clear, Senator Skelos.

SENATOR SKELOS: Then the Senate will stand at ease, and there will be an immediate conference of the Majority in the Majority Conference Room.

ACTING PRESIDENT KUHL: There will be an immediate conference of the Majority in the Majority Conference Room, Room 332. Immediate meeting of the Majority Conference in the Majority Conference Room, Room 332 and the Senate will stand at ease.

(Whereupon the Senate stood at ease from 1:34 p.m. until 9:03 p.m.)

SENATOR JOHNSON: The Senate please will come to order for the purposes of an announcement.

ACTING PRESIDENT KUHL: Chair recognizes Senator Johnson calling the chamber to order for an announcement. The Chair would, for the benefit of the members, would note that the Majority Leader has requested that all of you be in the chamber at 9:15, 11 minutes from now, when the Senate will reconvene.

The members will be provided with a revised active list. There will be several bills that we will attempt to take up this evening. So at 9:15, the Senate will be called back to order.

Senator Paterson. Why do you rise?

SENATOR PATERSON: Mr. President, first of all, I never sat down. I -- I'd like to hear the gavel, Mr. President.

ACTING PRESIDENT KUHL: You'd like to see the gavel.

SENATOR PATERSON: No, I'd like to hear it.

ACTING PRESIDENT KUHL: Well, we're really not in session at this moment, Mr. Paterson, just talking amongst ourselves providing a little information for the insight of the members. Would you like to provide the members with some information, those ears on your side of the aisle?

SENATOR PATERSON: Yes. The Senate will come to order at 9:15 like you said, Mr. President.

ACTING PRESIDENT KUHL: We're harmonious in our thoughts, Senator Paterson. Thank you.

SENATOR PATERSON: I understand.

ACTING PRESIDENT KUHL: Senate will come to order at 9:15, ten minutes away.

(The Senate stood at ease from 9:10 to 9:20 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT KUHL: Members please find their places, staff please find their places.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Johnson.

SENATOR JOHNSON: May we proceed with the Supplemental Calendar, calling up the first bill, Calendar Number 317.

ACTING PRESIDENT KUHL: Ask the Secretary to read Supplemental Calendar.

THE SECRETARY: On page 9, Calendar 317, by Senator DiCarlo, Senate Print 1984A, an act to amend the Executive Law, in relation to qualifications of employment for direct care staff in the Division for Youth.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

Secretary will continue to call the non-controversial.

THE SECRETARY: Calendar Number 573, by Senator Levy, Senate Print Number 392A, an act to amend the Transportation Law, in relation to requiring common rail carriers to adopt hazardous material emergency preparedness plans.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 594, by Senator Saland, Senate Print 2595, an act to amend the Social Services Law, in relation to criminal screening of child day care providers.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

734, by Senator Hoblock, Senate Print 4211, an act to amend the Alcoholic Beverage Control Law, and others, in relation to compensatory service.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 804, by Senator DiCarlo, Senate Print 4687, an act to amend the Executive Law, in relation to increasing income eligibility level for persons employed by Green Thumb Environmental Beautification, Incorporated.

SENATOR PATERSON: Oh, hold that.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 870, by Senator Levy, Senate Print Number 4857, an act to amend the Vehicle and Traffic Law, in relation to increasing fines associated with passing school buses.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 950, by Senator Saland, Senate Bill Number 3475, an act to amend the Family Court Act and the Domestic Relations Law, in relation to service of temporary orders of protection.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 951, by Senator Skelos, Senate Print 3612, an act to amend the Domestic Relations Law, the Criminal Procedure Law and the Family Court Act, in relation to imposing a mandatory surcharge.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 952, by Senator Saland, Senate Print 3953A, an act to amend the Family Court Act and the Civil Practice Law and Rules, in relation to jurisdiction over non-residents.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 953, by Senator Saland, Senate Print 4013, an act to amend the Family Court Act, in relation to law guardian representation.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Johnson, that completes the non-controversial calendar.

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

ACTING PRESIDENT KUHL: We have quite a few pieces of housekeeping at the desk, Senator Johnson. Would you like to take that up at the present time?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: We'll return to motions and resolutions.

Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr.

President.

On behalf of Senator Holland, on page 50, I offer the following amendments to Calendar 1014, Senate Print 68, and I ask that this bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 1014 received and accepted. The bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Stafford, on page 48, I offer the following amendments to Calendar Number 660, Senate Print Number 4056, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 660 will be received and accepted. Bill will retain its place on the Third Reading Calendar.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr.

President.

On behalf of Senator Cook, please remove the sponsor's star from Calendar Number 494.

ACTING PRESIDENT KUHL: At the request of the sponsor, a star will be removed from Calendar Number 494.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, on page number 8, I offer the following amendments to Calendar Number 247, Senate Print Number 2271, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 247 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I ask to remove the star on my bill, Senate Print Number 4951, the sponsor's star.

ACTING PRESIDENT KUHL: Calendar Number?

SENATOR MARCELLINO: 957.

ACTING PRESIDENT KUHL: At the request of the sponsor, the star will be removed from Calendar Number 957.

Senator Marcellino.

SENATOR MARCELLINO: And on that same page number 50, I offer the following amendments to Calendar Number 957, Senate Print 4951.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 957 are received and accepted. Bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: On behalf of Senator Goodman, I wish to call up Print Number 3424, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: 740, by Senator Goodman, Senate Print 3424, an act to amend the Administrative Code of the city of New York, in

relation to a credit against the unincorporated business tax.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Johnson, also there is a substitution if you'd like to take that up at this time. I'll ask the Secretary to read.

Secretary will read.

THE SECRETARY: Senator Rath moves to discharge from the Committee on Rules Assembly Print Number 2817 and substitute it for the identical Calendar Number 706.

ACTING PRESIDENT KUHL: Substitution is ordered.

That completes the housekeeping, Senator Johnson.

SENATOR JOHNSON: Now proceed with the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar beginning with Calendar Number 317.

THE SECRETARY: Calendar Number 317, by Senator DiCarlo, Senate Print Number 1984A, an act to amend the Executive Law, in relation to qualifications of employment for direct care staff in the Division for Youth.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator DiCarlo, an explanation of Calendar Number 317 has been asked for by the Acting Minority

Leader, Senator Paterson.

SENATOR DiCARLO: Thank you, Mr. President.

This bill sets forth qualifications for the DFY for direct care staff. Those persons who are convicted of felonies would not be employed. The Director of the Division for Youth also in terms of misdemeanors has the discretion for those positions which he feels are positions that are in direct care in the Division for Youth.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Abate.

SENATOR ABATE: Yes. Would Senator DiCarlo yield to a question?

ACTING PRESIDENT KUHL: Senator DiCarlo yields to Senator Abate for a question.

SENATOR ABATE: My recollection is that we passed a similar bill not so long ago; is that correct?

SENATOR DiCARLO: Yes, it is.

SENATOR ABATE: And how is this

bill -- this bill is amended. How is the bill different that was passed previously?

SENATOR DiCARLO: This bill -- I believe without -

SENATOR ABATE: Again, that's my recollection.

SENATOR DiCARLO: Yeah, but I believe what this bill does that is different than the prior bill is that we're also taking into account those people convicted of misdemeanors where the Director of the Division for Youth feels that they are in positions with direct oversight of those people in the Division for Youth. This adds into the categories.

SENATOR ABATE: My -- again, I mean it is your bill, but my recollection of the other bill had a broader category, all Division for Youth aides, and it did not delineate what those aides are. So is this a more restrictive bill? This is only individuals that are involved in the custody of the juveniles?

SENATOR DiCARLO: Yeah.

SENATOR ABATE: And not

counselors, not drug treatment providers.

SENATOR DiCARLO: Yeah. What this -- what this bill does, it allows the Director of the Division for Youth to decide what positions of those positions where these people should not be employed.

SENATOR ABATE: There's nothing in the bill that delineates who these individuals are; they will be described some time later by the director?

SENATOR DiCARLO: Director of DFY, correct.

SENATOR ABATE: For Youth. So this could include not only custody staff but treatment staff.

SENATOR DiCARLO: Yes.

SENATOR ABATE: Include anyone who works within the Division for Youth.

SENATOR DiCARLO: Direct contact, yes.

SENATOR ABATE: So that just for clarification, almost anyone who goes into a facility could be described as having direct

contact with the individuals?

SENATOR DiCARLO: Yeah, the Director of the Division for Youth will make those -- those decisions.

SENATOR ABATE: And again you don't remember what the language, specific language, changes are between the last bill and this bill?

SENATOR DiCARLO: Not specifically, no.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question, please?

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

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: What effect will this extension have on the Civil Service Law?

SENATOR DiCARLO: I don't believe

any, Senator.

SENATOR DOLLINGER: Well, suppose you're on a civil service list and you were entitled to an appointment or a promotion and this now puts a new requirement into the Civil Service Law, but I notice that it doesn't - doesn't change the Civil Service Law. It changes the Executive Law.

SENATOR DiCARLO: Yes, the answer is I stand by what I just said in my answer that I don't believe it affects it whatsoever.

SENATOR DOLLINGER: O.K. But again through you, Mr. President, if Senator DiCarlo will yield.

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

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: There isn't any section that changes the Civil Service Law in this state?

SENATOR DiCARLO: I believe it just establishes qualifications for the Division of Youth.

SENATOR DOLLINGER: Again through you, Mr. President, you might know it's my understanding the Civil Service Law contains provisions for the appointment and the circumstances and the qualifications for the testing for employees throughout the state service, and we have in the Executive Law and in other places, we may have additional qualifications for employees in particular departments.

What we usually have in the Civil Service Law is an express provision that incor porates those changes, makes those changes and applies them to specific executive departments. This bill doesn't do that, though?

SENATOR DiCARLO: I -- I -- what you say, I don't know whether you're right or wrong, and basically the answer that I gave you is the answer to your question that I still stand by.

SENATOR DOLLINGER: O.K. Again through you, Mr. President, on another topic.

ACTING PRESIDENT KUHL: Senator DiCarlo, you continue to yield?

SENATOR DiCARLO: Yeah.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: This bill requires a placement in the event of a felony or misdemeanor. How would the state Division for Youth find out whether the applicant or the potential transferee is either a felon or a mis demeanant? How will they -- how would they know?

SENATOR DiCARLO: By the honesty of the applicant.

SENATOR DOLLINGER: Is it - again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Is it your intention to change the application form, the civil service application form, for people that

work for the Division of Youth or seek transfers in it that will require them to disclose whether they are -- have been guilty of a felony or misdemeanor?

SENATOR DiCARLO: With a little aid from the chairman of the Codes Committee, right now, many of the employees are not civil service, as he tells me, and also under the legislation, I believe the background checks would be conducted to follow this law.

SENATOR DOLLINGER: But through you, Mr. President, do you have any -- do you know what the cost of conducting those background checks will be? My understanding is those checks are not currently conducted.

SENATOR DiCARLO: I don't have an exact estimate. I don't believe it would be too expensive, and I think it would be worthwhile, but I don't have any figures, no.

SENATOR DOLLINGER: O.K. Through you, Mr. President, one other question on the topic. Are you aware -- is the sponsor aware that, under the Executive Law in the state of

New York, it is now an impermissible inquiry in the course of an application, to ask a potential applicant whether they've been guilty of a mis demeanor? You can ask them whether they've been guilty of a misdemeanor but, under the current rulings of the Division of Human Rights, you cannot ask an applicant whether they've been guilty of a misdemeanor.

SENATOR DiCARLO: Sounds like a good recommendation and maybe that's something we have to look at, and I'd like your input and you can help co-sponsor it.

SENATOR DOLLINGER: I don't have any further questions. One more question, Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator DiCarlo, you continue to yield?

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Is there any provision in this bill that permits a court review of a denial for an application? I note

there is a provision that says that you may ask the director to review the denial of a position either on the basis of the fact that they were guilty of a misdemeanor and that that misdemeanor would mean it would not be in the best interests of the agency, but there's no provision in here that gives the courts jurisdiction to review the denial of an application if there were -- the decision was made on improper information or the decision was reversed on appeal, the felony was struck out, there was a later habeas corpus petition that expunged the felony, in all of those instances there may be justifiable grounds for this applicant or transferee to seek court review and have the courts overturn what would be an arbitrary and capricious exercise of discretion on the part of the department, but that's -- is there anything in this bill that affects that?

SENATOR DiCARLO: Well, I think you already stated they already have the ability and they would continue to have the ability to bring an Article 78 proceeding, and I'll bring

your attention to the last few para... lines in the bill in terms of whether it can just be done without any recourse and it says notwithstanding the foregoing provisions of the section, no person shall be disqualified on a discretionary basis unless he or she shall have been provided a written statement of the reasons for such disqualification and afforded an opportunity by the director or the director's designee to make an explanation and to submit facts in opposition thereto.

SENATOR DOLLINGER: Through you, Mr. President, what is the -- is there a motive under which those decisions would be made? Is there an improper -- impartial hearing officer will decide the question as we have in many other parts of our -- our code, or is this going to be something that the director will sort of decide without the presence of counsel, without impartial tribunals, without additional notice of the time and place of the hearing?

Usually those kinds of protections are tucked into these types of

determinations and, in addition, I'd ask, what's the standard of review in the court proceeding assuming that this individual takes the denial of the director and the denial of the review of the administration process, takes it to the court, what's the standard of review for this decision?

SENATOR DiCARLO: This is an administrative decision that is made by the director and the person who is deemed disqualified has legal recourse in this action.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I hope my questions perhaps expressed my late hour's skepticism for this bill. I think it has some good intent. I think there may be some good substance in here, but I think it needs a lot more work.

I think we ought to amend the Civil Service Law to expressly provide that this

will now be a part of any civil service determinations that are made in DFY. I think we should look at the Human Rights Law and the Executive Law which creates prohibitions on asking certain questions of applicants regarding their past criminal behavior, and I also think that you need a better standard of review.

There's no description of the standard of review. There's no description as there are in many bills that we pass that says all of this can be reviewed under an Article 78 proceeding, under which the standard will be whether or not the director's determination was arbitrary and capricious, a well accepted standard in the law.

The bill goes part of the way to solving what I think is a very complicated problem. I don't think it goes quite far enough.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes. Would Senator DiCarlo yield to a question?

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: I did find the prior legislation that passed on April 24th and perhaps you can clarify for me. It's the same bill in essence. The first bill talked about employment as a Youth Division aide and the current bill talks about a direct care staff. Could you explain to me the difference between a Youth Division aide and direct care staff?

SENATOR DiCARLO: I think in the first bill what it does is it limits the director's discretion in terms of who is in contact with those involved at the Division for Youth and it broadens for the director and for the DFY those people that they consider who are in contact with the youngsters so that they have a better idea and can make a better judgment on who should not be employed by the DFY who have contact with the youth.

SENATOR ABATE: So, in other words, the Youth Division aide is a civil service title; is that a civil service title

that relates to a small subset of the staff that work in the facility?

SENATOR DiCARLO: Well, I don't know whether it's a civil -- civil service title but it is a smaller subset within the DFY and I think that the reason that we've made a change in this legislation is for the director to have more say in who should not be in contact, those people who are convicted felons or those who are misdemeanants who, in the -- in the understanding of the director should not be in contact with the youths within the Division of Youth.

SENATOR ABATE: And it's my understanding, then, from the last time I asked the question that direct care staff will not only include custody which are similar to correction officers where I understand there is a need to eliminate people with prior felony convictions, but also includes treatment people, people who have casual conduct -- contact, and are not involved in the securing and the custody of the youngsters; is that right?

SENATOR DiCARLO: Well, I -

SENATOR ABATE: It would include anyone?

SENATOR DiCARLO: Sure, anyone who the Director of the -- of the Division believes is in contact with those individuals in DFY, who the Director and the Division for Youth do not believe should be in contact, who are felons or in some cases those who have committed misdemeanors. It is at their discretion again.

SENATOR ABATE: And is there anything in the bill that would allow the director or mandate the director to look at how long ago the person was convicted of this crime? Let's say it occurred 25 years ago, that they remain clean, they became law-abiding, they were employed successfully elsewhere. Is there any mandatory consideration when a court gives an individual certificate of relief from disability? None of that is in the statute?

SENATOR DiCARLO: If the individual has committed a felony and has been convicted of a felony, they can not be in those

positions. If the person has been convicted of a misdemeanor and the Director of the Division for Youth believes that they are still and should not be in contact with those in the Division for Youth, they will not be, so it is, to answer your question, no.

SENATOR ABATE: So under this legislation the second piece of legislation would mean just about anyone who is employed by the Division for Youth -

SENATOR DiCARLO: That is -

SENATOR ABATE: -- could be eliminated from employment if they have a prior felony conviction.

SENATOR DiCARLO: That the director believes they are in direct care, and those are the words that are used, direct care for those within the Division for Youth.

SENATOR ABATE: But there's no definition for that within the statute.

SENATOR DiCARLO: No. That is the director who will make that decision.

SENATOR ABATE: All right. Thank

you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 317 are Senators Abate, Dollinger, Kruger, Leichter, Montgomery, Paterson and Smith. Ayes 50, nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator Johnson.

SENATOR JOHNSON: Mr. President, is there any further housekeeping to be taken up at this time?

ACTING PRESIDENT KUHL: The desk tells me that all the housekeeping has been

taken care of, Senator Johnson.

SENATOR JOHNSON: Mr. President, then, at this time I move that we adjourn to reconvene tomorrow morning at 10:00 o'clock, 10:00 a.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Friday, June 2nd, at 10:00 a.m. Note the time change, 10:00 a.m.

(Whereupon at 9:45 p.m., the Senate adjourned.)