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ALBANY, NEW YORK

June 2, 1995

10:05 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT KUHL: The
3 Senate will come to order. Ask the members to
4 find their places, the staff to find their
5 places. Ask everybody in the chamber to rise
6 and join with me in saying the Pledge of
7 Allegiance to the Flag.

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

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

12 (A moment of silence was
13 observed.)

14 Senator Bruno, it's my
15 understanding you'd like to have a quorum call.

16 SENATOR BRUNO: Mr. President,
17 can we at this time have a roll call? I would
18 like to know who is in the chamber and who is
19 not.

20 ACTING PRESIDENT KUHL: At the
21 request of the Majority Leader, the Secretary
22 will call the roll, announce whether the members
23 are present or absent.

1 THE SECRETARY: Senator Abate.
2 SENATOR ABATE: Here.
3 THE SECRETARY: Senator Babbush.
4 (There was no response.)
5 Senator Bruno.
6 SENATOR BRUNO: Here.
7 THE SECRETARY: Senator Connor.
8 (Affirmative indication.)
9 THE SECRETARY: Senator Cook.
10 (There was no response.)
11 Senator DeFrancisco.
12 SENATOR DeFRANCISCO: Here.
13 THE SECRETARY: Senator DiCarlo.
14 SENATOR DiCARLO: Here.
15 THE SECRETARY: Senator
16 Dollinger.
17 (There was no response.)
18 Senator Espada.
19 (There was no response.)
20 Senator Farley.
21 (Affirmative indication.)
22 THE SECRETARY: Senator Galiber.
23 (There was no response.)

1 Senator Gold.
2 (There was no response.)
3 Senator Gonzalez.
4 (There was no response.)
5 Senator Goodman.
6 (There was no response.)
7 Senator Hannon.
8 (There was no response.)
9 Senator Hoblock.
10 (There was no response.)
11 Senator Hoffmann.
12 (There was no response.)
13 Senator Holland.
14 SENATOR HOLLAND: Here.
15 THE SECRETARY: Senator Johnson.
16 (There was no response.)
17 Senator Jones.
18 SENATOR JONES: Here.
19 THE SECRETARY: Senator Kruger.
20 (There was no response.)
21 Senator Kuhl.
22 SENATOR KUHL: Present.
23 THE SECRETARY: Senator Lack.

1 (There was no response.)
2 Senator Larkin.
3 SENATOR LARKIN: Here.
4 THE SECRETARY: Senator LaValle.
5 (There was no response.)
6 Senator Leibell.
7 SENATOR LEIBELL: Here.
8 THE SECRETARY: Senator Leichter.
9 (There was no response.)
10 Senator Levy.
11 (There was no response.)
12 Senator Libous.
13 SENATOR LIBOUS: Here.
14 THE SECRETARY: Senator Maltese.
15 (There was no response.)
16 Senator Marcellino.
17 SENATOR MARCELLINO: Here.
18 THE SECRETARY: Senator Marchi.
19 SENATOR MARCHI: Present.
20 THE SECRETARY: Senator
21 Markowitz.
22 (There was no response.)
23 Senator Maziarz.

1 SENATOR MAZIARZ: Present.
2 THE SECRETARY: Senator Mendez.
3 (There was no response.)
4 Senator Montgomery.
5 (There was no response.)
6 Senator Nanula.
7 (There was no response.)
8 Senator Nozzolio.
9 SENATOR NOZZOLIO: Present.
10 THE SECRETARY: Senator Onorato.
11 SENATOR ONORATO: To explain my
12 presence, Mr. President.
13 (Laughter.)
14 THE SECRETARY: Senator
15 Oppenheimer.
16 (There was no response.)
17 Senator Padavan.
18 SENATOR PADAVAN: Here.
19 THE SECRETARY: Senator Paterson.
20 SENATOR PATERSON: Here.
21 THE SECRETARY: Senator Present.
22 SENATOR PRESENT: Here.
23 THE SECRETARY: Senator Rath.

1 SENATOR RATH: Here.
2 THE SECRETARY: Senator Saland.
3 (There was no response.)
4 Senator Santiago.
5 (There was no response.)
6 Senator Sears.
7 SENATOR SEARS: Present.
8 THE SECRETARY: Senator Seward.
9 (There was no response.)
10 Senator Skelos.
11 (There was no response.)
12 Senator Smith.
13 (There was no response.)
14 Senator Solomon.
15 (There was no response.)
16 Senator Spano.
17 (There was no response.)
18 Senator Stachowski.
19 (There was no response.)
20 Senator Stafford.
21 SENATOR STAFFORD: Here.
22 THE SECRETARY: Senator Stavisky.
23 (There was no response.)

1 Senator Trunzo.
2 SENATOR TRUNZO: Here.
3 THE SECRETARY: Senator Tully.
4 SENATOR TULLY: Here.
5 THE SECRETARY: Senator Velella.
6 (There was no response.)
7 Senator Volker.
8 SENATOR VOLKER: Here.
9 THE SECRETARY: Senator Waldon.
10 (There was no response.)
11 Senator Wright.
12 SENATOR WRIGHT: Present.
13 SENATOR LAVALLE: Mr. President.
14 ACTING PRESIDENT KUHL: Senator
15 LaValle, why do you rise?
16 SENATOR LAVALLE: May I ask my
17 name be called, please?
18 ACTING PRESIDENT KUHL: The
19 Secretary will call -
20 THE SECRETARY: Senator LaValle.
21 SENATOR LAVALLE: Here.
22 ACTING PRESIDENT KUHL: The
23 Secretary will call the absentees.

1 THE SECRETARY: Senator Babbush.
2 (There was no response.)
3 Senator Cook.
4 (There was no response.)
5 Senator Dollinger.
6 (There was no response.)
7 Senator Espada.
8 (There was no response.)
9 Senator Galiber.
10 (There was no response.)
11 Senator Gold.
12 (There was no response.)
13 Senator Gonzalez.
14 (There was no response.)
15 Senator Goodman.
16 (There was no response.)
17 Senator Hannon.
18 (There was no response.)
19 Senator Hoblock.
20 SENATOR HOBLOCK: Here.
21 THE SECRETARY: Senator Hoffmann.
22 (There was no response.)
23 Senator Johnson.

1 (There was no response.)
2 Senator Kruger.
3 (There was no response.)
4 Senator Lack.
5 (There was no response.)
6 Senator Leichter.
7 (There was no response.)
8 Senator Levy.
9 (There was no response.)
10 Senator Maltese.
11 (There was no response.)
12 Senator Markowitz.
13 (There was no response.)
14 Senator Mendez.
15 (There was no response.)
16 Senator Montgomery.
17 (There was no response.)
18 Senator Nanula.
19 (There was no response.)
20 Senator Oppenheimer.
21 (There was no response.)
22 Senator Saland.
23 (There was no response.)

1 Senator Santiago.
2 (There was no response.)
3 Senator Seward.
4 (There was no response.)
5 Senator Skelos.
6 (There was no response.)
7 Senator Smith.
8 (Affirmative indication.)
9 THE SECRETARY: Senator Solomon.
10 (There was no response.)
11 Senator Spano.
12 SENATOR SPANO: Present.
13 THE SECRETARY: Senator
14 Stachowski.
15 (Affirmative indication.)
16 Senator Stavisky.
17 (There was no response.)
18 Senator Velella.
19 SENATOR VELELLA: Here.
20 THE SECRETARY: Senator Waldon.
21 (There was no response.)
22 ACTING PRESIDENT KUHL: Senator
23 Bruno, there is a quorum present.

1 Reading of the Journal.

2 SENATOR BRUNO: Mr. President,
3 yes. Can we proceed with the business in the
4 regular order; and I just want to say thank you
5 to the members that are here in the chamber at
6 10:00 o'clock this morning. Many of the people
7 have been involved and working all night to do
8 the people's work, and I just want to commend
9 those members that are here, and I want to
10 remind everyone else that isn't here that their
11 responsibility is to be in the chamber at the
12 appointed hours.

13 Thank you, Mr. President.

14 ACTING PRESIDENT KUHL: The
15 reading of the Journal.

16 THE SECRETARY: In Senate,
17 Thursday, June 1st. The Senate met pursuant to
18 adjournment, Senator Kuhl in the Chair upon
19 designation of the Temporary President. The
20 Journal of Wednesday, May 31st, was read and
21 approved. On motion, the Senate adjourned.

22 ACTING PRESIDENT KUHL: Hearing
23 no objection, the Journal stands approved as

1 read.

2 Presentation of petitions.

3 Messages from the Assembly.

4 Messages from the Governor.

5 Reports of standing committees.

6 Reports of select committees.

7 Communications and reports from
8 state officers.

9 Motions and resolutions.

10 The Chair recognizes Senator
11 Farley.

12 SENATOR FARLEY: On behalf of
13 Senator Stafford, would you please remove the
14 sponsor's star from Calendar 660.

15 ACTING PRESIDENT KUHL: At the
16 request of the sponsor, the star will be removed
17 on Calendar 660.

18 SENATOR FARLEY: On behalf of
19 Senator Velella, on page 42, I offer the
20 following amendments to Calendar 221, Senate
21 Print 2442 and I ask that this bill retain its
22 place on the Third Reading Calendar.

23 ACTING PRESIDENT KUHL: The

1 amendments to Calendar Number 221 are received
2 and adopted. The bill will retain its place on
3 the Third Reading Calendar.

4 The Chair recognizes Senator
5 Bruno.

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

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

12 THE SECRETARY: On page 11,
13 Calendar Number 402, by Senator Kuhl, Senate
14 Print 2314, an act to amend the General
15 Obligations Law, in relation to the liability
16 for negligence of owners or operators of pools.

17 ACTING PRESIDENT KUHL: The
18 Secretary -

19 SENATOR PATERSON: Lay it aside,
20 please.

21 ACTING PRESIDENT KUHL: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number

1 573, by Senator Levy, Senate Print 392-A, an act
2 to amend the Transportation Law, in relation to
3 requiring common rail carriers to adopt
4 hazardous materials emergency preparedness
5 plans.

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

8 THE SECRETARY: Section 3. This
9 act shall take effect on the 30th day.

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 37.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 594, by Senator Saland, Senate Print 2595, an
18 act to amend the Social Services Law, in
19 relation to criminal screening of child day care
20 providers.

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

23 THE SECRETARY: Section 6. This

1 act shall take effect on the 120th day.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT KUHL: Announce
6 the results when tabulated.

7 THE SECRETARY: Ayes 36, nays 1,
8 Senator Kuhl recorded in the negative.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 734, by Senator Hoblock, Senate Print 4211, an
13 act to amend the Alcoholic Beverage Control Law
14 and others, in relation to compensatory service.

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

17 THE SECRETARY: Section 8. This
18 act shall take effect on the first day of
19 January.

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 37.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 THE SECRETARY: Calendar Number
4 804, by Senator DiCarlo, Senate Print 4687, an
5 act to amend the Executive Law, in relation to
6 increasing the income eligibility level by
7 persons employed by Green Thumb Environmental
8 Beautification, Incorporated.

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

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 37.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 870, by Senator Levy, Senate Print 4857, an act
21 to amend the Vehicle and Traffic Law, in
22 relation to increasing fines associated with
23 passing school buses that are stopped to receive

1 or discharge passengers.

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

4 THE SECRETARY: Section 3. This
5 act shall take effect on the first day of
6 November.

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 38.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 950, by Senator Saland, Senate Print 3475 -

15 SENATOR PATERSON: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside at the request of the Acting Minority
18 Leader, Senator Paterson.

19 THE SECRETARY: Calendar Number
20 951, by Senator Skelos, Senate Print 3612, an
21 act to amend the Domestic Relations Law, the
22 Criminal Procedure Law and the Family Court Act,
23 in relation to imposing a mandatory surcharge

1 upon issuance of certain orders of protection.

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

4 THE SECRETARY: Section 11. This
5 act shall take effect on the first day of
6 November.

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 41.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 952, by Senator Saland, Senate Print 3953-A, an
15 act to amend the Family Court Act and the Civil
16 Practice Law and Rules, in relation to
17 jurisdiction over non-residents in cases in
18 which orders of protection are sought.

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

21 THE SECRETARY: Section 3. This
22 act shall take effect in 90 days.

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 41.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 953, by Senator Saland, Senate Print 4013, an
8 act to amend the Family Court Act, in relation
9 to law guardian representation.

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

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

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 42.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

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

23 SENATOR BRUNO: Mr. President,

1 can we at this time take up the controversial
2 calendar.

3 ACTING PRESIDENT KUHL: The
4 Secretary will -- the Secretary will call the
5 controversial calendar.

6 THE SECRETARY: On page 11,
7 Calendar Number 402, by Senator Kuhl, Senate
8 Print 2314, an act to amend the General
9 Obligations Law, in relation to the liability
10 for negligence of owners or operators of pools.

11 SENATOR PATERSON: Explanation.

12 ACTING PRESIDENT DeFRANCISCO:
13 Read the last section.

14 SENATOR PATERSON: Explanation.

15 ACTING PRESIDENT DeFRANCISCO:
16 I'm sorry. Explanation, Senator Kuhl.

17 SENATOR KUHL: Thank you, Mr.
18 President.

19 This is a bill that we passed in
20 substance last year. The Assembly passed the
21 bill last year and the Governor vetoed the bill
22 last year, and so things have changed a little
23 bit and we're bringing it back again for another

1 look.

2 This is a bill that essentially
3 clarifies a situation that exists in New York as
4 a result of a court decision as it relates to
5 liability waivers that are signed by
6 participants in racetrack operations.

7 In my district, we have a fairly
8 well-known racetrack by the name of Watkins Glen
9 International which holds a series of races
10 throughout the summer. Probably the most famous
11 one that's held currently is the NASCAR race
12 which is held in August, and what we have found
13 is that, as a result of a court decision,
14 there's some question as to whether or not the
15 racetrack remains liable for some -- some types
16 of negligence irregardless of the responsibility
17 of the racetrack and irregardless of the -- or I
18 should say, regardless of whether or not there
19 was a waiver signed by participants.

20 This bill would straighten that
21 whole concept out and it would make the signing
22 of a waiver releasing the racetrack from
23 liability true and irrevocable.

1 ACTING PRESIDENT DeFRANCISCO:
2 Senator Paterson.

3 SENATOR PATERSON: Would the
4 Senator yield for a question?

5 ACTING PRESIDENT DeFRANCISCO:
6 Would Senator Kuhl yield?

7 SENATOR KUHL: Yes.

8 ACTING PRESIDENT DeFRANCISCO: He
9 will.

10 SENATOR PATERSON: Senator, those
11 mechanics or employees who, in a sense, waive
12 their right, are you saying that they are now
13 taking the assumption of the risk; in other
14 words, that they know what the risk is and they
15 are volunteering to take it, therefore, making
16 the owner not liable?

17 SENATOR KUHL: In the general
18 sense, Senator Paterson, that's true. This bill
19 does not exempt the racetrack owner from
20 liability as a result of will... wanton,
21 willful, gross negligence on behalf of the
22 owner. So there still is the same basic premise
23 of liability that exists currently in New York

1 for most participants.

2 What this simply says is that
3 where there is not gross, willful, wanton
4 negligence on behalf of the racetrack owner,
5 there would be no liability.

6 ACTING PRESIDENT DeFRANCISCO:
7 Senator Paterson.

8 SENATOR PATERSON: Thank you, Mr.
9 President.

10 If Senator Kuhl would yield for
11 another question?

12 SENATOR KUHL: Yes.

13 SENATOR PATERSON: So, in other
14 words, even if you have a waiver, if you can
15 prove that there was wanton or gross negligence
16 on the part of the owner, then there would still
17 be damages that could be sought because of the
18 extent of the negligence?

19 SENATOR KUHL: That's my
20 understanding, Senator, yes.

21 SENATOR PATERSON: Now, as I
22 understand it, Senator, that is a higher
23 standard of negligence. In other words, that is

1 almost to the point of being a reckless -- not a
2 deliberate, but certainly where the reasonable
3 person should have known that this could create
4 the kind of harm that it will, which legally, as
5 you know, is a -- is a harder case to actually
6 prove.

7 What was it that -- about the
8 simple negligence that often exists in other
9 tort liability cases that in this case was
10 creating a problem for the owner? Was it that
11 there were a number of frivolous lawsuits or a
12 number of cases where it could be assumed that
13 actually the victim or the alleged victim was
14 contributory or should have known that this was
15 a possible result?

16 ACTING PRESIDENT DeFRANCISCO:

17 Senator Kuhl.

18 SENATOR KUHL: Well, Senator
19 Paterson, I don't know as there was any one
20 issue that triggered this particular approach to
21 resolving a potential problem and -- a problem,
22 but I could tell you that, as you probably are
23 familiar, if you surf the TV on the weekend like

1 I do looking for the most exciting sports event,
2 you know that practically every weekend there is
3 a NASCAR race or some sort of an automobile race
4 in some place across the country.

5 Watkins Glen International
6 participates in this NASCAR series. They have
7 one weekend event of several events. As you
8 know, there is a championship NASCAR series and
9 you have to win -- I don't know whether it's 20
10 or 25 or accumulate the most points over the
11 year to secure that championship.

12 What happens is that these people
13 who participate, they're trained professionals.
14 They are drivers. They are the pit crew. These
15 are people who do this for a living day in and
16 day out. They assume the risk. They know what
17 the risk is.

18 A couple of years ago, we had a
19 racetrack driver who was killed at Watkins
20 Glen. He lost control in a corner, went
21 through, hit the wall and died. The racetrack
22 doesn't feel that there was any liability on
23 their part, but yet they are being sued by the

1 estate. They have done nothing. The owner -
2 the driver certainly knew what existed, and so
3 there was a lawsuit that was brought about as a
4 result of that. That creates a potential
5 liability, number one, but also it creates a
6 situation where there are many, many, many
7 dollars spent by the racetrack personnel, and
8 actually they subject that track to potential
9 closure.

10 So what this bill essentially
11 does is say, "Look, if you're going to
12 participate in the sport, you understand what
13 the risk is, then fine, but let's leave it at
14 that. Let's not open the whole situation up to
15 potential liability and to financial
16 bankruptcy."

17 So that's what this bill attempts
18 to do. It says, Okay. Look, if you're going to
19 participate in this sport, understand the
20 sport. There are certain risks in driving race
21 cars at 150, 200, 250 miles an hour, you know
22 there's a potential for disastrous results, but
23 if you don't want to risk that, then don't

1 participate, but if you are going to participate
2 and you sign a waiver saying, "Okay. We, in
3 fact, forgive the track from anything other than
4 willful, wanton or gross negligence, then don't
5 hold us liable for that later on." That's what
6 this bill is all about.

7 ACTING PRESIDENT DeFRANCISCO:
8 Senator Paterson.

9 SENATOR PATERSON: Thank you very
10 much, Senator.

11 Mr. President, on the bill. I
12 think actually the example that Senator Kuhl
13 gave is a very good example of why a bill such
14 as this would actually be written. What he's
15 actually saying is that in these types of cases,
16 this is a standard of professionalism,
17 unfortunately, and it may sound a little tragic
18 or a little morbid, there's an expectation that
19 there are a certain number of accidents in
20 certain sports such as auto racing, boxing and a
21 few other sports, and that in the cases where,
22 unfortunately, the tragedy occurs on these
23 premises, it is generally understood that it is

1 really the -- the high degree of risk from the
2 actual sport, not any negligence of the facility
3 that causes the unfortunate situation.

4 What we're saying is that, in a
5 sense, the legislation may be somewhat over
6 broad to the extent that in these sort of
7 situations, we would prefer that they be handled
8 on a case by case basis, rather than sort of an
9 umbrella over-reaching determination that there
10 is no negligence or no liability.

11 Further, I would just want to add
12 that what may be helpful is if the facilities
13 are, in a sense, mandated by the legislation to
14 keep records of the accidents that occur, that
15 at a later date might enable us to make a more
16 proper determination as to whether or not
17 Senator Kuhl's idea is actually one that should
18 be put into law.

19 It's a good idea, but whether or
20 not having a law that is as over-reaching would
21 actually sustain the idea is a question that we
22 would probably be able to answer better with a
23 little more statistical data.

1 ACTING PRESIDENT DeFRANCISCO:

2 Read -- Senator Leichter.

3 SENATOR LEICHTER: Mr. President,
4 if Senator Kuhl would yield?.

5 ACTING PRESIDENT DeFRANCISCO:
6 Senator Kuhl, will you yield?

7 SENATOR KUHL: I would be happy
8 to.

9 SENATOR LEICHTER: Senator, I
10 fully agree with you on the assumption of risk,
11 and I am offended, as you are -- maybe
12 "offended" is a strong word -- people who go
13 skiing, which we know is risky, then turn around
14 after an accident and sue the slope operator; or
15 yesterday, actually, I voted for Senator
16 Holland's bill and I'm maybe being a little
17 inconsistent in getting up and questioning you
18 because I think that was pretty much the same
19 thing about people who go horse riding. Of
20 course, we just read about the terrible accident
21 that occurred to the actor Reeve. So there has
22 to be an appreciation, I think, of people who
23 engage in somewhat dangerous activities or

1 activities that have more than usual risk of an
2 accident, that they've got to assume the risk.

3 What I'm a little concerned
4 about, was bothering me as I listened to the
5 accident that you gave, suppose in car racing,
6 one of the ways that you manage the track is if
7 there's an oil spill, you clean it up -- mind
8 you, this is hypothetical. I don't know much
9 about car racing, but assume that to be the
10 case. Now assume that the track did not follow
11 procedures that really every track ought to do
12 after there's an oil spill; you clean it up.
13 They left that oil there. Along comes one of
14 these race car drivers, 250 miles an hour, hits
15 the slick, hits the wall, and the driver is
16 killed. So that there was clearly negligence,
17 and while the driver ought to assume risks,
18 should he assume the risk of the track leaving
19 the oil and failing to clean it up?

20 Now, your answer may be, "Well,
21 that's gross negligence", but I'm concerned that
22 gross negligence really requires such a willful
23 disregard of a person's safety that that example

1 that I gave you may not be considered gross
2 negligence.

3 I just wish you could sort of
4 address your thoughts on that.

5 SENATOR KUHL: Let -- let me -- I
6 probably would say that, Senator, would be
7 included in gross negligence and it would be
8 recoverable on a lawsuit, but let me -- I don't
9 think we even need to get to that answer
10 because, if you understand how the whole track
11 operation happens, you'll understand that that
12 situation that you just posed would never happen
13 because -- it does. Okay.

14 The racetrack owner doesn't
15 operate the race, that's number one. If you
16 have ever attended one of these races -- and I
17 have had the good fortune to attend several of
18 them because they are in my district -- you will
19 understand that the organization that these
20 racetrack drivers belong to, NASCAR, is totally
21 in control of the whole operation.

22 Let me give you a for instance,
23 okay? Three years ago I was the grand marshall

1 at Watkins Glen International, and as part of
2 that operation we got into a little rain delay.
3 I went up into the control center. There was a
4 fellow by the name of Bill LaFrance, who is a -
5 very well known within that circle, who was
6 there and was absolutely controlling the
7 situation. He was in communication with the
8 lead driver talking about -- and they had
9 control checks all the way around the track,
10 about 24 of them, and talking with the race car
11 driver as he we want around the track, saying,
12 "What's the situation here?" And the racetrack
13 driver, of course, in the lead, he wants to run
14 because he's burning gas, okay, and he wants to
15 get this thing going. He says, "Okay. Now,
16 what's the condition of the track?" He said,
17 "It's a little wet here, a little slippery
18 here." "Fine. We can't go. We can't go. We
19 can't go."

20 So the situation you're talking
21 about would never really occur because the
22 racetrack drivers themselves and the organi
23 zation that runs that, the NASCAR organization,

1 controls the whole operation. The racetrack
2 owner, Watkins Glen International, has
3 absolutely no control in the operation of that
4 race.

5 Now, keep in mind that these
6 racetrack driver -- these race car drivers,
7 okay, pay a fee to enter each one of these
8 organizations -- each one of these events,
9 okay? So they are actually paying to enter, in
10 return hopefully winning the big prize, getting
11 the money back. So they're participating, but
12 they're also part of the whole operation of
13 running the event.

14 So the liability of the racetrack
15 owner really is secondary, and these drivers and
16 the operation, they check everything out, so
17 it's really only upon their authority that the
18 situation goes on. They call the caution
19 flags. They call and say, "Okay. Now we're
20 going to green. We're going back on line," and
21 it's only after thorough checking.

22 So the answer to your question
23 really is kind of moot. It's secondary because

1 it really doesn't happen that way.

2 SENATOR LEICHTER: Mr. President,
3 if Senator Kuhl continues to yield.

4 SENATOR KUHL: I would be happy
5 to.

6 SENATOR LEICHTER: I thank you
7 for that explanation.

8 It just may be that I didn't give
9 a good example, but -- and as you explain it,
10 that maybe the race car driver where an accident
11 like that occurs or assuming whoever is running
12 the race -- and it may be an association that he
13 belongs to, but disregarding that example that I
14 gave you and maybe just focusing on the -- on -
15 on -- on the question absent an example, where
16 there occurs an act which is not in accordance
17 with the customary and the proper operation of a
18 track or of a race, are we saying that every
19 driver has to assume that risk? I think he
20 ought to assume the risk. "Hey, I'm engaged in
21 something very dangerous and something may
22 happen." Does he also have to assume the risk
23 that somebody fails to carry out a proper -

1 proper care and fails to -- fails to carry out
2 the duty that whoever it is that's running the
3 race has to -- all the drivers and all the
4 people that are involved in it, of due care?
5 That's the part that concerns me.

6 I think what you're really
7 getting at is that as long as you allow the
8 usual standard of negligence to apply, there's
9 going to be so many lawsuits brought that it
10 really eliminates the whole assumption of risk,
11 and maybe you're right and maybe for that reason
12 we have to go with -- with a bill such as yours,
13 but it does concern me somehow to say to
14 somebody, "You've got to assume the risk," and
15 whether that should also include that somebody
16 fails to use a proper standard or meet a proper
17 standard of care.

18 SENATOR KUHL: Senator, this is
19 not novel legislation, first of all.

20 SENATOR LEICHTER: I know.

21 SENATOR KUHL: There are 12 other
22 states who have adopted this already who are in
23 the race car business, but -- see, I think of

1 this as, okay, here's a ballgame -- and I don't
2 mean that in the literal sense, but I mean
3 here's an event that is kind of picking itself
4 up and going from one spot to another, to
5 another, to another throughout the course of a
6 year. They control it. They control the
7 distribution of the prizes. They control who
8 races. They control everything; and what
9 they're doing is they're coming in now and
10 saying, "Fine. We would like to use your spot
11 because we know that's going to bring people in;
12 it's going to create tourism; it's going to
13 create jobs, and the list goes on and on and on;
14 and then they say, "Well, if something goes
15 wrong, we're going to sue you," and what we're
16 simply saying is, "We would love to have you and
17 we'd love to have you sign the waivers freeing
18 us from this negligence because you're running
19 the whole operation and we can't control it and
20 you won't let us control it."

21 And so what this bill simply does
22 is now when you sign that waiver saying, "Okay.
23 We'll come and play on your ball field. We

1 understand what it is. We're going to tell you
2 whether the blacktop is right, whether it's
3 smooth, whether it needs to be coated, whether
4 it needs this done", and they set all the
5 rules. They set all the rules. If they're not
6 in accordance with their requirements, they
7 don't come, okay?

8 So now what we're saying is,
9 "Okay, fine. If you're going to come and
10 you're going to set the rules, then just simply
11 sign this little waiver and release us from the
12 liability because of what you're doing and what
13 you're not doing."

14 Now, if we do something willful,
15 wanton, gross that you can't control, then fine,
16 hold us liable; but if it's not that, then don't
17 hold us liable.

18 So it's kind of like -- the
19 situation that's occurring is that they've got
20 the best of both worlds, and that, we think, is
21 unfair; and so all we want is just some fairness
22 and some protection knowing that, in fact, this
23 event, a lawsuit is not going to occur because

1 of something they did or something they didn't
2 do, and if these people want to participate
3 willingly and they sign this waiver, then the
4 waiver ought to hold up, and that's what we're
5 doing, just simply saying this waiver ought to
6 hold up.

7 SENATOR LEICHTER: You convinced
8 me.

9 Thank you.

10 ACTING PRESIDENT DeFRANCISCO:
11 Senator Paterson.

12 SENATOR PATERSON: Would the
13 grand marshall yield for a couple more
14 questions?

15 ACTING PRESIDENT DeFRANCISCO:
16 Senator Kuhl?

17 SENATOR KUHL: Only if he's not
18 going to drive the car.

19 (Laughter.)

20 SENATOR PATERSON: Senator, we
21 are ever presently being swayed by your
22 arguments, and so I just have a couple of
23 questions, because I think we're going to have

1 something unique in the process. I think you're
2 actually changing people's minds here.

3 Does NASCAR have a standard -
4 first of all, I would assume that the standard
5 of care is -- is better achieved by the
6 organizations that are holding the events than
7 by the owner because since they do it so
8 frequently, they would actually know in the
9 hypothetical we were given, for instance, what
10 the better track conditions would be, and
11 pursuant to that, what I want to ask you is does
12 NAS...

13 ACTING PRESIDENT DeFRANCISCO:
14 Excuse me, Senator Paterson. Can we have a
15 little quiet in the chambers?

16 Thank you.

17 SENATOR PATERSON: Does the -
18 Senator Kuhl, does the NASCAR, for instance,
19 have a standard of insurance that must be met by
20 the employees or the individuals who travel and
21 work at the -- at the races that they must reach
22 to actually be involved in the process?

23 SENATOR KUHL: I honestly don't

1 know, Senator Paterson. I have always assumed,
2 yes, that the NASCAR provided an insurance
3 policy for all their participants, but I can't
4 give that verification to you from my personal
5 knowledge. I don't know.

6 SENATOR PATERSON: They just
7 called and said that they do, Senator, so I like
8 the bill.

9 ACTING PRESIDENT DeFRANCISCO:
10 Read the last section.

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

13 ACTING PRESIDENT DeFRANCISCO:
14 Please call the roll.

15 (The Secretary called the roll.)

16 ACTING PRESIDENT DeFRANCISCO:
17 Results.

18 THE SECRETARY: Ayes 48.

19 ACTING PRESIDENT DeFRANCISCO:
20 The bill is passed.

21 The Secretary will read.

22 THE SECRETARY: Calendar Number
23 950, by Senator Saland, Senate Print -

1 ACTING PRESIDENT DeFRANCISCO:

2 Excuse me. Excuse me.

3 Senator Velella.

4 SENATOR VELELLA: At this time we
5 would like to call an immediate meeting of the
6 Rules Committee in Room 332.

7 ACTING PRESIDENT DeFRANCISCO:

8 There will be an immediate meeting of the Rules
9 Committee in Room 332.

10 SENATOR VELELLA: Can we return
11 to the regular order now?

12 ACTING PRESIDENT DeFRANCISCO:

13 The Secretary will please read.

14 THE SECRETARY: Calendar Number
15 950, by Senator Saland, Senate Print 3475, an
16 act to amend the Family Court Act and the
17 Domestic Relations Law, in relation to service
18 of temporary orders of protection.

19 SENATOR PATERSON: Explanation.

20 ACTING PRESIDENT DeFRANCISCO:

21 Explanation, Senator Saland.

22 SENATOR SALAND: Thank you, Mr.

23 President.

1 Mr. President, this bill modifies
2 legislation that we enacted either last session
3 or the prior session which required temporary
4 orders of protection to be served by police or
5 peace officers. It appears that while we
6 certainly intended to ensure service and
7 efficient and effective service, what has
8 occurred is statistically, according to the
9 Office of Court Administration, the numbers of
10 effective services have decreased. The
11 percentage of service of orders -- of temporary
12 orders of protection has gone down.

13 What this bill attempts to do is
14 to -- is to create, in effect, a hybrid system,
15 one which still recognizes that there certainly
16 are very appropriate circumstances under which
17 service should only be made by law enforcement
18 personnel and still enables, at the same time,
19 an individual petitioner in this type of
20 situation to also effectuate service.

21 It's hoped that this, again,
22 hybrid system will bring back the numbers of
23 effective services accomplished under the law.

1 ACTING PRESIDENT DeFRANCISCO:

2 Senator Paterson.

3 SENATOR PATERSON: Mr. President,
4 would Senator Saland be willing to yield for a
5 question?

6 ACTING PRESIDENT DeFRANCISCO:

7 Senator Saland.

8 SENATOR SALAND: Yes, Mr.
9 President.

10 SENATOR PATERSON: Senator
11 Saland, does the victim have a choice of which
12 of the three services that they might be
13 seeking?

14 SENATOR SALAND: I believe the
15 language of the bill indicates that the victim
16 would have the ability to choose which type of
17 service.

18 SENATOR PATERSON: Then, just in
19 terms of -

20 SENATOR SALAND: Let me call your
21 attention on the first page of the bill to -- I
22 believe it's lines 5 and 6. It says -- 6 and 7
23 -- "Unless the party requesting the order

1 states on the record she will arrange for other
2 means of service." So it really would be at the
3 request of the -- of the petitioner or
4 applicant.

5 SENATOR PATERSON: Okay.

6 ACTING PRESIDENT DeFRANCISCO:
7 Senator Paterson.

8 SENATOR PATERSON: If the Senator
9 would yield for just one more question.

10 SENATOR SALAND: Yes, Mr.
11 President.

12 SENATOR PATERSON: In terms of
13 the timeliness of it, does the decision have to
14 be made prior to the issuance of the order of
15 protection?

16 SENATOR SALAND: I'm not quite
17 sure I follow your question.

18 SENATOR PATERSON: In other
19 words, do they have to pick which service
20 they're going to allow to provide prior to the
21 issue -- issuance of an order of protection?

22 SENATOR SALAND: I would assume
23 it would be done prior to the issuance of the

1 order upon the application. The section starts
2 off by saying, "If a temporary order of
3 protection has been issued or an order of
4 protec... or an order of protection has been
5 ordered upon default, unless the party
6 requesting the order...."

7 So I would assume the request has
8 to be made prior to the issuance in order for
9 the court to make it part of its ruling.

10 SENATOR PATERSON: The only
11 reason that I asked the question, Senator, is it
12 absolutely necessary, do you feel, to have the
13 victim make that choice where the order of
14 protection is really something that is a -- is a
15 criminal justice remedy? In other words, is it
16 absolutely necessary that that decision be made
17 prior to the issuance?

18 ACTING PRESIDENT DeFRANCISCO:
19 Senator Saland.

20 SENATOR SALAND: Well, what we're
21 doing here is we're not amending the CPL
22 section; we're amending the Family Court
23 section, and what we're providing is a means by

1 which the -- the applicant or petitioner will
2 still have the ability to determine whether -
3 in most cases, we're talking "she" -- whether
4 she wants to effectuate service through law
5 enforcement or whether she wants to adopt one of
6 the alternative means.

7 The driving force behind this
8 legislation, as I mentioned in my opening
9 remarks, according to the Office of Court
10 Administration, is the fact that since we've
11 gone over to a system that relies virtually and
12 entirely on service by law enforcement
13 personnel, the number of orders -- the service
14 of numbers of orders of protections -- orders of
15 protection has dropped.

16 This is apparently a means by
17 which the OCA believes that -- that we can
18 accomplish greater numbers of effective services
19 in these types of situations.

20 I don't see anything in this bill
21 that's going to preclude the exercise of that
22 discretion by the victim of -- who's seeking the
23 order of protection.

1 ACTING PRESIDENT DeFRANCISCO:

2 Senator Paterson.

3 SENATOR PATERSON: I'm just
4 wondering, Senator -- and I'm really wondering
5 in a way not to be contentious, but I would just
6 like to have your feeling on it -- if the fact
7 that the number of orders has dropped is really
8 such a good thing?

9 SENATOR SALAND: In my own
10 opinion, I would think that the fact that the
11 number of services -- of orders has diminished
12 is not a good thing, because I do not believe
13 that it reflects a diminution in the number of
14 these types of incidents that have occurred. So
15 I don't think it's a question of the base having
16 dropped; I think it's a question of the numbers
17 of orders that could have been served, not being
18 served. I couldn't -- in all fairness, Senator,
19 I couldn't confirm that with hard data.

20 ACTING PRESIDENT DeFRANCISCO:

21 Senator Paterson.

22 SENATOR PATERSON: Thank you very
23 much, Senator.

1 I just wanted to see how you felt
2 about that.

3 ACTING PRESIDENT DeFRANCISCO:
4 Please read the last section.

5 THE SECRETARY: Section 3. This
6 act shall take effect on the 60th day.

7 ACTING PRESIDENT DeFRANCISCO:
8 Call the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 49.

11 ACTING PRESIDENT DeFRANCISCO:
12 The bill is passed.

13 That completes the controversial
14 calendar.

15 SENATOR VELELLA: Do we have any
16 housekeeping?

17 ACTING PRESIDENT DeFRANCISCO:
18 There's no housekeeping at the desk.

19 SENATOR VELELLA: Would the
20 Senate stand at ease awaiting the Rules report.

21 ACTING PRESIDENT DeFRANCISCO:
22 The Senate will stand at ease awaiting the
23 report of the Rules Committee.

1 (Whereupon, the Senate stood at
2 ease from 10:49 a.m. until 11:11 a.m.)

3 ACTING PRESIDENT KUHL: The
4 Senate will come to order.

5 The Chair recognizes Senator
6 Velella.

7 SENATOR VELELLA: Mr. President,
8 can we return to the reports of standing
9 committees and have the Supplemental Calendar
10 read from the Rules report.

11 ACTING PRESIDENT KUHL: There is
12 a Rules report at the desk, Senator Velella.
13 We'll return to reports of standing committees.
14 I'll ask the Secretary to read the Rules report.

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

18 Senate Print 12-B, by Senator
19 Wright, an act to amend the State Administrative
20 Procedure Act, in relation to enhancing state
21 agency consideration.

22 614, by Senator Stafford, an act
23 to amend the Environmental Conservation Law, in

1 relation to non-hazardous municipal landfill
2 closure.

3 629, by Senator Stafford, an act
4 to amend the Environmental Conservation Law, in
5 relation to non-hazardous municipal landfill
6 closure.

7 1250-A, by Senator Holland, an
8 act to amend the General Obligations Law, in
9 relation to the liability of persons involved in
10 equine activities.

11 1525, by Senator Maltese, an act
12 to amend the Correction Law and the Penal Law,
13 in relation to consent for provisions of
14 medical, dental and medical health services.

15 2207, by Senator Seward, an act
16 to amend Chapter 668 of the Laws of 1977,
17 amending the Volunteer Firemen's Benefit Law.

18 2811-A, by Senator DeFrancisco,
19 an act to amend the Public Authorities Law, in
20 relation to contracts awarded by the Onondaga
21 County Water Authority.

22 2881-B, by Senator Lack, an act
23 to amend the Judiciary Law, in relation to jury

1 service and to repeal certain provisions of such
2 law relating thereto.

3 3219-A, by Senator Bruno, an act
4 to amend Chapter 714 of the Laws of 1986
5 relating to authorizing the city of Saratoga
6 Springs to sell certain lands.

7 3818, by Senator Volker, an act
8 to amend the Criminal Procedure Law, the Public
9 Health Law and the Family Court Act, in relation
10 to the authorized destruction of dangerous
11 drugs, drug paraphernalia or precursors of
12 controlled substances.

13 4003, by Senator Libous, an act
14 to amend the Correction Law, in relation to
15 extending civil immunity to officers or
16 employees of the Office of Mental Health.

17 4216, by Senator Padavan, an act
18 to amend the Penal Law, in relation to auto
19 stripping.

20 4300, by Senator Present, an act
21 to amend the Criminal Procedure Law, in relation
22 to designation of uniformed court officers of
23 the city of Jamestown as peace officers.

1 4549-A, by Senator Trunzo, an act
2 to amend Chapter 901 of the Laws of 1990,
3 amending the Environmental Conservation Law.

4 5134, by Senator Marcellino, an
5 act in relation to granting a retroactive senior
6 citizen tax exemption to Gladys Raso.

7 5154, by Senator Present, an act
8 to amend the Highway Law, in relation to
9 construction and maintenance of streets and
10 highways.

11 5211, by Senator Marcellino, an
12 act to amend the Criminal Procedure Law, in
13 relation to anonymous juries and to repeal
14 subdivision 1-A of Section 270.15.

15 5230, by Senator Lack, an act to
16 amend the Tax Law, in relation to authorizing
17 the county of Suffolk to impose an additional
18 one-quarter of one percent of sales and
19 compensating use tax.

20 5235, by the Committee on Rules,
21 an act to amend the Social Services Law, in
22 relation to medical assistance exclusion.

23 2302, by Senator Stavisky, an act

1 to amend the Penal Law, in relation to penalties
2 for criminal solicitation of persons under 16
3 years of age.

4 All bills ordered directly for
5 Third Reading.

6 ACTING PRESIDENT KUHL: The Chair
7 recognizes Senator Velella.

8 SENATOR VELELLA: Mr. President,
9 I move that we adopt the Rules report.

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

13 (Response of "Aye".)

14 Opposed, nay.

15 (There was no response.)

16 The Rules report is adopted.

17 All bill are directed to third
18 reading.

19 Senator Velella.

20 SENATOR VELELLA: Mr. President,
21 I believe we have some housekeeping at the
22 desk. Can we take that up now?

23 ACTING PRESIDENT KUHL: We do.

1 The Chair recognizes Senator Farley.

2 SENATOR FARLEY: Thank you, Mr.
3 President.

4 On behalf of Senator Levy, on
5 page 5, I offer the following amendments to
6 Calendar 128, Senate Print 2591-C, and I ask
7 that the said bill retain its place on the Third
8 Reading Calendar.

9 ACTING PRESIDENT KUHL: The
10 amendments to Calendar Number 125 are received
11 and adopted. The bill will retain its place on
12 Third Reading Calendar.

13 Senator Farley.

14 SENATOR FARLEY: On behalf of
15 Senator Stafford, on page 1 of the Supplemental
16 Number 1 Calendar, Calendar Number 1072, Senate
17 Print 629, I offer the following amendments to
18 that bill, and I ask that it retain its place.

19 ACTING PRESIDENT KUHL: The
20 amendments to Calendar Number 1072 are received
21 and adopted. The bill will retain its place on
22 the Third Reading Calendar.

23 Senator Farley.

1 SENATOR FARLEY: On behalf of
2 Senator Marchi, please place a sponsor's star on
3 Calendar Number 741.

4 ACTING PRESIDENT KUHL: Calendar
5 Number 741 is starred at the request of the
6 sponsor.

7 Senator Montgomery, did you have
8 something?

9 SENATOR MONTGOMERY: Yes, Mr.
10 President. I would like unanimous consent to be
11 recorded in the negative on Calendar Number 951.

12 ACTING PRESIDENT KUHL: Without
13 objection, and hearing no objection, Senator
14 Montgomery will be recorded in the negative on
15 Calendar Number 951.

16 Senator Velella.

17 SENATOR VELELLA: Mr. President,
18 can we now go to the non-controversial reading
19 of Supplemental Calendar Number 1.

20 ACTING PRESIDENT KUHL: The
21 Secretary will read the non-controversial
22 calendar, Supplemental Calendar Number 1.

23 THE SECRETARY: Calendar Number

1 1070, by Senator Wright, Senate Print 12-B, an
2 act to amend the State Administrative Procedure
3 Act, in relation to enhancing state agency
4 consideration.

5 SENATOR LEICHTER: Lay it aside.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 1071, by Senator Stafford, Senate Print 614, an
10 act to amend the Environmental Conservation Law,
11 in relation to non-hazardous municipal landfill
12 closure projects.

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

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 51.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 1073, by Senator Holland, Senate Print 1250-A,
2 an act to amend the General Obligations Law, in
3 relation to the liability of persons involved in
4 equine activities.

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

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 51.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Senator Maltese
16 moves to discharge from the Committee on Crime
17 Victims, Crime and Correction, Assembly Bill
18 Number 2344, and substitute it for the identical
19 Calendar Number 1074.

20 ACTING PRESIDENT KUHL: The
21 substitution is ordered.

22 The Secretary -- the Secretary
23 will read the last section.

1 THE SECRETARY: Calendar Number
2 1074, by Member of the Assembly Connelly,
3 Assembly Print 2344, an act to amend the
4 Correction Law and the Penal Law, in relation to
5 consent for provision of medical, dental and
6 mental health services to inmates under 18 years
7 of age.

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

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 51.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Senator Seward,
19 from the Committee on Local Government, moves to
20 discharge Assembly Bill Number 3350 and
21 substitute it for the identical Calendar Number
22 1075.

23 ACTING PRESIDENT KUHL: The

1 substitution -- the substitution is ordered.

2 The Secretary will read the title.

3 THE SECRETARY: Calendar Number
4 1075, by Member of the Assembly McGee, Assembly
5 Print 3350, an act to amend Chapter 688 of the
6 Laws of 1977, amending the Volunteer Firemen's
7 Benefit Law.

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

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 ACTING PRESIDENT KUHL: Announce
16 the results when tabulated.

17 THE SECRETARY: Ayes 50, nays 1,
18 Senator Leichter recorded in the negative.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 1076, by Senator DeFrancisco, Senate Print
23 2811-A, an act to amend the Public Authorities

1 Law, in relation to contracts awarded by the
2 Onondaga County Water Authority.

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

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

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 51.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 1077, by Senator Lack, Senate Print 2881-B, an
15 act to amend the Judiciary Law, in relation to
16 jury service and to repeal certain provisions of
17 such law relating thereto.

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

20 THE SECRETARY: Section 12. This
21 act shall take effect on the first day of
22 January.

23 SENATOR LEICHTER: Mr. President,

1 can I have -

2 ACTING PRESIDENT KUHL: Senator
3 Leichter to explain his vote?

4 SENATOR LEICHTER: -- my name
5 called?

6 Yeah, Mr. President. This is
7 really a most significant bill. I wish Senator
8 Lack were here to, if nothing else, receive
9 kudos for moving this bill, because it really
10 makes the most substantial, significant changes
11 in jury duty by removing exemptions that have
12 been built up over the years and really no
13 longer should exist.

14 I think a lot of credit should
15 also go to Chief Judge Kaye, the commission that
16 she set up to take a look at how we can make
17 jury duty easier, less burdensome, more
18 effective.

19 This is really one of the major
20 bills we passed this session. I vote in the
21 affirmative.

22 ACTING PRESIDENT KUHL: Call the
23 roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT KUHL: Senator
3 Dollinger to explain his vote.

4 SENATOR DOLLINGER: To explain my
5 vote.

6 I join with the ranking Democrat
7 on the Judiciary Committee in commending its
8 chairman, Jim Lack, for the work on this bill.

9 I went to a public hearing in
10 Rochester on the exemptions. I think both
11 Senator Lack and I were somewhat surprised that
12 all those people who were protected from jury
13 service for the last 20 or 30 years didn't come
14 out and tell us that there were all kinds of
15 problems if they were put back in the jury pool;
16 but this is a very significant piece of
17 legislation. I think it will expand the pools
18 and it will make the notion of a trial by your
19 peers a reality in New York.

20 I congratulate, although he isn't
21 here, in absentia, the chairman of the Judiciary
22 Committee.

23 ACTING PRESIDENT KUHL: Senator

1 Dollinger will be recorded in the affirmative.

2 Announce the results.

3 THE SECRETARY: Ayes 51.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 1078, by Senator Bruno, Senate Print 3219-A, an
8 act to amend Chapter 714 of the Laws of 1986,
9 relating to authorizing the city of Saratoga
10 Springs to sell certain lands.

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

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 51.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 1079, by Senator Volker, Senate Print 3818, an

1 act to amend the Criminal Procedure Law, the
2 Public Health Law and the Family Court Act.

3 ACTING PRESIDENT KUHL: The
4 Secretary -- the Secretary will read the last
5 section.

6 SENATOR LEICHTER: Lay it aside.

7 ACTING PRESIDENT KUHL: Lay the
8 bill aside.

9 THE SECRETARY: Calendar Number
10 1080, by Senator Libous, Senate Print 4003, an
11 act to amend the Correction Law, in relation to
12 extending civil immunity to officers or
13 employees of the Office of Mental Health.

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

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 51.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 1081, by Senator Padavan, Senate Print 4216, an
3 act to amend the Penal Law, in relation to auto
4 stripping.

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

7 THE SECRETARY: Section 9. This
8 act shall take effect on the first day of
9 November.

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 51.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 1082, by Senator Present, Senate Print 4300, an
18 act to amend the Criminal Procedure Law, in
19 relation to designation of uniformed court
20 officers of the city of Jamestown as peace
21 officers.

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

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT KUHL: Announce
7 the results when tabulated.

8 THE SECRETARY: Ayes 50, nays 1,
9 Senator Leichter recorded in the negative.

10 ACTING PRESIDENT KUHL: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 1083, by Senator Trunzo, Senate Print 4549-A, an
14 act to amend Chapter 901 of the Laws of 1990,
15 amending the Environmental Conservation Law,
16 relating to providing for enforcement authority
17 in Suffolk and Nassau Counties.

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

20 THE SECRETARY: Section 2. This
21 act shall take effect in 30 days.

22 ACTING PRESIDENT KUHL: Call the
23 roll.

1 (The Secretary called the roll.)
2 THE SECRETARY: Ayes 51.
3 ACTING PRESIDENT KUHL: The bill
4 is passed.
5 THE SECRETARY: Calendar Number
6 1084, by Senator Marcellino, Senate Print
7 5134 -
8 SENATOR LEICHTER: Lay it aside.
9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.
11 THE SECRETARY: Calendar Number
12 1085, by Senator Present, Senate Print 5154, an
13 act to amend the Highway Law, in relation to
14 construction and maintenance of streets and
15 highways within the city of Salamanca and on the
16 Allegheny Indian Reservation.
17 ACTING PRESIDENT KUHL: The
18 Secretary will read the last section.
19 THE SECRETARY: Section 2. This
20 act shall take effect immediately.
21 ACTING PRESIDENT KUHL: Call the
22 roll.
23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 51.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 1086, by Senator Marcellino, Senate Print 5211,
6 an act to amend the Criminal Procedure Law, in
7 relation to anonymous juries.

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

10 THE SECRETARY: Section 4. This
11 act shall take effect on the 30th day.

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 51.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 1087, by Senator Lack, Senate Print 5230, an act
20 to amend the Tax Law, in relation to authorizing
21 the county of Suffolk to impose an additional
22 one-quarter of one percent sales and
23 compensating use tax.

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

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

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 51.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 1088, by Sen... by the Committee on Rules,
13 Senate Print 52...

14 SENATOR VELELLA: Lay it aside
15 temporarily.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside temporarily.

18 THE SECRETARY: Calendar Number
19 1089, by Senator Stavisky, Senate Print 2302 -

20 SENATOR VELELLA: Lay it aside
21 for the day.

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

1 Senator Velella, that completes
2 the non-controversial calendar.

3 SENATOR VELELLA: Can we now
4 proceed to the controversial calendar.

5 ACTING PRESIDENT KUHL: The
6 Secretary will call the controversial calendar
7 on Senate Supplemental Calendar Number 1.

8 THE SECRETARY: Calendar Number
9 1070, by Senator Wright, Senate Print 12-B, an
10 act to amend the State Administrative Procedure
11 Act, in relation to enhancing state agency
12 consideration.

13 SENATOR LEICHTER: Is Senator
14 Wright here to yield to a question?

15 ACTING PRESIDENT KUHL: Senator
16 Wright, an explanation of Calendar Number 1070
17 has been asked for by Senator Leichter.

18 SENATOR WRIGHT: This is
19 legislation that we have been -- excuse me -- we
20 have enacted previously in this house
21 identifying the impact on jobs and employment
22 and requiring the agencies to reflect specific
23 job impact statements in terms of a proposed

1 rule or regulation.

2 SENATOR LEICHTER: Yeah -

3 ACTING PRESIDENT KUHL: Senator
4 Leichter.

5 SENATOR LEICHTER: Mr. President,
6 if Senator Wright would yield, please.

7 ACTING PRESIDENT KUHL: Senator
8 Wright, do you yield to a question by Senator
9 Leichter?

10 SENATOR WRIGHT: Certainly, Mr.
11 President.

12 ACTING PRESIDENT KUHL: The
13 Senator yields.

14 SENATOR LEICHTER: Senator,
15 there's certainly some grounds for having an
16 agency that's promulgating rules take a look at
17 the consequences of that rule on economic
18 activity, jobs, and so on. I'm not so sure that
19 that's not presently being done, although not in
20 the form that you provide for in this bill.

21 I just have this strong suspicion
22 that the real aim of this bill is to limit the
23 rulemaking authority of agencies and in that

1 connection I want to ask you, when an agency now
2 makes a rule that it considers appropriate and
3 necessary for the public welfare, does it, for
4 instance, make findings as to the number of
5 people whose lives would be saved if that rule
6 were enacted, the number of people who would
7 avoid hospitalization, illness, sickness? Do
8 you know the answer to that question?

9 SENATOR WRIGHT: That may or may
10 not be reflected, depending upon what the agency
11 has promulgated. In fact, what you're seeking
12 would be risk assessment that Senator Rath has
13 introduced legislation on before.

14 What the current legislation
15 requires is an economic impact analysis, and the
16 reason for this bill is that, in fact, many
17 times the agencies do not reflect the employment
18 impact. They speak in very general,
19 non-specific economic impact terms. What we're
20 looking for is a very specific identification of
21 the employment impact.

22 What I find interesting is, in
23 fact, last year when we had this bill -- and it

1 passed this house as well as passed the Assembly
2 -- in fact, we literally had a state agency put
3 out a memo in opposition indicating their
4 opposition to this bill because they knew that
5 the rules had an adverse effect -- effect on
6 jobs and employment but it would slow down the
7 rulemaking process, and this, in fact, is the
8 heart of why we have this legislation on the
9 floor today. The agencies were far more
10 preoccupied with their rulemaking processes than
11 they were the impact that it was going to have
12 on this state and the job losses that have
13 resulted consistently as a result of rules in
14 this state.

15 ACTING PRESIDENT KUHL: Senator
16 Leichter.

17 SENATOR LEICHTER: Senator
18 Wright, if you would be so good as to continue
19 to yield.

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

22 SENATOR WRIGHT: Yes, I will, Mr.
23 President.

1 ACTING PRESIDENT KUHL: The
2 Senator continues to yield, Senator Leichter.

3 SENATOR LEICHTER: Senator, I
4 guess the point that I'm trying to make and I'm
5 trying to understand this bill -- and see if it
6 makes sense or whether it just reflects a bias
7 that you have against any rulemaking, and that's
8 why I asked the question of whether the health
9 considerations or the health consequences or the
10 effect of a rule are treated in a manner similar
11 to which you require information or
12 consideration of job loss.

13 Now, you said, "Well, it depends
14 on the rule." Maybe in some rules -- I guess if
15 we have a rule that -- as we did some time on
16 the percentage of a certain substance in DEET or
17 how much DEET can be in anti-insect repellent,
18 which very unfortunately, the current
19 administration in an arbitrary manner tried to
20 eliminate and was struck down by its -- its
21 action was struck down by the court, there
22 clearly since the rule deals specifically with
23 health, the rule at the time that it was

1 promulgated had information as to saving of
2 lives, saving people from illness.

3 I can also understand that if you
4 have a rule that deals only with a certain
5 industrial policy, that you might very well at
6 that point deal with job loss or job growth as a
7 consequence of the rule; but your bill requires
8 every rule where there's a likelihood of
9 possibility that more than 100 jobs may be lost
10 to deal with the job loss, and I'm just trying
11 to see how balanced your bill is and, therefore,
12 ask you whether presently we have a practice,
13 whether required by law or otherwise, that any
14 rule which deals or could affect the health of
15 more than 100 people, whether there is a health
16 assessment similar to what you require as a job
17 assessment?

18 SENATOR WRIGHT: I don't -- I'm
19 not aware of a specific requirement that
20 identifies in excess of 100 incidents that there
21 would be a specific health impact.

22 Typically, when you are doing the
23 regulatory impact statement, if it is a health

1 rule or regulation, that certainly would be part
2 of the -- part of the assessment and reflected.

3 We're specifically targeting a
4 threshold of 100 jobs because we consider that
5 to be a significant impact and, in fact, it's
6 very unlikely that you would have a circumstance
7 where you would have a negative impact being
8 promulgated by a rule as it relates to health.
9 In fact, it's just the opposite. There's
10 generally a very conscious, positive impact that
11 is to be promulgated when you're developing a
12 regulation relative to health.

13 In fact, what we've seen with the
14 job loss is that there are numerous rules and
15 regulations that have a considerable adverse
16 impact, and this is what this bill recalls, that
17 if you are going to result in an adverse impact
18 or a loss reduction of -- in excess of 100 jobs,
19 you're very specifically speaking to that
20 adverse impact.

21 SENATOR LEICHTER: Senator
22 Wright, if you could continue to yield.

23 ACTING PRESIDENT KUHL: Senator

1 Wright, do you continue to yield?

2 SENATOR WRIGHT: Yes.

3 ACTING PRESIDENT KUHL: The
4 Senator continues to yield.

5 SENATOR LEICHTER: I'm not sure
6 you're correct when you say that it's very
7 unlikely that a rule could ever have an adverse
8 health impact because there's rules that deal,
9 for instance, with the transmission of
10 electricity, of other materials throughout the
11 state, rules that DOT may make as to hazardous
12 material where certainly there may be an adverse
13 health consequence or there may be actions that
14 could kill people, and so on.

15 So what I'm really trying to see,
16 Senator -- and I'll ask you very directly -- are
17 you as concerned about health as you are about
18 jobs? Is that a concern of yours?

19 SENATOR WRIGHT: Certainly it is,
20 Senator, but that's not the issue we have before
21 us today. We're talking about the economic
22 health of this state, and as you and I have
23 debated that issue on numerous occasions, I

1 happen to believe that the economic health of
2 this state has been adversely affected by the
3 rulemaking process.

4 A number of my colleagues in this
5 house and the other house share that view and
6 believe that the adverse impact -- and very
7 seldom have we -- in the analogy I was using in
8 terms of health, so we don't have rules
9 promulgated to adversely impact health. Some
10 action that we are regulating may adversely
11 impact health, and that's the reason that we're
12 regulating it, but in the case of rules that are
13 being promulgated to have another result, one of
14 the side effects, unfortunately, is job loss.

15 What we're requiring is if that
16 side effect is going to occur, then it should be
17 specifically identified and alternatives to that
18 should be specifically considered.

19 SENATOR LEICHTER: Senator
20 Wright, if you would just yield to one more
21 question. I -- I -

22 SENATOR WRIGHT: Yes, Mr.
23 President.

1 ACTING PRESIDENT KUHL: Senator
2 Wright continues to yield.

3 SENATOR LEICHTER: I appreciate
4 your saying this bill doesn't deal with health.
5 I'm concerned at this moment about job loss, but
6 that's precisely my point, Senator. Why not
7 come up with a balanced bill? Why not be as
8 equally concerned with people's health as you
9 are concerned with the loss of jobs?

10 Loss of jobs is a thing that we
11 all need to be concerned about, but I see, very
12 frankly, a somewhat one-sided, very narrow,
13 unbalanced approach, and that's what I'm
14 concerned about. So I ask you, why not put in a
15 bill that also says that if the consequence of
16 the rule is that 100 or more people might be
17 injured or might be killed or might die or might
18 be maimed or may end up in a hospital, that
19 there ought to be a similar assessment; and I
20 don't believe that's the law now, and I don't
21 see you addressing that.

22 ACTING PRESIDENT KUHL: Senator
23 Rath, why do you rise?

1 SENATOR RATH: Mr. President, I'm
2 wondering if Senator Wright might allow me an
3 observation at this point in the debate.

4 ACTING PRESIDENT KUHL: Senator
5 Leichter has the floor. He's asked Senator -

6 SENATOR LEICHTER: I would be
7 happy to, you know, have Senator Rath join us.

8 ACTING PRESIDENT KUHL: Senator
9 Leichter says he would like to have a little
10 enlightenment also, Senator Rath, so the floor
11 is yours.

12 SENATOR RATH: Thank you, Senator
13 Leichter, Senator Wright, Mr. President.

14 I will be directing your
15 attention to a handout that I will bring
16 around. It may have come to your office and you
17 might not have seen it, but I think you're
18 coming, Senator Leichter -- and I think it's
19 very appropriate that we do come to the
20 discussion of risk assessment and cost benefit.

21 As we did earlier this year in an
22 omnibus bill that went through this house and in
23 a piece of legislation that I've sponsored and

1 Senator Wright has co-sponsored, his piece today
2 deals with one of the specific concerns we have
3 in relation to job loss, and I urge the support
4 of this bill; but I urge also your attendance
5 and all of you -- and all of us will be very
6 busy on June 14th, inasmuch as that's the day
7 before we're anticipating summer recess, but I
8 would hope that, if you cannot be there, that
9 one of your staff persons can come to a seminar
10 that we are presenting -- and I would tell you
11 it's the ARRC, the Administrative Regulation
12 Review Commission, and we're bringing in John
13 Graham; and John Graham is the director for the
14 Center for Risk Analysis at Harvard University.
15 His publications include In Search of Safety:
16 Chemicals and Cancer Risks, and this is exactly
17 where we're going, Senator Leichter, exactly to
18 where you're going, because the question is not,
19 as Senator Wright has brought up very
20 appropriately, the situation of the job loss and
21 what we need to do in order to protect that when
22 rules are made; but we also need to go to the
23 risk, and we are working towards getting -- I

1 don't think it's going to happen this year, but
2 it certainly can happen next year that we get
3 the bookends, as I call them, of regulatory
4 reform, of cost benefit and risk assessment
5 here, and we get our arms around this problem
6 and, in the meantime -- and believe me, there
7 are some very open-ended questions, and this
8 week wonderfully the Albany Law School brought
9 the Warren Anderson breakfast series here and
10 Professor Hutter spoke for an hour on cost
11 benefit and risk assessment. It is what we've
12 got to do to get our arms around this, but until
13 we do, Senator Wright is absolutely appropriate
14 and correct to attempt to move something along
15 immediately to take a look at what we're doing
16 by way of job loss.

17 Thank you. And I will be having
18 these handed out in a few minutes when the
19 debate is concluded.

20 SENATOR LEICHTER: Senator Rath,
21 let me thank you for your comment and also thank
22 you for having that seminar and I hope we'll all
23 be free to attend. If not, I'll certainly send

1 some staff persons because I fully agree with
2 you. I think risk assessment is a very
3 necessary and very important tool. I think we
4 have regulations that require sort of absolute
5 safety that probably do not make sense, and I -
6 and I think it's important for people to
7 understand what the risk is and also the
8 trade-off in terms of health and jobs, and so
9 on, and that's why I addressed the question as I
10 did to Senator Wright, and that's why I'm
11 troubled about this bill, although I can't say
12 that in itself there are any real objectionable
13 provisions in there other than what I see, and
14 that is this great skepticism or really
15 hostility towards government regulations,
16 towards government actions which we know exist
17 on the part of the far right in the Republican
18 Party, and it's sort of a failure, if you will,
19 to -- to appreciate and understand what the
20 modern technological, highly competitive,
21 economic world is all about. I mean, it's sort
22 of a denial that we're living on the threshold
23 of the 21st Century.

1 So I don't know, Senator Wright,
2 if the aim -- I won't say the aim -- but if the
3 effect of this bill really isn't going to be to
4 make rulemaking more cumbersome, more difficult,
5 more harder to achieve, and to that extent and
6 in that respect, as laudable as your purpose may
7 be, if it is solely limited to the issue of job
8 loss and not an attempt to hinder and try to
9 paralyze government -- I'm still concerned,
10 presented as it is, in isolation not dealing
11 with risk assessment that its impact will not be
12 positive.

13 ACTING PRESIDENT KUHL: Senator
14 Wright to respond.

15 SENATOR WRIGHT: Senator, I can
16 assure you that's certainly not our intent to
17 hinder the process. It's, in fact, our intent
18 to improve upon the process, and that is to
19 require that in instances where there is going
20 to be an adverse impact on employment, that the
21 agency be very conscious of that, that the
22 agency make a very specific review of that,
23 review of the alternatives and come up with

1 recommendations that reflect our concern about
2 job losses.

3 In fact, you will know if you
4 look at this bill compared to the prior version,
5 we've established a threshold at 100 jobs.
6 Prior versions of this bill did not, because
7 it's not our intent to hinder. It's not our
8 intent to totally eliminate regulation. We
9 recognize the importance of that, but at the
10 same time, we also recognize that there has to
11 be a balance. There has to be a recognition
12 within government that you have a responsibility
13 to understand the consequences of simply
14 promulgating rules and regulations and simply
15 pursuing a process for having the end result of
16 a process.

17 What we're looking to do is to
18 identify the consequences of that and ensure
19 that when they have an adverse economic impact
20 in this state that they're recognized. I think
21 that's a reasonable and appropriate action for
22 to us to take in terms of curtailing a
23 bureaucracy that's been out of control.

1 SENATOR LEICHTER: Senator

2 Wright, I thank you.

3 I will accept your statement
4 because I really don't think as such there's
5 anything objectionable in your bill. Certainly
6 job loss is something that ought to be
7 considered. I'm still concerned that we have
8 this bill here without having a broader, overall
9 view, and I hope that what drives this bill -
10 and I accept your statement that that is not
11 your concern but, nevertheless, we've seen in
12 Washington here a lot of efforts really to
13 hamper and hinder government in trying to
14 protect people, and I hope that's not going to
15 be the effect of this bill.

16 Maybe I'm getting mellow. I was
17 convinced by Senator Kuhl earlier today, now I'm
18 convinced by you, but I think that we -- and
19 with the good help of Senator Rath, I think
20 we've raised issues here that certainly all of
21 us ought to have in mind as we deal with these
22 regulatory matters.

23 I thank you.

1 ACTING PRESIDENT KUHL: Senator
2 Wright to respond.

3 SENATOR WRIGHT: I thank you,
4 Senator. You're obviously spending more time at
5 your summer residence in the North Country.

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

8 THE SECRETARY: Section 5. This
9 act shall take effect October 1st.

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 51.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 The Secretary will continue to
17 call the controversial Supplemental 1 Calendar.

18 THE SECRETARY: Calendar Number
19 1079, by Senator Volker, Senate Print 3818, an
20 act to amend the Criminal Procedure Law, the
21 Public Health Law and the Family Court Act, in
22 relation to the authorized destruction of
23 dangerous drugs, drug paraphernalia or

1 precursors of controlled substances.

2 SENATOR PATERSON: Explanation.

3 ACTING PRESIDENT KUHL: An
4 explanation has been asked for.

5 SENATOR VOLKER: Mr. President,
6 this -

7 ACTING PRESIDENT KUHL: Senator
8 Volker.

9 SENATOR VOLKER: This is a city
10 of New York bill, and some have termed it a bill
11 that, in a sense, relates to some of the
12 evidence problems that have been occurring in
13 some of the more celebrated cases, such as the
14 O.J. Simpson case.

15 One of the problems that I think
16 has been identified as a serious problem in
17 these cases is that many of the major police
18 departments in the country -- and I guess the
19 New York City Police Department other than the
20 Los Angeles County Police Department could
21 probably be considered the department with the
22 greatest problems in taking care of evidence,
23 and I could go into chapter and verse on

1 problems in Dallas and various cities in the
2 country.

3 One of the biggest problem is the
4 sheer volume of evidence. The New York City
5 Police Department says that they have something
6 in the area of 500,000 evidence vouchers on
7 file. 200,000 of them are narcotics. Just the
8 sheer volume of the narcotics creates a huge
9 problem of identifying and of quantifying, and
10 so forth, but then the problem of storage, and I
11 think there have been several, as I think
12 everyone knows, several problems, not only in
13 New York City, but throughout the country with
14 disappearing drugs and things of that nature.

15 What this bill attempts to do and
16 I think it does so in a very -- I think a very
17 informed way is to set up a process for the
18 destruction of drugs, to create a procedure
19 whereby the agencies charged with safeguarding
20 can destroy the narcotics, making sure, however,
21 that there's enough that's kept -- kept in
22 reserve so that any cases could be taken care
23 of. If you -- if the narcotics are destroyed

1 over and above the level needed, then the stuff
2 would be photographed and kept in the evidence
3 lockers, whatever, so that a process could be
4 done here that it -- that you don't have to keep
5 huge amounts of narcotics for an inordinate
6 period of time.

7 SENATOR LEICHTER: Mr. President.

8 ACTING PRESIDENT KUHL: Senator
9 Leichter.

10 SENATOR LEICHTER: If Senator
11 Volker would certainly yield.

12 SENATOR VOLKER: Certainly.

13 ACTING PRESIDENT KUHL: Senator
14 Volker, do you yield? The Senator yields.

15 SENATOR LEICHTER: Senator, your
16 explanation certainly seems to make a lot of
17 sense. I'm just concerned whether this bill has
18 been circulated among the district attorneys,
19 the Division of Criminal Justice, defense
20 organizations to see that it doesn't create a
21 problem.

22 SENATOR VOLKER: I don't -- as
23 far as I know, this bill -- by the way, we've

1 had a similar bill around for quite a while. In
2 fact, I believe we passed a similar bill here a
3 few years ago.

4 I have not heard that anyone is
5 in opposition to this bill. As far as I know,
6 the district attorneys have indicated no
7 opposition to it and, as you know, there is
8 notice provisions in here as far as the district
9 attorneys and also as far as defense attorneys
10 are concerned. It's -- we have not heard from
11 any group that opposes this bill or says that
12 this has created a problem, and I would think
13 certainly we have probably one of the most -
14 maybe one of the most liberal defense
15 associations here and one of them in the
16 country, in this state and I'm sure if they
17 really had a problem, they'd have been one of
18 the first ones -

19 SENATOR LEICHTER: Did you say
20 liberal or best? I thought you said best.

21 SENATOR VOLKER: I think
22 extremely liberal would be better to term it,
23 but at any rate, as far as I know, there is -- I

1 have not heard of any opposition to this.

2 SENATOR LEICHTER: Thanks.

3 ACTING PRESIDENT KUHL: The Chair
4 recognizes Senator Abate.

5 SENATOR ABATE: Yes. Would -
6 Mr. President, would Senator Volker yield to a
7 question?

8 ACTING PRESIDENT KUHL: Senator
9 Volker yields to Senator Abate.

10 SENATOR ABATE: Just a point of
11 clarification for Senator Leichter. It's my
12 understanding that the defense counsel, before
13 any of this evidence is destroyed, can make a
14 motion to inspect, photograph, et cetera, and
15 until they're given that full opportunity,
16 nothing is tampered with, is that correct?

17 SENATOR VOLKER: That's correct,
18 and, in fact, we also -- a certain amount of the
19 drugs has to be kept. In fact, it's supposed to
20 be the minimum amount of -- twice -- I think
21 it's twice the amount that's considered to be
22 needed and then the rest that's destroyed has to
23 be photographed and calculated because -- just

1 in case that there would be any question of
2 additional amounts or anything of that nature,
3 but we definitely -- the defense attorney -- if
4 the defense attorney objects for some reason,
5 wants further tests or whatever, why, they
6 certainly have the ability to do that.

7 SENATOR ABATE: Thank you.

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

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 51.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 The Secretary will continue to
20 call the controversial Supplemental Calendar
21 Number 1.

22 THE SECRETARY: Calendar Number
23 1084, by Senator Marcellino, Senate Print 5134,

1 an act in relation to granting a retroactive
2 senior citizen tax exemption to Gladys Raso.

3 SENATOR PATERSON: Explanation.

4 ACTING PRESIDENT KUHL: Senator
5 Marcellino, an explanation has been asked for of
6 Calendar Number 1084 by the Acting Minority
7 Leader, Senator Paterson.

8 SENATOR MARCELLINO: Mr.
9 President, this legislation will retroactively
10 apply a senior citizen tax exemption to Ms.
11 Gladys Raso who is a resident of the town of
12 Huntington in the county of Suffolk.

13 ACTING PRESIDENT KUHL: Senator
14 Leichter.

15 Senator Paterson.

16 SENATOR PATERSON: Mr. President,
17 if Senator Marcellino would please yield for a
18 question.

19 ACTING PRESIDENT KUHL: Senator
20 Marcellino, do you yield?

21 SENATOR MARCELLINO: Certainly.

22 ACTING PRESIDENT KUHL: The
23 Senator yields.

1 SENATOR PATERSON: Senator, at
2 first blush, there really is no problem with
3 this bill, but I have to ask you, what is the
4 position of the town in this particular case? I
5 would feel less willing to be a part of this if
6 we have the state acting in contravention with
7 what the town has established as their policy,
8 and so I would like to know, where is the town
9 with respect to this particular individual?

10 SENATOR MARCELLINO: Mr.
11 President, through you. Senator Paterson, we
12 have a resolution from the town of Huntington
13 requesting this action by the state Legislature,
14 which I have already forwarded -- my office, I
15 believe, has forwarded to your counsel.

16 SENATOR PATERSON: Then I guess
17 the question just to follow up with is whether
18 or not we actually need this legislation being
19 that we have the resolution from the town,
20 Senator.

21 SENATOR MARCELLINO: It's
22 apparently -- in 1991 when this was first -
23 when this thing was first remedied or attempted

1 to be remedied by the state Legislature, they
2 omitted some years in this lady's tax exemption
3 status. We're just trying to correct that
4 error. The town pointed it out. Mrs. Raso has
5 properly applied for each of these years. The
6 town has requested that we go back and correct
7 the mistake that was made in 1991.

8 SENATOR PATERSON: Thank you for
9 bringing that up, Senator.

10 SENATOR LEICHTER: Mr. President.

11 ACTING PRESIDENT KUHL: Senator
12 Leichter.

13 SENATOR LEICHTER: If I could
14 just ask Senator Marcellino -

15 ACTING PRESIDENT KUHL: Senator
16 Marcellino, do you yield to Senator Leichter?

17 SENATOR MARCELLINO: It's my
18 pleasure.

19 ACTING PRESIDENT KUHL: The
20 Senator yields.

21 SENATOR LEICHTER: Senator, I
22 guess all the years here, I can't remember
23 having seen a similar bill. We have had a lot

1 of bills trying to deal with problems of
2 individual pensions, but I don't know whether
3 we've ever had one -- or at least I don't
4 remember one that ever dealt before where
5 somebody claimed that they were entitled to the
6 senior citizen tax exemption that didn't get
7 it.

8 Now, if the town says "We made a
9 mistake" or whatever it is, "This woman is
10 entitled. Please give us the authority to do
11 it" -- I'm just not aware that towns didn't have
12 the authority now to say, "Hey, we made a
13 mistake, Gladys; you were entitled to this.
14 Here's the exemption."

15 You're telling us that the town
16 does not have the authority to do this?

17 SENATOR MARCELLINO: Apparently
18 the town doesn't feel it has.

19 SENATOR LEICHTER: Excuse me?

20 SENATOR MARCELLINO: Apparently
21 the town doesn't feel that it has the
22 authority. Apparently in 1991 it didn't have
23 the authority to do it on its own. The state

1 Legislature passed -- the state Senate passed a
2 bill which corrected the lady's problems for
3 certain years. It omitted inadvertently two
4 years in the sequence and this bill is an
5 attempt to correct that omission. The town has
6 requested it. We're simply trying to comply and
7 help this lady out.

8 SENATOR LEICHTER: Senator, then
9 you're telling me we had bills like this
10 before. In fact, Gladys' problems have been
11 before us before.

12 If I may just make a suggestion
13 to you. If, indeed, this requires state
14 legislation before we become inundated with
15 these sort of bills, why don't we just give the
16 town the authority to correct any mistake that
17 the town believes it made in regard to senior
18 citizen tax exemption before all of us are
19 importuned by our constituents to correct
20 mistakes and -- because every one of these
21 bills, I dare say the cost of this bill and
22 passing this legislation is probably more than
23 the value of the senior citizen tax exemption,

1 so let's give the towns that authority. If they
2 don't have it, they certainly should. It's
3 their money and go on and do maybe some more
4 important things, maybe even pass a budget.

5 Thank you.

6 ACTING PRESIDENT KUHL: The
7 Secretary -- Senator Paterson.

8 SENATOR PATERSON: Just one last
9 question, Senator Marcellino. You have been
10 quite cooperative.

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

13 SENATOR MARCELLINO: Sure.

14 ACTING PRESIDENT KUHL: The
15 Senator yields.

16 SENATOR PATERSON: Will there be
17 any local town action that will take place after
18 we pass this legislation? In other words, will
19 the local town have to initiate any legislation
20 of its own?

21 SENATOR MARCELLINO: Senator, I
22 can't answer that question accurately. I would
23 guess that they've already taken that action by

1 the resolution requesting us to take this
2 action, and they will probably remit her past
3 taxes as due.

4 SENATOR PATERSON: Okay. I was
5 just wondering as to whether or not the
6 completion of the legislation would be the
7 catalyst for any further action by the local
8 town.

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

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 52.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 Senator Solomon, why do you
20 rise?

21 SENATOR SOLOMON: Yes, Mr.
22 President. I would like unanimous consent to be
23 recorded in the negative on Calendar Number 952

1 and Calendar Number 1073.

2 ACTING PRESIDENT KUHL: Without
3 objection. Hearing no objection, Senator
4 Solomon will be recorded in the negative on
5 Calendar Number 952 and 1073.

6 Senator DiCarlo.

7 SENATOR DiCARLO: Mr. President,
8 if we can just stand at ease for a few moments.

9 ACTING PRESIDENT KUHL: We do
10 have a couple housekeeping matters we could take
11 care of, Senator DiCarlo, if you don't mind.

12 SENATOR DiCARLO: Let's do the
13 housekeeping.

14 ACTING PRESIDENT KUHL: All
15 right. I have a substitution at the desk. I
16 will ask the Secretary to read.

17 THE SECRETARY: On page 6,
18 Senator DiCarlo moves to discharge from the
19 Committee on Rules, Assembly Bill Number 4130-A
20 and substitute it for the identical Calendar
21 Number 195.

22 ACTING PRESIDENT KUHL: Without
23 objection, the substitution is ordered.

1 The Chair recognizes Senator
2 Farley.

3 SENATOR FARLEY: Thank you, Mr.
4 President.

5 On page 12, on behalf of Senator
6 Cook, I offer the following amendments to
7 Calendar Number 421, Senate Print 3491-A, and I
8 ask that that bill retain its place on the Third
9 Reading Calendar.

10 ACTING PRESIDENT KUHL: The
11 amendments to Calendar Number 421 are received
12 and adopted. The bill will retain its place on
13 the Third Reading Calendar.

14 Senator Dollinger, why do you
15 rise?

16 SENATOR DOLLINGER: Mr.
17 President, just a point of order. Was 1073
18 voted on in the house?

19 ACTING PRESIDENT KUHL: Yes.
20 Calendar Number 1073 passed on the
21 non-controversial calendar first time through.

22 SENATOR DOLLINGER: Mr.
23 President, may I have unanimous consent to be

1 recorded in the negative on Number 1073?

2 ACTING PRESIDENT KUHL: Without
3 objection.

4 SENATOR DiCARLO: No.

5 ACTING PRESIDENT KUHL: Hearing
6 no objection -

7 SENATOR DOLLINGER: Thank you.

8 ACTING PRESIDENT KUHL: -
9 Senator Dollinger will be recorded in the
10 negative on Calendar Number 1073.

11 Senator Abate.

12 SENATOR ABATE: Yes, Mr.
13 President. Could I have unanimous consent to be
14 recorded in the negative on 1072?

15 ACTING PRESIDENT KUHL: Without
16 objection. Hearing no objection, Senator Abate
17 will be recorded in the negative on Calendar
18 Number 1073.

19 Senator DiCarlo.

20 SENATOR DiCARLO: Mr. President,
21 I ask that we stand at ease until 1:30 p.m. and
22 there will be an immediate meeting of the
23 Majority Conference in Room 332.

1 ACTING PRESIDENT KUHL: There
2 will be an immediate meeting of the Majority
3 Conference -- immediate meeting of the Majority
4 Conference in the Majority Conference Room, Room
5 332. The Senate will stand at ease until 1:30.

6 (Whereupon, at 12:05 p.m., the
7 Senate stood at ease.)

8 (The Senate reconvened at 3:30
9 p.m.)

10 ACTING PRESIDENT KUHL: The
11 Senate will come to order. Members please take
12 their chairs, staff please find their places. A
13 little order in the chamber. Senator Bruno has
14 a statement that he'd like to make.

15 Senator Bruno.

16 SENATOR BRUNO: Thank you, Mr.
17 President.

18 We're going to take up, Mr.
19 President, at this time, the state operations
20 budget, and this will be the first of the budget
21 bills that pertain to the budget for this year,
22 '95-96, for the people of New York State.

23 Mr. President, my colleagues,

1 this has been a long process, and I am not going
2 to make it longer by being on my feet talking
3 about it, but I want to make this statement.
4 The result, after these days of delay, is a very
5 positive result for the people of this state and
6 that's what's important, not the date but what
7 is in this budget.

8 We have in this budget for the
9 first time in 51 years, that there will be less
10 all state spending than there was in a previous
11 year, first time in 51 years, up to several
12 hundred million less.

13 All of us can be proud of having
14 worked together to accomplish that. We have
15 welfare -- welfare reform and Medicaid reform
16 that is in this budget that will help all of the
17 people in this state and we have a tax cut
18 package that benefits primarily the middle class
19 in New York State.

20 It is a job creation/economic
21 development package, and all of us know the
22 statistics in New York having lagged the country
23 in the recovery over these last couple of years

1 while 750 -- 7,500,000 jobs, approximately,
2 created in this country, New York in the first
3 quarter lost jobs.

4 This will change the direction of
5 New York State. This will help us with economic
6 development primarily and job creation. So, Mr.
7 President, while it's late, I'm proud of what we
8 together have accomplished as we start the
9 process of adopting this budget this year.

10 Thank you.

11 ACTING PRESIDENT KUHL: Chair
12 recognizes Senator Connor, or do you want to
13 move the first bill before the house?

14 SENATOR CONNOR: Let it go.

15 ACTING PRESIDENT KUHL: Senator
16 Bruno.

17 SENATOR BRUNO: Mr. President,
18 can we return to the order of messages from the
19 Assembly.

20 ACTING PRESIDENT KUHL: We'll
21 return to messages from the Assembly. There is
22 a message at the desk. I'll ask the Secretary
23 to read.

1 THE SECRETARY: The Assembly
2 returned Senate Bill Number 1550A, Assembly
3 Reprint 30,000, entitled "An act making
4 appropriations for the support of government"
5 with the message that it has concurred in the
6 passage of the same with amendments.

7 ACTING PRESIDENT KUHL: Senator
8 Bruno.

9 SENATOR BRUNO: Mr. President, I
10 move that the Senate not concur in the
11 amendments, and I move to reconsider the vote by
12 which the bill passed.

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

15 (The Secretary called the roll on
16 reconsideration.)

17 THE SECRETARY: Ayes 55.

18 ACTING PRESIDENT KUHL: The bill
19 is before the house, restored to the Third
20 Reading Calendar.

21 Senator Bruno.

22 SENATOR BRUNO: I offer the
23 following amendments, Mr. President, to Senate

1 1550B, move it have its third reading.

2 ACTING PRESIDENT KUHL:

3 Amendments are received and adopted. Bill is
4 before the house. Would you read the title.

5 THE SECRETARY: Calendar -

6 ACTING PRESIDENT KUHL: Secretary
7 will read the title.

8 THE SECRETARY: Calendar Number
9 342, Budget Bill, Senate Print 1550B, an act
10 making appropriations for the support of
11 government, State Operations budget.

12 SENATOR BRUNO: Is there a
13 message, Mr. President?

14 ACTING PRESIDENT KUHL: I'm
15 informed by the desk that there is a message at
16 the desk.

17 SENATOR BRUNO: I move we adopt
18 the message at this time.

19 ACTING PRESIDENT KUHL: The
20 motion is to adopt the message of necessity at
21 the desk. All those in favor signify by saying
22 aye.

23 (Response of "Aye.")

1 Opposed nay.

2 (There was no response.)

3 The message is adopted.

4 SENATOR BRUNO: Mr. President,

5 can we at this time take up Senate 1550B.

6 ACTING PRESIDENT KUHL: Read the

7 last section.

8 THE SECRETARY: Section 2. This

9 act shall take effect immediately.

10 ACTING PRESIDENT KUHL: The Chair

11 recognizes Senator Connor on the State

12 Operations Budget Bill.

13 SENATOR CONNOR: Thank you, Mr.

14 President.

15 Senator Bruno introduced the

16 budget in general. I just wanted to point out

17 to the members this is not the tax cut bill.

18 This is not -- this is just one part of the

19 budget. It's State Operations and, while it

20 does represent some cuts, I think for many of us

21 there are reasons to support this in the spirit

22 of compromise because some significant

23 restorations were made in this; for example, the

1 programs like SEEK to CUNY and SUNY. Not
2 everything some people would like, but certainly
3 things like HEOP, and so on, have had a level of
4 funding restored in this budget bill and while
5 it's been a long and difficult budget process,
6 it is now coming to a conclusion, and we do have
7 it to represent from all philosophical
8 viewpoints the balancing of what each -- each
9 viewpoint would regard as a good or a bad
10 feature of this budget, and for the most of us
11 on this side of the aisle since there are
12 restorations in here to programs that we feel
13 are very, very important to the people, that I,
14 at least for myself, am going to vote for this
15 bill.

16 Thank you, Mr. President.

17 SENATOR BRUNO: Last section.

18 ACTING PRESIDENT KUHL: Last
19 section.

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

22 ACTING PRESIDENT KUHL: Call the
23 roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT KUHL: Announce
3 the results when tabulated.

4 THE SECRETARY: Those recorded in
5 the negative on Calendar 342 are Senators Abate,
6 Dollinger, Nanula, Smith, Stachowski and
7 Waldon. Ayes 49, nays 6.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 Senator Bruno.

11 SENATOR BRUNO: Mr. President,
12 can we ask for an immediate meeting of the
13 Finance Committee in Room 332.

14 ACTING PRESIDENT KUHL: There
15 will be an immediate meeting of the Senate
16 Finance Committee, immediate meeting of Senate
17 Finance, meeting in the Majority Conference
18 Room, Room 332. Room 332.

19 While I have your attention, for
20 those members who are going to the Senate
21 Finance Committee, there are only a limited
22 number of the tax bill available. It's on your
23 desk. You should have it. It's Senate Print

1 5279. It's 107 pages long. It's still warm,
2 and so if you'll take that with you to the
3 Senate Finance Committee, that will be most
4 helpful.

5 SENATOR LEICHTER: Mr.
6 President.

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

9 SENATOR LEICHTER: Mr. President,
10 Calendar 342 was just passed, the State Op's
11 Budget?

12 ACTING PRESIDENT KUHL: Yes.

13 SENATOR LEICHTER: Yes. May I
14 please have unanimous consent to be recorded in
15 the negative.

16 ACTING PRESIDENT KUHL: Without
17 objection, no objection being heard, Senator
18 Leichter will be recorded in the negative on
19 Calendar Number 342.

20 Senator Stavisky.

21 SENATOR STAVISKY: Mr. President,
22 in coming to the chamber, I had intended to
23 submit amendments to the State Operations

1 Budget. Apparently the discussion was brief and
2 I did not quite make it in time.

3 The amendments I had intended to
4 present would have limited the increase in
5 tuition at SUNY and CUNY approved by trustees to
6 \$300 for state residents and \$750 for out-of
7 state residents. I wish that to be recorded in
8 the Journal of the proceedings -- excuse me -
9 and I wish to be recorded otherwise in
10 opposition to the main bill since I did not have
11 the opportunity to present the amendments.

12 ACTING PRESIDENT KUHL: Senator
13 Stavisky, your comments are recorded and made
14 part of the official record, no question about
15 that, and without objection, and I hear of no
16 objection, Senator Stavisky will be recorded in
17 the negative on Calendar Number 342, the State
18 Operations Budget bill.

19 We'll return to motions and
20 resolutions for just a moment. The Chair would
21 recognize Senator DiCarlo.

22 SENATOR DiCARLO: Thank you, Mr.
23 President.

1 On behalf of Senator Levy, on
2 page 29, I offer the following amendments to
3 Calendar Number 869, Senate Print 4856A, and ask
4 that said bill retain its place on Third Reading
5 Calendar.

6 ACTING PRESIDENT KUHL: The
7 amendments to Calendar 869 are adopted and the
8 bill will retain its place on the Third Reading
9 Calendar.

10 Senator DiCarlo.

11 SENATOR DiCARLO: Mr. President,
12 on behalf of Senator Present, on page 33, I
13 offer the following amendments to Calendar
14 Number 921, Senate Print 2715, and ask that said
15 bill retain its place on the Third Reading
16 Calendar.

17 ACTING PRESIDENT KUHL: The
18 amendments to Calendar Number 921 are received
19 and accepted and adopted, and the bill will
20 retain its place on the Third Reading Calendar.

21 (The Senate stood at ease from
22 3:40 p.m. until 3:54 p.m.)

23 ACTING PRESIDENT KUHL: The

1 Senate will come to order for a couple minutes.

2 The Chair recognizes Senator
3 Wright.

4 SENATOR WRIGHT: Mr. President,
5 on behalf of Senator Volker, on page number 26,
6 I offer the following amendments to Calendar
7 Number 827, Senate Print Number 4381, and ask
8 that said bill retain its place on Third
9 Calendar Reading.

10 ACTING PRESIDENT KUHL:
11 Amendments to Calendar 827 are received and
12 adopted. The bill will retain its place on the
13 Third Reading Calendar.

14 Senator Wright.

15 SENATOR WRIGHT: Mr. President,
16 on behalf of Senator Present, on page number 32,
17 I offer the following amendments to Calendar
18 Number 910, Senate Print Number 1625A, and ask
19 that said bill retain its place on the Third
20 Reading Calendar.

21 ACTING PRESIDENT KUHL:
22 Amendments to Number 910 are received and
23 adopted. Bill will retain its place on the

1 Third Reading Calendar.

2 ...At 4:12 p.m....

3 ACTING PRESIDENT KUHL: The
4 Senate will come to order.

5 Senator Paterson for an
6 announcement.

7 SENATOR PATERSON: Mr. President,
8 with the approval of Senator Mendez, the
9 Conference Chair, there will be an immediate
10 conference of the Minority in the Minority
11 Conference Room, Room 315.

12 ACTING PRESIDENT KUHL: There
13 will be an immediate meeting of the Minority in
14 the Minority Conference Room, Room 315.
15 Immediate meeting of the Minority in the
16 Minority Conference Room, Room 315.

17 ...At 4:55 p.m....

18 THE PRESIDENT: The Senate will
19 come to order.

20 Senator Skelos.

21 SENATOR SKELOS: Madam President,
22 at this time, if we could return to reports of
23 standing committees for a report from the

1 Finance Committee.

2 THE PRESIDENT: Without
3 objection, we will return to reports of the
4 standing committees.

5 The Secretary will read.

6 THE SECRETARY: Senator Stafford,
7 from the Committee on Finance, reports the
8 following bill directly to third reading:

9 Senate Print 5279, by the
10 Committee on Rules, an act to amend the Tax Law,
11 in relation to reduction of rates and
12 enhancement of credits under the state personal
13 income tax.

14 THE PRESIDENT: Without
15 objection, the bill will be reported directly to
16 third reading.

17 SENATOR SKELOS: Madam President,
18 if we could call up 5279, Calendar 1090.

19 THE PRESIDENT: The Secretary
20 will read the title to the bill.

21 THE SECRETARY: Calendar Number
22 1090, by the Senate Committee on Rules, Senate
23 Print 5279, an act to amend the Tax Law, in

1 relation to reduction of rates and enhancement
2 of credits under the state personal income tax.

3 SENATOR SKELOS: Madam President,
4 is there a message of necessity at the desk?

5 THE PRESIDENT: There is a
6 message from the Governor at the desk.

7 SENATOR SKELOS: Move we accept.

8 THE PRESIDENT: All those in
9 favor of accepting the message signify by saying
10 aye.

11 (Response of "Aye.")

12 Those opposed nay.

13 (There was no response.)

14 The message is accepted.

15 Senator Skelos.

16 SENATOR SKELOS: Yes. Could we
17 have the last section read on 5279?

18 THE PRESIDENT: Read the last
19 section, please.

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

22 THE PRESIDENT: Call the roll.

23 (The Secretary called the roll.)

1 SENATOR SKELOS: An explanation
2 has been requested by Senator Leichter.

3 THE PRESIDENT: Senator Stafford,
4 an explanation, please.

5 SENATOR DOLLINGER: Madam
6 President, which bill are we on?

7 THE PRESIDENT: 5279.

8 SENATOR DOLLINGER: Thank you.

9 SENATOR STAFFORD: Mr. President,
10 a great deal of work has gone into this legisla
11 tion -- proposed legislation -- a tremendous
12 amount of work, by our dedicated staff members
13 on both sides of the aisle, and members.

14 I can briefly explain what we are
15 doing here. For the last few years, in fact
16 unfortunately almost a number of years, we have
17 seen the tax -- the taxes in New York rise and
18 this has been detrimental to business, and what
19 we have said is that, if we don't do something
20 about taxes being raised and increasing in New
21 York, then we're not even going to have -- I
22 know I'm interrupting.

23 THE PRESIDENT: Some order,

1 please.

2 SENATOR STAFFORD: I want to
3 apologize for anybody that I'm interrupting, but
4 if you'd allow me to talk here for a couple of
5 minutes, I think you'd all be interested.

6 We have said that we have an
7 economic locomotive in this state and we have
8 been reducing it, taking from it and, if we
9 continue -- if we continue to do things that are
10 detrimental to this locomotive, we're not going
11 to -- we're not going to have the funds to
12 provide any services in this state, whether it
13 is education, criminal justice, social services,
14 the infrastructure, any of the responsibilities
15 that we have in state government and, Mr.
16 President, this evening we are taking steps in
17 the right direction by reducing the taxes which
18 will be paid here in New York State.

19 Now, I could go down all of them
20 and I'll be glad to explain them. I know you've
21 had the memoranda concerning this legislation,
22 so I will just mention that we have reduced and
23 there's been a tax reduction in the personal

1 income tax, petroleum taxes, real estate gains
2 tax, estate tax reform, the pari-mutuel tax, the
3 container tax and the beer tax that has been
4 included, taxes on beer.

5 Now, we have a long way to go and
6 we're going to have to do much more, but I would
7 suggest we are making a start. I could also
8 mention, and I should, the motor fuel refund
9 tax, the real estate transfer tax spin-up.

10 We've mentioned revisions in the lottery. I've
11 mentioned the pari-mutuel, the utilities and
12 some other recommendations from the Governor.

13 We think that, for the first time
14 in many, many years, we are moving here in this
15 state in the right direction, and this obviously
16 has been agreed upon by the Assembly, the
17 Executive Branch and the Senate.

18 THE PRESIDENT: Senator Padavan.

19 SENATOR PADAVAN: Thank you,
20 Madam President.

21 This bill that is before us as
22 outlined by the chairman of Finance, Senator
23 Stafford, has many, many positive aspects to it

1 which is a tribute to the leadership and the
2 Majority in this house as it seeks to redirect
3 the state forward particularly in the areas of
4 economic development -- jobs. But there's one
5 portion of this bill that troubles me greatly, a
6 portion which I think points us in another
7 direction, and it is that portion that adopts a
8 new gambling entity in this state known as Quick
9 Draw.

10 We're told that in this fiscal
11 year that we're now in that that new game will
12 produce \$82 million in revenue and over 200
13 million on an annualized basis. That would
14 require that at least a half a billion or more
15 be wagered by citizens of this state, a
16 contention that I think is disingenuous at
17 best.

18 The notion that there is that
19 much money out there not being wagered on the
20 state lottery and OTB and at racetracks, I find
21 difficult to accept, and so I think the revenues
22 that have been estimated have a lot of suspect
23 associated with them.

1 However, if that estimate is
2 correct, then what we are taking out of the
3 economy in terms of money spent in meaningful
4 ways that produce jobs and other kinds of
5 legitimate revenues from the state is an
6 enormous amount of money, and I think that runs
7 counter to the basic direction of this bill and
8 the budget bills that are associated with it.

9 Quick Draw will combine in most
10 instances the twin problems of gambling and
11 alcoholism as people are permitted to bet \$10
12 every five minutes for 13 hours a day while they
13 are in places that provide alcohol. There's
14 only so much money that people have to spend.
15 Even a compulsive gambler has a limit to how
16 much cash is in his pocket; and so there will be
17 real social costs associated with this venture,
18 real and substantial.

19 If you look at the balance of
20 losses in revenue to the state, the losses in
21 revenue in other forms of gambling, the social
22 costs associated with this expanded gaming
23 opportunity, I think on balance the people of

1 this state lose out.

2 You should also be aware of the
3 fact that the moment this becomes law, the
4 Indian casinos in this state will be able to go
5 to electronic slot machines unrestricted, some
6 thing that is currently a matter of contention.
7 So those of you who are in favor of casinos in
8 New York State, which I'm not, might find that
9 somewhat troubling. These are electronic slot
10 machines no matter how you define them. Some
11 are called a "video crack" and I think that's a
12 very apt description.

13 Overall, I think this is bad
14 public policy and we will at some future point
15 in time recognize that, as we begin to pay the
16 price.

17 Thank you, Mr. President.

18 THE PRESIDENT: Senator
19 Leichter.

20 SENATOR LEICHTER: Yeah. Madam
21 President, my colleagues, I think this is just
22 part of a shameful budget. You know, I'm
23 reminded of the saying that the French are fond

1 of telling us, which is "Plus ca change, plus
2 c'est la meme chose," which is "The more things
3 change, the more they remain the same," and
4 certainly that's true in the process this year
5 which has brought us this budget very much in
6 the same way that budgets have appeared before
7 the Legislature in other years after protracted
8 lengthy negotiations. Three people sit down
9 over some period of time, work out a bill and
10 then we hear those magic words, "This is an
11 agreed-upon bill" as if it came down from Mount
12 Olympus.

13 The Legislature, except for the
14 Majority Leader and the Speaker, are excluded.
15 The public is excluded from the process. There
16 comes a time when suddenly bills appear like
17 Jack out of the box and end up on our desk.
18 There's a flurry of activity, hastily called
19 conferences, efforts to try to find out what are
20 in bills that are put on our desks. Ink is
21 still wet. You try to get memos, try to find
22 out what's happening. You're rushed into the
23 chamber to vote on these bills. I will say the

1 only change is that the sun is still up and
2 usually it's in the dead of night, but except
3 for that difference, the process is the same and
4 what we've gotten and particularly this year, is
5 a budget that I think does grievous harm to the
6 people of the state of New York and maybe the
7 centerpiece of what is wrong with this budget is
8 seen precisely in this bill.

9 I know it's -- it's fun. It's
10 fun for me in some respects, for me too to have
11 tax decreases. There's nothing that legislators
12 love more than to pig out on tax decreases. The
13 more the merrier, the better, and so on. But
14 what does it really mean for the state of New
15 York?

16 Senator Stafford talks about
17 we've been going in the wrong direction, and we
18 have to bring back our economic health to this
19 state and so on, as if these tax decreases in
20 this bill are going to lead to a great economic
21 flowering in this state as if all of the
22 worldwide economic forces that pretty much
23 determine how we do in this state are going to

1 be significantly or at all affected by these tax
2 decreases.

3 I mean the way you hear this bill
4 touted, you would think the factories in Bangla
5 Desh are going to close, and that all will
6 reappear here in New York State. This is
7 obviously just nonsense.

8 But there is a theory behind
9 this, and the theory really is a redistribution,
10 if you will, of wealth which goes from the poor,
11 from the middle class to the affluent, to the
12 people who really don't need it. Not only in
13 this tax decrease, and I will pay credit and
14 tribute to the Speaker for at least having made
15 this somewhat more equitable, but the fact is
16 that this tax decrease means that poor people
17 are not going to need services that they require
18 and are entitled to, that the sick will not get
19 the help and the assistance that they need, that
20 the elderly will be bereft of help and
21 assistance, and we've seen this in government
22 programs that have been severely slashed on
23 some -- or in some instances totally

1 eliminated.

2 Just a few minutes ago or half an
3 hour, an hour ago, we passed the State Opera
4 tions Budget which increased tuition to SUNY and
5 CUNY by \$750. You're giving minimum, minute tax
6 decreases to working people and middle class,
7 but you're telling them that their children, if
8 they want to go to college, are going to have to
9 pay a higher tuition, a tuition of 750, an
10 increase of maybe 60 percent.

11 It seems to me, Senator Stafford,
12 if we wanted to invest in the economic health of
13 this state, there is nothing we could do that's
14 more important than to support our higher
15 education system, than to open up higher
16 education to the maximum number of qualified
17 students in this state, to really achieve what I
18 had when I was young, and I -- you also had,
19 Senator Stafford, and the others here when
20 government really provided assistance in helping
21 people to move into the middle class and acquire
22 skills that would be helpful to all of society.
23 We had, of course, all of the veterans programs

1 that many of us benefited from, but at that time
2 we had free tuition in the city of New York and
3 in most of this state, and what we've done since
4 then is to further and further erode the
5 educational opportunities and today, we've taken
6 the biggest step that we've ever taken in
7 curtailing those educational opportunities and
8 that, to my mind, does more to hurt the economic
9 competitiveness, the economic potential and the
10 economic future of this state than these tax
11 cuts.

12 What I've always found partic
13 ularly disturbing is that we have tax cuts that
14 extend over three years. I don't know any other
15 government that -- or governmental entity in
16 this country, not the federal government, I
17 don't believe any other state governments, that
18 says we're going to have a phased-in tax cut
19 that's going to extend over a number of years.

20 If you're committed as you are to
21 the tax cut as the -- as the magic wand that's
22 going to increase economic prosperity in this
23 state, next year, if you have a surplus, next

1 year if the demands of the localities and the
2 demands of education and the demands of -- of a
3 health care system doesn't require all the
4 revenue that's going to come in, enact another
5 tax cut next year. Do it in the third year, but
6 to have a tax cut as we do it here which is
7 back-loaded so when you get to the third year of
8 this tax cut, as I look at the chart, we're
9 going to have a \$3.8 billion loss of revenue -
10 \$3.8 billion.

11 If we have had a hard time in
12 enacting a budget this year, it's going to be
13 ten times as hard three years from now with this
14 enormous loss of revenue.

15 Now, we went through this once
16 before. We should have learned our lesson. We
17 did it in 1986 when we enacted the tax program
18 that started with 1987. We made it a four-year
19 program -- four-year program, and we found
20 ourselves in dire financial straits. We should
21 have learned from that experience why have a
22 multiple-year tax cut.

23 Now, in New Jersey where Governor

1 Whitman committed herself to reducing taxes
2 over, I believe, a period of three or four
3 years, but they did it year by year -- I don't
4 agree with her tax program, but at least the
5 process was somewhat rational and was somewhat
6 responsible. This is totally irresponsible to
7 sort of -- to make the prediction that three
8 years from now you're not going to need this
9 revenue.

10 The result of this is that you're
11 really squeezing the working people. You're
12 squeezing the middle class. You're hurting
13 economic development. You're going to create
14 budgetary and financial chaos in the state of
15 New York, and you're not going to achieve tax
16 cuts for the people of this state because you're
17 going to shift to a large extent taxes to
18 localities.

19 You're going to find your real
20 estate tax is going to increase because there's
21 no way that you're going to be able to support,
22 among other things, the educational needs of
23 people in this state and to support a primary

1 and secondary education. As it is this year,
2 we're cutting aid to education. My city,
3 Senator Goodman's city, the city of many of us
4 here, is going to have an increase next year of
5 some of 20- to 25,000 students, but we're -
6 what we're getting, in fact, the Governor's
7 budget froze educational aid. That's a decrease
8 in education.

9 Now, I understand we're going to
10 see in the Local Assistance Budget, when that
11 pops up on our desk, that there will be some
12 slight additional amount for New York City but
13 not equal to the number of increased students
14 that we're going to have.

15 How much worse is that going to
16 be in 1996-97, '97-98 when this tax cut kicks in
17 to the much greater amount? And this will be not
18 only New York City, but this will be throughout
19 the state, with the result that localities will
20 not receive the educational aid they'll need.
21 They'll have to raise real estate taxes and
22 probably all that you're doing is shifting the
23 taxes onto the localities.

1 Another way that we're actually
2 increasing taxes, and Senator Padavan pointed
3 that out and that's, of course, through this
4 Quick Draw. This is a tax on poor people,
5 working people who are more inclined to gamble,
6 to use this new means of -- whether it's a
7 lottery or whatever you want to call it. And
8 who will be spending money? It's a regressive
9 tax, and so in this way too, all we're really
10 doing is shifting tax.

11 There are ways that we could
12 raise some revenue without even touching some of
13 the broad-based taxes. I appreciate, to suggest
14 at this time a surcharge on income tax, try to
15 deal with corporate taxes and so on, would be
16 impossible, but I've identified together with
17 some other people the \$500 million of revenue
18 just by closing loopholes that make absolutely
19 no sense. For instance, we're the only state
20 that gives both an investment tax credit and an
21 accelerated depreciation. Perfectly absurd!

22 Fact is we shouldn't even have
23 the ITC. That costs us \$150 million. We allow

1 localities to reduce state revenues by exempting
2 IDA projects from the state sales tax. There's
3 a number of other ways that we could move to
4 close loopholes. I'm going to just offer, just
5 to give people an example, just one amendment
6 which would raise revenue, and I'm going to
7 spend very little time on it, but at least it's
8 an example of some of the things that we could
9 do to bring in monies into the coffers of the
10 state so that we could meet our social
11 responsibilities.

12 THE PRESIDENT: Senator Leichter,
13 are you moving an amendment?

14 SENATOR LEICHTER: Madam
15 President, you have -- you're exactly right. I
16 was just going to say is there an amendment at
17 the desk?

18 THE PRESIDENT: Yes, there is an
19 amendment at the desk.

20 SENATOR LEICHTER: Thank you.
21 Thank you for bringing that to my attention. At
22 this time then, Madam President, I am, I believe
23 I -- let me just check. Did we put -

1 THE PRESIDENT: There are two
2 amendments at the desk.

3 SENATOR LEICHTER: I'm just going
4 to move one so that we're sure that we have the
5 same one. This was -- I think we wrote
6 Amendment 101 to Calendar 1090.

7 THE PRESIDENT: Yes.

8 SENATOR LEICHTER: O.K. Good.
9 Then, if at this moment I could move that
10 amendment, I'll waive its reading and ask an
11 opportunity -

12 THE PRESIDENT: The reading of
13 the amendment is waived.

14 SENATOR LEICHTER: Fine, ask an
15 opportunity to explain it.

16 This is very simple. What it
17 does is this limits personal income tax
18 deduction for interest on mortgages for out-of
19 state homes. I don't think that we here in New
20 York State need to support or subsidize somebody
21 who has a condo in Aspen or a vacation home in
22 Florida. If they have a mortgage on it and they
23 pay interest on that mortgage, they can now

1 deduct it from their New York State income tax.
2 There's absolutely no benefit to the state of
3 New York, no reason to do it. This doesn't
4 bring in a great deal of money. It may bring in
5 somewhere between 25- and \$50 million, but it's
6 just an example of the things that we could do
7 to close loopholes, to make the tax system
8 fairer, to bring money to the people of the
9 state of New York and give us the opportunity to
10 have a budget which is less harmful, less
11 painful, less injurious to the people of this
12 state than this budget is.

13 Madam President, I move the
14 amendment.

15 THE PRESIDENT: The question is
16 on the amendment. All those in favor please
17 signify by saying aye.

18 (Response of "Aye.")

19 All those opposed please signify
20 by saying nay.

21 (Response of "Nay.")

22 The amendment is defeated.

23 Senator Waldon.

1 SENATOR WALDON: Thank you very
2 much, Madam President.

3 Would the learned gentleman who
4 is our chairman of Finance allow me to ask him a
5 question or two?

6 SENATOR STAFFORD: By all means.

7 THE PRESIDENT: Yes.

8 SENATOR WALDON: Thank you, Madam
9 President.

10 Senator, in this bill is there
11 any proviso that the monies raised -- and I'm
12 only interested in that piece of it dealing with
13 Keno, Quick Draw -- for education? Stafford.

14 THE PRESIDENT: Senator
15 Stafford.

16 SENATOR STAFFORD: Yeah, it's -
17 we all remember when we passed the amendment to
18 the Constitution providing -

19 SENATOR WALDON: Answer the
20 question, please, sir.

21 SENATOR STAFFORD: -- that
22 lottery money here in New York State, the money
23 is dedicated to education.

1 SENATOR WALDON: Thank you very
2 much, Senator Stafford. May I continue, Madam
3 President?

4 THE PRESIDENT: Yes, Senator
5 Waldon.

6 SENATOR WALDON: Within that
7 money dedicated to education, is there any set
8 aside for those who become addicted to gambling
9 as a result of this new game?

10 SENATOR STAFFORD: I think that's
11 an excellent question. Not actually from this
12 money, but there is from the general fund, as
13 you probably know.

14 SENATOR WALDON: If I may
15 continue, Madam President, please.

16 THE PRESIDENT: Senator Waldon.

17 SENATOR WALDON: Thank you very
18 much.

19 Senator, is there any information
20 in your preparation for creation of this bill in
21 regard to the communities from which this money
22 comes? By that, I mean is there any corollary
23 between the amount of money generated and the

1 neighborhoods from which they are generated, to
2 your knowledge?

3 THE PRESIDENT: Senator
4 Stafford.

5 SENATOR STAFFORD: It -- are you
6 -- Madam President, is the good Senator asking
7 about how the money is going to be divided for
8 education?

9 THE PRESIDENT: Senator Waldon.

10 SENATOR WALDON: No, no, I
11 apologize, Madam President.

12 SENATOR STAFFORD: I think I -

13 SENATOR WALDON: Let me rephrase
14 the question.

15 SENATOR STAFFORD: I think you
16 were clear. You're asking is it going to come
17 from any specific area?

18 SENATOR WALDON: Yes.
19 Historically -

20 SENATOR STAFFORD: Well, I think
21 it probably will come from an area about two
22 minutes from my house, because I drove by there
23 the other day and there was a line of around a

1 hundred people, I guess. What do you call it
2 when they're waiting to draw picks? What are
3 they waiting for? Lotto. When it's up -- you
4 can see I'm not maybe as literate here as I
5 should be. I wasn't on the line, but they were
6 standing in line and they were betting -- no,
7 they weren't betting, they were buying a lottery
8 ticket because supposedly they had an
9 opportunity to win a large sum of money.

10 I take it, it's from all over the
11 state.

12 SENATOR WALDON: If I may.

13 THE PRESIDENT: Senator Waldon.

14 SENATOR WALDON: Thank you, Madam
15 President.

16 The point I was trying to elicit
17 from you, Senator, and obviously I was not
18 sufficiently clear -- I apologize for that -
19 was there, in your data base information as to
20 where this money comes from? Specifically, does
21 the major portion of this money, and being very
22 blunt, come from black and Latino and otherwise
23 poor communities, be they black, white, Asian

1 American, whomever, but primarily from the
2 poorer areas of our state and specifically
3 coming from areas that some of us in this
4 chamber do represent, areas like Bed'-Stuy',
5 South Bronx, Harlem where David Paterson is
6 from, Brooklyn where I grew up, and areas of
7 South Jamaica and Jamaica in the area that I now
8 serve in conjunction with Senator Ada Smith?

9 THE PRESIDENT: Senator
10 Stafford.

11 SENATOR STAFFORD: I would
12 suggest that the question is well taken and
13 again, as I mentioned, this probably will come
14 from throughout the state, but I'm glad you
15 asked the question because in this program this
16 is aimed at, rather than the stores on the
17 corner -- What do you call the stores on the
18 corners? The convenience stores, that's right,
19 late in the day, convenience stores. This will
20 be more -- this will be more in restaurants and
21 in that type of facility -

22 THE PRESIDENT: Senator, please.

23 SENATOR STAFFORD: -- that this

1 has been suggested with the thought in mind
2 which you have very well raised.

3 SENATOR WALDON: Thank you,
4 Senator.

5 I do have a couple of more
6 questions, Madam President, if I may, please.

7 THE PRESIDENT: Proceed, Senator
8 Waldon.

9 SENATOR WALDON: Thank you, Madam
10 President.

11 Senator, is there any information
12 despite the locations meaning in futuro, meaning
13 these Keno type locations, these Quick Draw
14 locations and all locations of lottery machines
15 or lottery-like facilities in the state of New
16 York, is there any information as to the
17 disproportionate -- this is an assumption on my
18 part; permit me to do this -- as to the
19 disproportionate amount of money being generated
20 from poor communities playing these games versus
21 other communities?

22 SENATOR STAFFORD: I think this
23 is one area that we could ask the Lottery to do

1 some work in. I don't think that there are any
2 accurate programs. I would suggest that it may
3 not be exactly what you and I would think here
4 this evening.

5 I think that, if my area is any
6 indication, and I have various areas in my
7 district just like you do, all -- all of the
8 people seem to be a cross-section, seem to be
9 very involved. I have one friend, very
10 interesting, he's a very successful builder and
11 he bought the lottery ticket and there was a
12 very large payout that time. Interestingly
13 enough, he forgot he bought it so he bought
14 another one, and he ended up winning -- I think
15 there were ten winners, and he was two of the
16 ten.

17 I think people have become quite
18 -- quite interested in it, and I think the -
19 of course, the -- what it's produced has
20 indicated that.

21 SENATOR WALDON: Thank you very
22 much, Senator Stafford.

23 Madam President, if I may, on the

1 bill.

2 My worry about this is that the
3 people who disproportionately play these games
4 will not receive benefit from the monies
5 generated by these games. For example, there's
6 not a proviso, from what our learned chairman of
7 Finance has indicated to me at least here this
8 evening, that there will be an educational
9 component to deal with not only just education
10 in general per se, but an educational component
11 to help people in this bill, to help people who
12 become addicted to gambling. As he mentioned,
13 he said there is a proviso elsewhere, but
14 there's no percentage of the money generated by
15 Quick Draw to deal with that problem.

16 It is my understanding, my
17 colleagues, that the communities who are least
18 able to support this form of activity are the
19 ones from which the largest amounts of money on
20 a daily basis are generated, and I think that
21 being that we have not necessarily seduced this
22 population but at least induced this population
23 to participate in these games and we have a

1 moral responsibility to do something to help
2 them to make sure that a certain percentage,
3 percentage or percentages of those monies go
4 back to those communities either for education,
5 either for infrastructure refurbishment or
6 either for anything which benefits those people
7 and elevates their quality of life.

8 I don't see it here. I don't see
9 the vision to do that here, so I would suggest
10 to our chairman, and I know it cannot be done
11 tonight, and it won't be done this session, so I
12 can't support this bill tonight or this session,
13 but that somewhere down the road we begin to
14 take responsibility for our actions in terms of
15 this inducement and do something to help those
16 people who will be most disparately impacted by
17 the frenzy of buying the Lotto tickets and
18 participating in the Keno and the Quick Draw and
19 I'll close by saying this:

20 The Senator mentioned that he saw
21 a place in his district where people were lined
22 up. I represent perhaps one of the more
23 affluent areas of the City where blacks and

1 Latinos live, but even in parts of my district,
2 I have seen not one, not two, not ten, but on a
3 given day when the pot raises to about \$10
4 million, hundreds of places where people have
5 lined up and, Senator Stafford, I have on
6 occasion -- and I'll admit to this to you, only
7 to you -- I have on occasion been in the line
8 and have purchased a ticket, but I was not as
9 lucky as your friend and, if I were as lucky and
10 if I become as lucky, you'll be the first person
11 I offer to go to dinner from our colleagues.

12 SENATOR STAFFORD: Mr. -- Madam
13 President, I hasten to caution the good Senator
14 from Queens. I think you will find that it is
15 not within the framework of the law for you to
16 be in that line.

17 SENATOR WALDON: Well, then I
18 stand accused, and I appreciated the learned
19 Senator's bringing that to my attention, and
20 I'll speak to my counsel, Senator Espada, and
21 I'm sure he will give me right direction in the
22 future, be it Pick 5, Pick 10 or the lottery.

23 Thank you very much.

1 THE PRESIDENT: Senator Goodman.

2 SENATOR GOODMAN: Now, Madam
3 President -- I'm sure there's no one in this
4 chamber who remembers the Boston Tea Party which
5 was dedicated to the proposition that taxation
6 without representation was intolerable and that
7 kicked off a major revolution which resulted in
8 our system as we know it today.

9 Some years later, the great Will
10 Rogers said, "Taxation with representation ain't
11 so hot either" and the fact of the matter is
12 that we have had such a full dose of it that we
13 must plainly face up to the fact that this has
14 been the principal generative factor in a
15 hemorrhage of jobs out of the state of New
16 York.

17 Now, this is a very difficult
18 proposition to sell to an unsophisticated
19 audience, but with a group as knowledgeable as
20 the one within the sound of my voice at the
21 moment, I'm sure it takes no special persuasion
22 to have you understand clearly that tax policy
23 does have a direct impact upon economics, and we

1 all know the definition of an economist. It's
2 someone with a Phi Beta Kappa key on one end of
3 his chain and nothing on the other end.

4 But, nonetheless, good common
5 sense dictates that when taxes are too high in
6 New York compared to New Jersey, to Connecticut,
7 to Pennsylvania, to all of our neighboring
8 states, that it results in a reverse flow of our
9 middle class and in a departure of the jobs that
10 we so desperately need and of the middle class
11 who benefit from a solid job economy and of the
12 executive class who simply are not willing to
13 sustain a very heavy tax upon their income.

14 There's another even more subtle
15 feature of this called the estate tax and for
16 those of you who've had an opportunity to have a
17 look at this, I'm sure you're well aware that
18 the estate tax is not just driving people out of
19 the state immediately before they die when they
20 can go to Florida and pay no estate tax, but
21 it's driving them out of the state many years
22 before they're deceased, so that we lose from
23 some of our highest paying income people,

1 highest tax paying people an enormous amount of
2 revenue.

3 At last, in this year's budget -
4 in a few moments, Senator, if I may -- in this
5 year's budget, we finally have a grand design
6 which is hopefully going to come to grips with
7 something which has bedeviled the state for many
8 decades. We have had a tax system which has
9 pressed down a crown of thorns upon the state
10 from which it could hardly ever hope to emerge
11 unless there is some fairly radical surgery
12 introduced.

13 My friends, if you will take a
14 look at this tax program with some care, I know
15 you will understand why I'm about to make to you
16 a couple of declarations of basic principles.
17 First of all, the tax cuts this year will save
18 New Yorkers more than \$3.6 billion when fully
19 implemented. The top income tax rate will fall
20 from 7-point-almost-9 percent in '94 to 6.9
21 percent in '97 and some 5.6 million of New York
22 State's 8 million tax filers will receive
23 reductions of 25 percent or more in their taxes

1 by 1997.

2 Now, this is not a fly-by. This
3 is something significant. This is something
4 which changes the center of gravity of people's
5 basic life style plans and, for that reason,
6 even though you might argue and some have, that
7 this does not give all of the benefit that we
8 might hope to those in the lower tax brackets,
9 although it does benefit them quite
10 significantly, it nonetheless carries with it a
11 message which, in the long run, will be of
12 greater benefit to those of our less fortunate
13 in our society than many other approaches might
14 otherwise be which have a quicker fix, more
15 immediate Band-Aid effect.

16 I'd also like to stress to you
17 the fact that along with reducing the tax rates
18 the Governor's plan accelerates the growth of
19 the earned income tax credit for low income tax
20 payers. Previously the credit was to growth in
21 ten percent of the federal credit this year, to
22 15 percent in 1996 and to 20 percent in 1997.
23 This budget adopts the Governor's proposal to

1 increase the EITC to 20 percent in 1996, a full
2 year earlier than originally scheduled.

3 Now, although this is admittedly
4 technical, the fact is that it does have and
5 will have leverage in the approach that people
6 will take to deciding whether to be in New York
7 or not. The Pataki plan is the most ambitious
8 multi-year tax cut enacted this year by any
9 state and, when it comes to comparing New York
10 with other states, let me point out that this
11 tax cut is large enough to move New York State's
12 personal income tax burden from the second
13 highest in the nation, double the national
14 average, to seventh in the nation, 59 percent
15 above the national average.

16 While this is good progress, we
17 still have a long way to go. It will also move
18 New York's income tax per \$1,000 of income from
19 the fourth highest in the nation, 69 percent
20 above the national average, to the 11th highest,
21 34 percent above the national average. Again,
22 while this is good progress, we have a long way
23 to go.

1 The point that I'd like to make
2 is that the agreement which was reached between
3 the houses and between the parties on this
4 matter is, by and large, rational and I want to
5 be very candid with you in saying that the
6 Governor's initial schedule of tax cuts for
7 several years out struck me as being
8 unrealizable and would have exacted an enormous
9 necessity, perhaps up to \$8 billion of
10 expenditure cuts which, in my considered
11 opinion, the state could not afford, but as a
12 result of the process of negotiation which,
13 believe it or not in this bizarre process known
14 as democracy, which Winston Churchill said was
15 the worst form of government known to man except
16 all the others, we have actually come up, I
17 think, with something that is reasonable, not
18 punitive, and essentially very productive of
19 good results.

20 By coming up with a \$3.7 billion
21 cut in taxes over the next three years, we have
22 an achievable level which will make sense.
23 Now, mind you, there's one trap which I think

1 we've avoided in all of this, and that is the
2 trap which occurs when legislators with too much
3 ambition for tax cutting do so without
4 commensurate expenditure cuts.

5 We saw what happened in the
6 Reagan years when this occurred and the
7 President brought forth a so-called balanced
8 program. The tax cuts were activated but then
9 the expenditure cuts did not follow. Even the
10 secretaries in the Reagan cabinet were more or
11 less seduced, if you will, by the constituencies
12 within their areas of responsibility, and they
13 ended up advocating more and more expenditure
14 escalation.

15 We have not done this. It's my
16 belief that the balanced program which the
17 Governor has given us and which we have
18 ultimately sandpapered and chiseled -- not
19 chiseled, strike that word; that has a bad
20 connotation -- crafted, that we have crafted
21 will bring into equilibrium the tax cuts that we
22 have proposed and the necessity for shrinkage of
23 government on a rational basis.

1 It is my confident belief that
2 the safety net is intact. It's my belief that
3 this will not exact punitive penalties from
4 those in our society who are the most
5 defenseless. It's my belief that this will, on
6 the other hand, squeeze a great deal of waste
7 and in the reform of both Medicaid and welfare
8 we have put up sign posts which point in
9 directions which our Lieutenant Governor, for
10 example, adumbrated in her very significant
11 report on the matter of Medicaid in which she
12 stressed from the beginning that -
13 "adumbrated", by the way, I think means
14 outlined in advance, approximately correct or I
15 hope that's correct -- but in any event it did
16 create a situation which she foresaw and which
17 we've now implemented which will squeeze waste
18 without diminishing the importance of basic
19 service delivery to our people.

20 There was at one time a notion
21 that we should eliminate home care. That, in my
22 judgment, would have exacted a far higher price
23 than the so-called economy connected with it.

1 That is out of the budget. There is a time in
2 which we had thought that we could squeeze the
3 hospitals to the point where several of them
4 would have been pushed over the edge.

5 We've eliminated that. So what
6 has seemed to happen in all of this is the fact
7 that the two houses and the two parties, in
8 their ultimate wisdom in this, have come up with
9 some rough justice which has worked out pretty
10 well for the people of our state.

11 This is a rational program. It
12 is a productive program, and I'm confident in
13 predicting that, over the long run, if we adopt
14 this, as I trust we are about to do it will have
15 significant benefit for the people of the state
16 at an immensely difficult time when both the
17 Governor of the state and the Mayor of the city
18 of New York inherited enormous deficits
19 aggregating almost \$9 billion of other people's
20 money.

21 This was a potential tragedy in
22 the making, and I think we're averting it and I
23 think we're doing it in a way which in the long

1 run will be to the benefit of us all.

2 THE PRESIDENT: Thank you,
3 Senator Goodman.

4 Senator Leichter, why do you
5 rise?

6 SENATOR LEICHTER: I wanted to ask
7 Senator Goodman to yield. He wanted to finish
8 his remarks, and I wondered if he would be good
9 enough to yield now.

10 SENATOR GOODMAN: Indeed,
11 Senator.

12 THE PRESIDENT: Senator Goodman,
13 will you yield?

14 SENATOR LEICHTER: Senator, do
15 you remember when the income tax in this state
16 was almost 14 percent?

17 SENATOR GOODMAN: You and I
18 remember when there was no income tax at all,
19 Senator.

20 SENATOR LEICHTER: Senator, you
21 told me you remembered the Boston Tea Party, so
22 I'm sure you remember -

23 SENATOR GOODMAN: Even the Battle

1 of Hastings is a distinct memory. 1066 A.D., is
2 that right, Franz?

3 SENATOR LEICHTER: Do you
4 remember, Senator, not that long ago when the
5 tax was -- I believe the upper bracket was 13.75
6 percent?

7 SENATOR GOODMAN: Quite vividly,
8 and I remember our deep desire to make very
9 significant cuts in that, which we've done.

10 SENATOR LEICHTER: I'm going to
11 be nasty at this moment, Senator.

12 SENATOR GOODMAN: No, you're
13 never nasty.

14 SENATOR LEICHTER: I was sure you
15 would remember because I believe you voted for
16 those increases in the Rockefeller year as did
17 some other members who were here. But the point
18 that I'm going to make, I think that was voted
19 in 1970-71, '72, and in the 1970s was a pretty
20 prosperous time for the state of New York, was
21 it not?

22 SENATOR GOODMAN: My recollection
23 is that we were quite spendthrift in those days,

1 Senator, if that's the point you're making.

2 SENATOR LEICHTER: Right, and,
3 Senator, is it not also a fact that under
4 Governor Carey and under Governor Carey -- I
5 mean under Governor Carey and Governor Cuomo
6 that maximum tax rate was reduced to 7.75
7 percent, almost cut in half?

8 SENATOR GOODMAN: Under the
9 initiative, if I may say so, which started in
10 our Conference there were major tax cuts made
11 which I think only started the pathway that we
12 are now following and unfortunately are not
13 following far enough yet, but they started in
14 that direction and, of course, you all remember
15 the Federal Tax Reform Act which was a
16 significant factor in some of the cutting which
17 we did in which cuts were made in adjustment to
18 that Federal Tax Reform Act.

19 SENATOR LEICHTER: Senator -

20 SENATOR GOODMAN: Do you recall
21 that?

22 SENATOR LEICHTER: Senator, if
23 you would be good enough to continue to yield.

1 Senator, whoever takes the credit for it, and
2 I'm willing certainly to acknowledge the role
3 that you and your Conference played in this. I
4 think you'll also acknowledge the role that
5 Governors Carey and Cuomo played, but I'm not
6 trying to play this partisan game, you did it or
7 we did it. This one, I'm trying to make the
8 point of how significant our tax cuts are or the
9 correlation between tax cut and economic
10 well-being in this state.

11 It is a fact, is it not, that the
12 last three or four, almost five years have seen
13 this state first in a recession and then barely
14 limping out of recession, is that not also a
15 fact?

16 SENATOR GOODMAN: Well, if I may,
17 Senator, I think we can save a little time in
18 this by pointing out that, despite the fact that
19 we sought to make tax cuts, the comparative
20 rates in our neighboring states, were in most
21 instances no less than half of our rate, and
22 it's that comparative rate that I stressed in my
23 earlier remarks as indicating the competitive

1 disadvantage at which we placed ourselves by
2 allowing those rates to remain at those high
3 levels.

4 SENATOR LEICHTER: Senator.

5 THE PRESIDENT: Senator
6 Leichter.

7 SENATOR LEICHTER: One final
8 question, if you would, Senator Goodman.
9 Senator, I understand the point you're making
10 about comparative rates, but I wonder whether
11 you would address the incongruity for your
12 argument that, when our tax rate was twice as
13 high as it is now, that we were really quite
14 prosperous and at that time the disparity
15 between our tax rate and the rate in other parts
16 of this region was probably greater than it is
17 now, that at a time when our tax rate at least
18 on the state level had declined significantly,
19 although it did increase on the local level,
20 that having decreased on the state level, we've
21 never -- and the disparity between New York
22 State and the neighboring states being much
23 less, we nevertheless found ourselves in a very

1 poor economic time, does not -- does that not
2 show, Senator, that what we're really dealing
3 with is national/international economic trends
4 and our local tax policy, our monetary policy if
5 you will, has really minor effect on the economy
6 of this state?

7 SENATOR GOODMAN: I could not
8 disagree with you more completely, Senator. I
9 may say that not long ago, I heard a very lovely
10 compliment directed at you which stated that
11 Senator Leichter is a gentleman of the old
12 school. I think that's a wonderful personal
13 compliment, and I congratulate you and agree
14 that you richly merit that, but I must also be
15 constrained to say, Senator, that not only are
16 you a gentleman of the old school, you're an
17 economic thinker of the old school, and it is
18 the old school that we are deeply concerned with
19 and seeking passionately to reverse in the
20 action we take today, because the old school
21 took the view that ever higher taxes to produce
22 ever greater benefits for those who
23 theoretically were in need of never ending

1 spiraling schemes of social well-being, and vast
2 construction projects which, in the fullness of
3 time, crumbled because we couldn't afford to
4 maintain them and vast service delivery networks
5 which we could not possibly hope to continue,
6 essentially began to strangle us and throw us
7 into a reverse spiral, and I think it's amply
8 demonstrated by the relatively recent history of
9 the state that all of these things have come
10 together and have hit New York with a vicious
11 whiplash.

12 It is this that we're trying to
13 reverse. These deficits that we've suffered
14 have come from the fact that fundamentally the
15 job economy has been wrecked and it's that that
16 I appeal to you to try to understand requires
17 some very strong medicine and some major
18 strategy to turn around this ocean liner which
19 is headed over Niagara Falls, if you will allow
20 me to mix an aquatic metaphor.

21 The fact of the matter is that we
22 are reversing it at last, but we're not
23 accomplishing our objective yet. We're sending

1 a strong signal, and I'll give you one example,
2 the estate tax. Quite candidly, I'm not happy
3 with this estate tax modification because all
4 this does is say we'll take your house, your
5 basic residence, and we'll give you some basic
6 tax relief when you die, on your residence.

7 We have to go much beyond that.
8 We have to say that as long as Florida has no
9 estate tax and as long as it's sucking out of
10 our state like an Electrolux, people of wealth
11 and means, if we give them this estate tax we'll
12 keep them here and we'll get a rich return on
13 our investment in prudent policy.

14 This is just an example of what
15 at times some might call a give-away to the rich
16 and extraordinary benefits to all levels of our
17 population and especially those of our least
18 fortunate because they don't get short-term
19 welfare jobs. They get long-term employment
20 which keeps them in a position of supporting
21 their families and of a bright future to which
22 they can look forward, which is not possible
23 under a punitive tax system.

1 THE PRESIDENT: Thank you,
2 Senator Goodman.

3 Senator Oppenheimer, why do you
4 rise? You look very sad.

5 SENATOR OPPENHEIMER: I am.
6 Senator Goodman, would you yield to a question?

7 SENATOR GOODMAN: Yes, Senator,
8 with pleasure.

9 SENATOR OPPENHEIMER: Would you
10 tell me what, in your opinion, is the most
11 burdensome tax in New York State? Would you say
12 it is the personal income tax, or would you say
13 it is the property tax?

14 SENATOR GOODMAN: May I put the
15 answer this way: Once upon a time there was a
16 family who had a lovely, robust horse and that
17 horse maintained his good health on a diet of
18 one hundred percent oats. As times worsened,
19 however, the farmer was constrained to cut the
20 percentage of oats in the diet and to increase
21 the percentage of sawdust, and one day, to his
22 astonishment when he got to about the 60 percent
23 sawdust, the horse dropped dead.

1 When you ask me what is the worst
2 tax, there is no one worst tax. They're all
3 sawdust, and the more we allow them to increase
4 in the mixture of oats, the more we threaten our
5 economy and imperil our very existence. I hope
6 that's a helpful graphic explanation of my
7 point. The taxes as a whole are a tremendous
8 burden, and we must try to lighten that burden.

9 SENATOR OPPENHEIMER: If I may
10 though, Madam President, in the area that I come
11 through -- come from, there is no question that
12 by far our most burdensome of tax is our
13 property tax. We have average taxes in many of
14 our communities on property of \$15,000. It is
15 just not a bearable tax, and we are very much
16 afraid that a cut in the income tax is going to
17 cause our property taxes to go higher.

18 So while I appreciate that
19 taxations are a pain in the neck for all of us,
20 the fact is we have a government to run and we
21 have to provide services and our Constitution
22 tells us what we must be doing, so none of us
23 like paying them, but I think it's a necessary

1 evil.

2 Thank you, Madam President.

3 THE PRESIDENT: Senator
4 Stavisky.

5 SENATOR STAVISKY: Thank you,
6 Madam President.

7 I don't know which economist on
8 staff or in the Legislature will be able to
9 predict the outcome of this fiscal package, but
10 I have a prediction to make regarding the
11 outcome of this loss of billions of dollars in
12 state revenue.

13 I gather that many of us want to
14 meet frequently, and I predicted that with the
15 passage of this tax cut bill, we will be meeting
16 again to deal with the fiscal crisis, to deal
17 with a loss of revenue, to deal with the failure
18 of the state of New York to meet its obligations
19 to its citizens.

20 So I'm very happy for all of our
21 members that it will give us an opportunity to
22 see each other again and to undo the damage, if
23 we can, of the loss of revenue. When taxes are

1 cut and you give away revenue, you have to have
2 replacement money, and I know of no replacement
3 money comparable to what is being sacrificed in
4 this legislation.

5 That aspect of the bill defies
6 explanation. I know 1996 will be an election
7 year, but I believe with an honest approach,
8 with candor in your conversations with your
9 constituents, that you will not have to force
10 feed them to vote for anyone in this room by
11 giving away money that the state of New York and
12 all of its services can ill afford to lose.

13 I think it's irresponsible. I
14 think it takes money from those who can afford
15 to pay and squanders it on those who will lose
16 so very much. Senator Leichter indicated the
17 contrast. There is no legislator representing
18 any of the districts of this state, the most
19 affluent areas of the state whose constituents
20 in the most affluent ranks will not be forced to
21 make the sacrifice that our working poor or
22 moderate income family will have to expend in
23 sending two kids to college at a state

1 institution, SUNY or CUNY. That's a \$1,500 tax
2 increase for families that can ill afford this
3 tax rise, and yet we're doing it to help the
4 most affluent people who do not need this.

5 Are we going back to the glory
6 days of Herbert Hoover and the "trickle down"
7 theory? I don't know if that "trickle down"
8 theory worked very well in rescuing the United
9 States in the greatest depression in its history
10 and I fear that with all the lovely analogies
11 that have been drawn by some of the advocates
12 for this, Senator Goodman, I don't think that
13 horse suffered from the fact that it was getting
14 too much oats. If there was a conflict, it's in
15 that horse's innards. A medicine that you are
16 very familiar with probably would have done very
17 great good. That horse needed Ex-Lax rather
18 than the speech on the floor of this Legislature
19 and I really think that the analogies that have
20 been drawn are far-fetched.

21 We have a right to be truthful
22 with ourselves and our constituents and not
23 promise tax cuts for every individual in the

1 state who doesn't need one and tax increases for
2 others who can benefit from the services that
3 are rendered but don't have the money to pay for
4 those services.

5 So if we want to come together
6 soon, if we want to come together to see each
7 other, don't schedule a social event. Schedule
8 a legislative budget debate to restore the money
9 that we are giving away now without reason. I'd
10 be happy to come back to Albany at any time even
11 though we don't get paid when we arrive here,
12 but we will come back. We will do the people's
13 business, whether or not the legislators or the
14 Governor are paid, and I know we'll do the right
15 thing. We'll act responsibly when we have to.
16 We'll act in a way to provide the funds and to
17 undo the damage that we may be doing today with
18 this legislation.

19 And yes, Senator Padavan, as well
20 as Senator Leichter, are both on target. We may
21 be creating a new wave of Quick Draw McGraws who
22 are going to be trapped with this instant appeal
23 for more money.

1 Senator Stafford, you are
2 absolutely right, don't get on that line and buy
3 these tickets. Don't get on the line and be
4 seduced by these promises of rapid return, but
5 let us not use this Quick Draw McGraw method of
6 raising enough revenue as an excuse to pass a
7 very broad tax bill.

8 I hope that you will see the
9 wisdom of not sacrificing your constituents all
10 over the state whose kids still need the college
11 education that we have been benefited in our
12 professional and business careers. This new
13 generation not always have the same ethnic
14 background as those in this room but, yes, but
15 yet increasingly, kids from minority and
16 disadvantaged communities are in need of public
17 higher education and we're taking away from them
18 to give to the wealthiest taxpayers in the
19 state.

20 I think that's shameful, and I
21 hope you reflect on that as it affects your
22 community.

23 THE PRESIDENT: Senator

1 Dollinger.

2 SENATOR DOLLINGER: Madam
3 President, I rise just to speak on this bill and
4 give my brief thoughts.

5 The notion that somehow we're
6 going to substantially increase the number of
7 jobs in this state is, to me, a somewhat dubious
8 premise. The -- I think other speakers have
9 addressed the fact that in New Jersey where
10 Governor Whitman has already granted large
11 reductions in the personal incomes tax, there
12 has been an in-consequence increase in property
13 taxes, which has had the same dampening effect
14 on the poor horse that's eating, can't
15 differentiate between the sawdust and the oats.

16 I think any tax increase, when we
17 promise something that we don't have the
18 capability of paying for today, makes that
19 premise even more dubious. However, I'm going
20 to vote in favor of this bill because I believe,
21 based on the negotiations that I've seen, we can
22 afford a \$550 million tax cut this year. This
23 budget enables that to be done.

1 I think it comes at some cost. I
2 am concerned when we get to the Medicaid cuts
3 and other portions of this budget about the
4 impact and the consequences to many in our state
5 by this tax cut. I don't believe that we'll see
6 an explosion of jobs. I don't believe we'll see
7 a resurgence.

8 I'd only relate the story that I
9 was told by a wealthy businessman who urged me
10 to vote in favor of tax cuts. He said, Gee, I
11 took \$10,000 out of my business just before the
12 close of the fiscal year last year and you know
13 I where I invested it, where I could get the
14 best possible return? It's all going into a
15 Pacific Rim growth fund just like in the 1980
16 tax cut when tax cuts were given to people in
17 wealthy industrial states like New York and they
18 took their tax cut and invested it in the
19 Southwest and in the Southeast, states that had
20 very low wages, labor, states that had very,
21 very low cost, states that were not like New
22 York, because the money moves so quickly it goes
23 other places. My prediction is that this tax

1 cut for wealthy people will similarly not come
2 to rest in the state of New York.

3 I also express one other concern
4 with respect to the tax cuts. In casting a vote
5 in favor of this year's tax cut, while this bill
6 as a compromise includes all three years, this
7 legislator is not afraid to look next year at
8 the issue, which is can we afford next year's
9 tax cut. If we can't, I'm not going to be bound
10 to deliver it.

11 I understand that, by virtue of
12 the compromise in this bill, the position of the
13 second floor, the position of others in this
14 chamber, that they're willing to make that
15 commitment. I am not.

16 I'll close with one other thought
17 and that's on the Quick Draw provision. I share
18 Senator Padavan's concerns. I believe, as
19 Senator Waldon expressed, that this is a poor
20 people's tax. It's a poor people's tax that
21 we're creating because we're reducing our
22 revenues by reducing personal income taxes.

23 I think it will have the

1 consequent result of increasing gambling. It
2 will change the nature of our families, change
3 the nature of our state, and I also make one
4 other promise, if there are other things that
5 are necessary to further implement Keno and
6 Quick Draw, I intend to take every step that I
7 can to try to prevent it. I think it's a shame
8 that we're giving away -

9 SENATOR LIBOVS: I'd ask if
10 Senator Dollinger would yield to a question.

11 SENATOR DOLLINGER: I'd be glad
12 to, Mr. President, at the conclusion of my
13 remarks.

14 ACTING PRESIDENT DiCARLO:
15 Senator Dollinger will not yelled.

16 SENATOR DOLLINGER: -- that the
17 give-aways, and the concern for people's
18 gambling and poor people's gambling that could
19 have the consequence of creating additional
20 social strain and putting additional demands on
21 our social service system. So when all is said
22 and done, I recognize this is a compromise. I
23 recognize it's got many dimensions. I'm not

1 happy with all of them, but at least at this
2 point, Mr. President, I'm prepared to vote in
3 favor of this, although I recognize that, in the
4 future, we may need to make some changes.

5 ACTING PRESIDENT DiCARLO:
6 Senator DeFrancisco.

7 SENATOR DeFRANCISCO: Yes,
8 Senator Dollinger, you have expressed quite
9 quickly that you don't agree with the tax cut,
10 you don't agree with the Quick Draw. I wonder
11 if you could explain why you're voting for this.

12 SENATOR DOLLINGER: I believe
13 I've already, Mr. President, explained. I
14 believe we can afford a \$550 million tax cut
15 this year. I've looked at our costs and our
16 expenses, and I believe this year that we can
17 afford a \$550 million tax cut. If we were given
18 the alternative, if this bill were changed, so
19 that it was in two parts to vote for a \$550
20 million tax cut this year and then vote for a
21 \$2.8 million tax cut next year and then a \$2.8
22 million tax cut the next year, then I would
23 alter my vote. I would vote for this year and

1 not vote for the years out. Because it's
2 packaged all in one little package, I'm going to
3 vote in favor.

4 SENATOR DeFRANCISCO: Would you
5 yield for another question?

6 ACTING PRESIDENT DiCARLO: Would
7 you yield?

8 SENATOR DOLLINGER: I'll be glad
9 to.

10 ACTING PRESIDENT DiCARLO: He
11 will yield, sir.

12 SENATOR DeFRANCISCO: Since you
13 support the tax cut this year, would you also
14 agree that it will not have the effect of
15 raising property taxes back home?

16 SENATOR DOLLINGER: I don't -
17 Mr. President, I don't know that. One of the
18 interesting things about doing the budget this
19 way is that I haven't seen the local assistance
20 bill. I don't know what's in it. I don't know
21 what effect it's going to have. I'm concerned
22 about the increase in property taxes in Monroe
23 County and the communities that I represent, but

1 again, not sitting on the Majority side of the
2 house, not designing these bills as they come,
3 recognizing perhaps based on my own experience
4 over the last two and a half years that
5 amendments tend to have a certain futile side to
6 them at this stage in the proceedings, it seems
7 to me that I can't make a judgment as to whether
8 there will be a property tax reduction or
9 increase as a consequence.

10 I'd simply add, Mr. President, if
11 Senator DeFrancisco, who is in the Majority, had
12 seen it and has additional information, I'd love
13 to hear it.

14 SENATOR DeFRANCISCO: Will the
15 Senator yield to another question?

16 ACTING PRESIDENT DiCARLO:
17 Senator Dollinger, will you yield to another
18 question?

19 SENATOR DOLLINGER: I'll be glad
20 to.

21 ACTING PRESIDENT DiCARLO:
22 Senator, he will.

23 SENATOR DeFRANCISCO: If you

1 don't have the required information, would you
2 tell me how you can feel that the state of New
3 York can afford the \$500,000 -- \$500 million of
4 tax cut this year?

5 SENATOR DOLLINGER: Through you,
6 Mr. President, I've seen the State Operations
7 portion of the budget. I've seen the capital
8 budget and the consequences of that, and I
9 believe that, based on what I see in the State
10 Operations side of the budget, there's a
11 sufficient saving, a reduction in costs, I
12 believe this Governor has suggested the
13 reduction in cost, reduction in spending, on the
14 state spending side, and State Operations is a
15 significant portion of the 550 million.

16 Under those circumstances, I'm
17 willing to take, I guess, that chance, that
18 suggestion that the Speaker and the Majority
19 Leader have negotiated a budget which is
20 constitutionally acceptable, that is it is
21 balanced, and therefore, there's enough to do
22 the \$550 million this year.

23 SENATOR DeFRANCISCO: One last

1 question, if you'd yield.

2 SENATOR DOLLINGER: I'd be glad
3 to.

4 ACTING PRESIDENT DiCARLO: One
5 last question, certainly, Senator DeFrancisco.

6 SENATOR DeFRANCISCO: At this
7 point, of course, you recognize that the local
8 assistance portion is two-thirds of the portion
9 of -- of the budget. You realize that?

10 SENATOR DOLLINGER: I do, Mr.
11 President.

12 SENATOR DeFRANCISCO: I have no
13 other questions.

14 SENATOR DOLLINGER: I can't wait
15 to see it, I'd just mention.

16 ACTING PRESIDENT DiCARLO:
17 Senator Markowitz, do you wish to speak?

18 SENATOR MARKOWITZ: Let me just
19 say there's no doubt in my mind that when
20 Governor Pataki won the election that the
21 direction of the state would move in a different
22 direction. There is no question that we are
23 about to see that and its first steps over the

1 next few hours, perhaps few days.

2 I wonder if people in the state
3 of New York have changed. We'll see because
4 this budget will do less for less. It will do
5 -- it will provide less services for people.
6 There's no doubt about it. Those that are
7 moderate and middle income will to some degree
8 share in less attention and less services. It
9 will be interesting to see if the free lunch -
10 and that's what this buys into, the ability of
11 the Majority to convince the residents of the
12 state that they are paying too much taxes and
13 that they are not receiving services -- it will
14 be interesting to see when it rolls around and
15 finally when they need a service that have
16 supported the philosophy of less taxes, it will
17 be interesting to see when they have to access
18 those services and there are less services for
19 them at the time they need it, whether or not
20 they will then say it's all right, it's fine.
21 I'm happy that there's less services even though
22 I need it. I accept the fact that the state is
23 doing less for me, and that will really be what

1 the future brings to us. It will be interesting
2 to see how the residents of New York State react
3 to less government, quote, and less services,
4 less programs, less assistance, and that's what
5 this budgeted will mean, at least it means to me
6 and to the great majority of the people that I
7 serve, and I believe to the great majority of
8 the people of the state of New York.

9 That's what this past election,
10 in my opinion, was all about and we'll see on a
11 federal level and on a state level and perhaps
12 on a local level what the future brings. We'll
13 see. I'm convinced and hope that New York State
14 residents, particularly those that are fortunate
15 to be well off, somewhat more affluent, have had
16 better luck in their lives, it will be
17 interesting to see whether or not they will once
18 again realize that they have a collective
19 responsibility through their taxes and other
20 generosities to help those that are attempting
21 to also make something of their lives and to
22 have a chance to share in the American dream.
23 We'll see.

1 I'm convinced that the pendulum
2 will come around and that we'll see it turn once
3 again in the very near future when it becomes a
4 reality to residents of the state there is no
5 free lunch, there's no free ride. You have to
6 pay for the services, not only for the services
7 that you need today, Senator Marchi, but none of
8 us know what the future brings tomorrow, and I
9 know for one that while I may not need many
10 services of New York State today, surely I may
11 or a member of my family or friends may need
12 those services tomorrow. We have to think about
13 that as much as we think about today.

14 Having said that, on the issue of
15 jobs, since all of us -

16 ACTING PRESIDENT DiCARLO: Excuse
17 me, Senator Markowitz. The stenographer is just
18 getting set up. Can you just hold up a second.
19 We want to make sure that we get every word.
20 This is history being made here this evening.
21 Senator -- well, Senator Markowitz, you have the
22 floor, sir.

23 SENATOR MARKOWITZ: On the

1 question of jobs, this really goes to the heart
2 of what perhaps is the greatest problem in New
3 York State, finding jobs that provide for those
4 that aspire to be part of our dream of reality.
5 I have to tell you, as I may have mentioned
6 previously, that recently a major supermarket
7 chain opened a new store in my area at jobs
8 paying \$5.50 an hour. I'm sure none of us would
9 say that's a high paying job. There were three
10 blocks long of residents in the area unemployed
11 looking for those \$5.50 an hour jobs.

12 It's not that they're lazy. It's
13 that they want to work but we have allowed,
14 through our tax policies, American manufacturers
15 to leave New York and to leave America as they
16 seek to continue to build overseas, to the
17 markets that they can manufacture their products
18 the dead cheapest.

19 Now, how we address that, how we
20 encourage manufacturers to make it necessary for
21 them to manufacture here and employ our own
22 people, so that our standard of living can at
23 least have a chance to be everything it ought to

1 be, is a challenge that I think faces all of us
2 that goes well beyond -- well beyond policies
3 set right here in the state of New York.

4 Let's hope that that will be a
5 direction. I don't believe that this will
6 result, this budget, in creation of jobs because
7 we're not getting to the real issues as to why
8 manufacturers have left New York and continue to
9 leave urban areas of New York State.

10 On the issue of Keno, I don't
11 know, I see Senator Stafford -- Senator
12 Stafford, I want to ask you a question. May I?

13 ACTING PRESIDENT DiCARLO:
14 There's a lot of conversations going on in the
15 chamber. If you would please take your
16 conversations outside the chamber. Thank you,
17 Senator Markowitz.

18 SENATOR MARKOWITZ: Just a
19 question of Senator Stafford.

20 ACTING PRESIDENT DiCARLO:
21 Senator Stafford, would you yield to Senator
22 Markowitz?

23 SENATOR STAFFORD: By all means,

1 Senator.

2 SENATOR MARKOWITZ: Thank you,
3 Senator. The good Senator yields.

4 In regards to Keno, do you sense
5 that the numbers, local numbers operations,
6 enterprises that exist in many areas of our
7 communities and state might -- that this might
8 be a dent on their activities if we implement
9 and enact this new gambling opportunity?

10 SENATOR STAFFORD: Well, Mr.
11 President.

12 ACTING PRESIDENT DiCARLO:
13 Senator Stafford.

14 SENATOR STAFFORD: I don't
15 understand. By numbers? Could you explain.

16 SENATOR MARKOWITZ: Well, Senator,
17 obviously -

18 ACTING PRESIDENT DiCARLO:
19 Senator, could you be a little clearer?

20 SENATOR STAFFORD: Mr. President,
21 I'll explain.

22 I -- I think that upstate too, I
23 have thoughts about that myself. I sometimes

1 think we should be -- at all times think we
2 should be careful. You know, we say it's there
3 so we'll legalize it. I -- I'm concerned about
4 that, but I have been advised by friends of mine
5 who understand exactly what you're asking about
6 and who I think -- well, I'll leave it at that,
7 that this is a move and making something legal
8 and it's actually being policed and being run
9 properly, and there is less -- there is less of
10 a possibility of fraud and people being taken
11 advantage of.

12 I appreciate the question, and I
13 think I was thinking about that as I was
14 speaking, but I didn't mention it.

15 ACTING PRESIDENT DiCARLO: Thank
16 you, Senator Stafford.

17 Senator Markowitz, did you wish
18 to continue?

19 SENATOR MARKOWITZ: Let me just
20 conclude on that.

21 Senator, I hope and pray that
22 your observation is correct, but my concern is
23 that the law of instant gratification on the

1 gambling issue might develop an even greater
2 attraction as has been said previously of those
3 that have been not necessarily involved in -- in
4 gambling, and I worry greatly, I really do,
5 about that potential impact especially for many
6 of our communities that many of us serve, and I
7 hope that as a Legislature, that we will monitor
8 this very closely because certainly there has to
9 be other ways, certainly other ways that this
10 state can find on a fair basis to come up with
11 the revenues that we do need to maintain the
12 services that are really necessary in our
13 society.

14 Thank you very much.

15 ACTING PRESIDENT KUHL: Senator
16 Stachowski.

17 SENATOR STACHOWSKI: If Senator
18 Stafford would yield for a few questions.

19 ACTING PRESIDENT DiCARLO:
20 Senator Stafford, would you yield to a few
21 questions for Senator Stachowski?

22 SENATOR STACHOWSKI: I know
23 there's a portion of this bill that nobody has

1 discussed yet, and although we talked about it
2 in committee I would like to run through some of
3 the horse racing features of this rather complex
4 bill that we have in front of us, and I think we
5 should get some of those items on the record
6 since we've discussed at length a lot of the
7 other parts of it.

8 SENATOR STAFFORD: You're exactly
9 right.

10 SENATOR STACHOWSKI: Senator,
11 would you mind briefly giving us an explanation?

12 SENATOR STAFFORD: I think I
13 could.

14 SENATOR STACHOWSKI: Do you want
15 to just briefly try to cover it and then I'll
16 ask you specifics if you don't?

17 SENATOR STAFFORD: I think I can
18 tell you that. As far as the racing industries
19 in this state, again, I hate to be -- I probably
20 shouldn't be using the word "direction" all the
21 time. In other words, it hasn't been going
22 well. I don't think anyone will argue, and at
23 one time, at one time we were THE racing state.

1 Saratoga, I believe, had the oldest race in the
2 nation with the Travers.

3 I have been there, as some of my
4 friends have, always had a good time, but never
5 was anyone excited about my winnings. It was
6 very pleasant and, of course, we have Belmont,
7 Aqueduct and, of course, I believe now -
8 correct me if I'm wrong -- but I remember when
9 we had Jamaica and when I was in school, I went
10 to the races at Jamaica, that close to that
11 time.

12 Now, we've been going down, down,
13 down, and once again when we get -- and I talked
14 about -- I talked about the economic locomotive
15 here in the state, although I disagree with my
16 Senator, I'm afraid, on other items, I always
17 say my summer Senator -- I'm his summer Senator.
18 I can see now that we just tax, tax, tax and the
19 purses were down, down, down. People didn't
20 want to race here. We weren't supporting the
21 horsemen.

22 We -- I have a couple friends,
23 I'm sure you do, one friend especially, he built

1 a racing stable here in New York, and he's out
2 of here. He's now moved to Florida, and he
3 tells me because this isn't the place where he
4 can have an operation that is profitable. The
5 vitality of racing is not what he felt it should
6 be, is not what it should be and had been at one
7 time.

8 So there's no question about it,
9 and we'll get right to the question of money
10 because that's key. NYRA gets 25 less taxes for
11 NYRA, they'll get 25 less in the state and the
12 horsemen will have a \$15 million advantage in
13 this program. I think it's a step in the right
14 direction. A great deal of work has gone into
15 this. The industry has had input, and I know
16 you know this, this is one area where you get
17 input, I mean one industry where you get input
18 and you don't ever say, Well, you don't get
19 ahold of it. They get ahold of you.

20 But I think for the most part we
21 have a good package. Now, we want to mention
22 simulcasting because that will be very important
23 for -- and we're increasing simulcasting for all

1 the facilities in the state. We don't think
2 there will be any damage at all of the
3 facilities.

4 I am of the opinion that we have
5 needed to do this. We just haven't reacted in
6 the way I think we should have, and I am
7 supporting this. I think it's -- here I go
8 again, but it's right, it's a step in the right
9 direction, and I think it will increase the
10 attendance. I think it will be good for the
11 industry, and I also want to say, you know, so
12 often, so often we complain and we criticize,
13 you know, what is being done in various
14 industries and racing is no exception, but I
15 want to say on a beautiful summer day in August
16 there isn't a more beautiful place than Saratoga
17 with families there now and picnics, which was
18 never the case when you and I were young when
19 you came over from Worcester and I came down
20 from Plattsburgh, that you had people all over
21 the area, and I think the NYRA is doing a good
22 job as far as the facility and this is another
23 point, you and I discussed this. This is a two

1 year commitment to attend -

2 SENATOR STACHOWSKI: Senator, if
3 I could.

4 ACTING PRESIDENT DiCARLO:
5 Senator Stachowski, do you have another question
6 for Senator Stafford? Senator, do you yield for
7 another question?

8 SENATOR STACHOWSKI: And he did
9 such a good job with this complex subject, and
10 I'd like to get a couple parts of this.

11 The OTB, through simulcasting,
12 will benefit and even more, but obviously the
13 OTB will benefit?

14 SENATOR STAFFORD: This is very,
15 very important so -- OTBs are an important
16 entity, very important. They will have six
17 months more of a race track. I didn't say
18 that. Well, yeah, they'll have six months
19 they'll have another race track which, of
20 course, increases their overall program.

21 SENATOR STACHOWSKI: If the
22 Senator would continue to yield.

23 ACTING PRESIDENT DiCARLO:

1 Senator Stafford, will you continue to yield?

2 Sir? Yes, I believe he will.

3 SENATOR STAFFORD: Yes.

4 SENATOR STACHOWSKI: The harness
5 tracks will benefit too almost through increased
6 simulcasting also?

7 SENATOR STAFFORD: Exactly,
8 increased simulcasting but also they will have a
9 takeout adjustment which is very important.

10 SENATOR STACHOWSKI: If the
11 Senator would continue to yield.

12 SENATOR STAFFORD: Yes.

13 ACTING PRESIDENT DiCARLO:
14 Senator Stafford will continue to yield.

15 SENATOR STACHOWSKI: The -- and I
16 forgot to ask this in committee, the bettors,
17 will they benefit from these adjustments and the
18 takeout particularly in the win, place and show
19 bets?

20 SENATOR STAFFORD: I hasten to
21 answer this one, because I remember when this
22 decision was made -

23 ACTING PRESIDENT DiCARLO:

1 Senator Stafford, I'm sorry but it's difficult
2 for the stenographer to pick you up with your
3 back to the microphone, sir. Thank you.

4 SENATOR STAFFORD: This will be
5 the lowest in the nation that will be better for
6 the -

7 SENATOR STACHOWSKI: Senator -

8 SENATOR STAFFORD: The
9 handicapper will be paying the lowest rate in
10 the nation, and that is very important because
11 that has also been a complaint, but I would also
12 say this, and I think these are excellent
13 questions, and I think you're laying the entire
14 program out and a lot of work went into it. If
15 we started improving the program then that's
16 what is going to have the person making the
17 wager or the handicapper there.

18 SENATOR STACHOWSKI: If the -- if
19 the Senator would continue to yield.

20 ACTING PRESIDENT DiCARLO:
21 Senator, would you continue to yield to Senator
22 Stachowski?

23 SENATOR STAFFORD: Yes, I will.

1 ACTING PRESIDENT DiCARLO: Yes,
2 he will, Senator Stachowski.

3 SENATOR STACHOWSKI: The Finger
4 Lakes, which I know over time is left out of
5 bills and I know is in this bill, and could you
6 explain to us how Finger Lakes benefits in this
7 piece of legislation?

8 SENATOR STAFFORD: I don't mean
9 to just say this. I continue to say it, but
10 again, what you just said is exactly right about
11 Finger Lakes, and I think at times they have
12 been treated less than fairly. They will now
13 have their product in every single OTB program
14 in the nation -- state. What did I say, nation?
15 State, sorry.

16 SENATOR STACHOWSKI: Is it -- if
17 the Senator will continue to yield.

18 ACTING PRESIDENT DiCARLO:
19 Senator Stafford, will you continue to yield?

20 SENATOR STACHOWSKI: Is it also a
21 benefit between that there, the Finger Lakes
22 itself and two of the OTBs and also in some
23 exotic betting that they can now feature at

1 Finger Lakes that I don't think they have had
2 the opportunity to do or something to do with
3 the exotic betting if you can explain those two
4 sections, please?

5 SENATOR STAFFORD: They'll have
6 the new exotic betting at Finger Lakes and it
7 will apply only to simulcasting, but let me -
8 my counsel just for -- what that means, I will
9 -- these -- this terminology "exotic betting"
10 just so everyone knows, you know, you pick six
11 straight, and I just happened to be at Saratoga
12 one day when somebody picked eight straight and
13 you know, and the place went wild, and I don't
14 want to tell you the amount that was won, but it
15 was a -- quite impressive.

16 SENATOR STACHOWSKI: The
17 relationship between the OTBs, Western and
18 Capital I think, Finger Lakes -

19 SENATOR STAFFORD: On all these
20 out-of-state wagering, Finger Lakes will receive
21 increased payment from the Capital District and
22 from the Western Region, you're exactly right.

23 SENATOR STACHOWSKI: If the

1 Senator would continue to yield.

2 ACTING PRESIDENT DiCARLO:

3 Senator Stafford, would you continue to yield to
4 Senator Stachowski? He will.

5 SENATOR STACHOWSKI: I hate to
6 bring up the one questionable part, but I will.
7 Yonkers has a concern that they are going to
8 lose the guarantee that they formerly had and
9 can you tell us how that loss of that guarantee
10 would be covered by loss of parts of this bill
11 which I was told would satisfy their concern in
12 the long run by the financial write-off, it
13 would break even at least if not gain money?

14 SENATOR STAFFORD: After
15 September 1st, Yonkers will have full card
16 simulcasting every day of the week and you are
17 exactly right, there's been a little bit of a
18 glitch here or a ripple, but I assure you and my
19 other colleagues, that this will be -- this will
20 be arranged in a way that there will be as much
21 of an advantage, if not more than an advantage
22 for Yonkers.

23 SENATOR STACHOWSKI: Thank you,

1 Senator.

2 Just a couple of comments only on
3 the racing part of this bill. It seems that a
4 lot has been dealt with. There's an amazingly
5 good package for NYRA. The -- at the same time
6 the simulcast features of the bill have the OTBs
7 very content. The simulcast features and the -
8 with the other features seem to handle the
9 harness tracks. The Finger Lakes which has
10 oftentimes, because they're not a harness track
11 and not OTB or not part of NYRA, they often
12 times get treated differently, but in this bill,
13 particular bill, they seem to be well taken care
14 of, and it seems from a racing perspective and
15 an industry that has been struggling gets as
16 good a boost as possible.

17 I would just point out that,
18 although we're doing all these things for NYRA,
19 it is, in effect, a major Band-Aid to an
20 industry that's been struggling, and I would
21 hope with the fact that NYRA's, was it, you call
22 it charter or whatever, it's going to go out,
23 the franchise is going to go out of existence in

1 three years, I believe in the year 2000 it's
2 basically the end of four more years or five
3 years. It's something that we should be looking
4 to and that to deal with that whole industry and
5 maybe in putting this in a position where this
6 will help that we'd like to look at it, maybe
7 investigate it through a subcommittee we now
8 have in coordination with the Assembly people,
9 so that when that franchise is being dealt with,
10 we will have a program or a package that will
11 not only deal with the franchising if the
12 franchise has to be changed or stay the same or
13 whatever it's going to do, to make sure that
14 that industry will not only be helped, it will
15 be put in a position where it can flourish, and
16 I thank Senator Stafford for his patience with
17 my questions and his answers.

18 ACTING PRESIDENT LACK: Senator
19 Abate.

20 SENATOR ABATE: Yes. I would
21 like to briefly explain why I'm opposed to this
22 budget bill, and unlike my colleagues who also
23 cannot support this budget bill, it's not that

1 we are against tax cuts. Clearly, in an ideal
2 world and out of a context of an existing \$4
3 billion deficit, everyone -- I think everyone in
4 this room would agree that we would support tax
5 cuts, but the relevant questions are not whether
6 -- and again, it's a question sometimes of
7 courage. I think it takes some courage for some
8 of us to say -- to vote against this bill
9 because tax cuts are so popular in New York
10 State, but the relevant issues are how, when,
11 how much and can we afford it? And I guess I
12 for one am not a gambler.

13 We're talking about a three-year
14 tax cut, not a two-year tax cut or a one-year
15 tax cut, something that equals \$3.8 billion, and
16 if you ask an economist today -- and not all
17 economists will agree -- they will say, "Yes,
18 tax cuts can spur the economy. They can
19 revitalize the economy. They may produce jobs,"
20 but you have to look at it in the context of an
21 entire economy; and we're now in economic flux
22 in New York State. We're facing a \$4 billion
23 deficit, obviously will be closed during this

1 budget here, and as someone who's not a gambler,
2 I expect New York State not to be a gambler and
3 I think, given the flux, this large of a tax cut
4 this year, a three-year span, is a high-risk,
5 very speculative venture, and if you go back to
6 the economists who say "Yes, on the one hand,
7 this produces good results but, on the other
8 hand, during a time that we're facing, this may
9 produce results that will be devastating to our
10 communities."

11 There was a recent survey where
12 business corporations were asked, "What do you
13 need in order to stay in New York or other urban
14 centers?" And they listed a number of factors,
15 and the factor that was not as important as
16 other factors were tax cuts. What they listed
17 as high priority on whether they would stay in
18 New York City or another urban area was quality
19 of life issues -- crime, head of the list. They
20 talked about schools, quality of the school
21 system, quality of health care. They talked
22 about mass transit, and then they talked about
23 tax cut reductions.

1 I submit we are already in this
2 budget affecting health care, quality education,
3 mass transit. Those cuts are taking place now.
4 They're going to affect the quality of life of
5 our communities.

6 We are now saying we're going to
7 gamble another \$3.8 billion that we're saying is
8 not going to affect these quality of life
9 issues. I suggest that this tax cut ultimately
10 -- I hope I'm wrong. I'm voting against this
11 budget bill because I think I'm right. This tax
12 cut will end up being anti-business as well as
13 anti-community.

14 And who will pay the price? The
15 price will be paid by the middle income, be paid
16 by our communities through higher property
17 taxes, through critical services in our
18 communities being cut, and I also will add,
19 because I'm not a gambler, I do not support
20 Quick Draw. Of course, we have to raise
21 revenue, but do we have to raise revenue at the
22 expense of enormous social and quality of life
23 costs? It certainly does not -- I don't think

1 we can pay the price of this increased revenue.
2 It's not always about bottom line. I just
3 suggest we have to raise revenue in this way so
4 we can gamble at breakfast, so we can gamble at
5 lunch, we can gamble at dinner, so we can gamble
6 24 hours a day -- although I'm told after eight
7 hours, you can take a five-minute reprieve.

8 I say we have to be in the
9 business -- in the business, do things that are
10 smart, that are pro business and pro community,
11 pro quality of life. At this point in time, I
12 believe we cannot afford a \$3.8 billion tax cut
13 over the next three years.

14 THE PRESIDENT: Read the last
15 section of Bill 5279, please.

16 THE SECRETARY: Section 152.
17 This act shall take effect immediately.

18 THE PRESIDENT: Call the roll.
19 (The Secretary called the roll.)

20 THE PRESIDENT: Announce the
21 results, please.

22 Oh, Senator Waldon -- Senator
23 Tully.

1 SENATOR TULLY: Thank you, Madam
2 President.

3 I rise to explain my vote.
4 Laryngitis notwithstanding, this is our
5 well-known revenue package. Contained within
6 it, of course, are the revenue cuts. There are
7 some items in this budget that I'm not so
8 pleased with, particularly that portion of the
9 budget which increases the assessment on nursing
10 homes, at the same time that the nursing homes
11 are undergoing extreme cuts.

12 To me, that is not something that
13 should be done. I understand the need for
14 revenue. I understand the fact that this is a
15 revenue package. Also contained within this
16 budget is an electronic lottery proposal called
17 Quick Draw. It's a gambling fix for the state's
18 dollars needs, in my opinion. By itself, it
19 will extend the state's gambling dependency, but
20 mixed with alcohol, I'm concerned that the
21 social cost would tilt the balance of the
22 projected revenue.

23 I have never voted for gambling

1 as a revenue producer in this house since I came
2 here in 1982, and I would not vote for it
3 tonight, but I must vote for this particular
4 bill with one hand tied behind my back, because
5 how could I not vote for a bill that reduces the
6 personal income tax \$3.6 billion and brings our
7 PIT burden on a per capita basis from second in
8 the nation behind Massachusetts to sixth behind
9 Massachusetts, Hawaii, Oregon, Delaware and
10 Minnesota.

11 This tax cut, Madam President, my
12 colleagues, is long overdue and most deserved by
13 our constituents, and I cannot let my strong
14 personal belief against gambling as a revenue
15 producer stand in the way of this much needed
16 relief.

17 I vote aye.

18 THE PRESIDENT: Thank you,
19 Senator Tully.

20 Could the negative voters please
21 raise their hands once more for the results?

22 And Senator Waldon to explain
23 your vote.

1 SENATOR WALDON: Thank you very
2 much, Madam President.

3 I don't know if it's necessary
4 for me to say some of the things I'm going to
5 say, and I won't belabor the point. We've gone
6 through a very difficult process in arriving at
7 tonight. There has been some contentiousness.
8 There has been some anger expressed. There has
9 been some discontent amongst us who are part of
10 a very important collegial body, representing
11 eighteen and a half million people.

12 This bill, I must vote no on, but
13 I want you to understand that it's a very
14 reasoned vote, in my opinion. There are parts
15 of this bill that I applaud.

16 For example, I recognize the need
17 to help the racing industry, and I think what
18 was done, Mr. Chairman, Senator Stafford, in
19 that regard, was tremendous. I think we need to
20 keep people in New York State and increasing the
21 amount of money that our state can receive
22 certainly will help in that regard, and there
23 are other phases of this proposal which are

1 excellent, in my opinion.

2 However, because of the reasons I
3 expressed earlier, especially in regard to Keno
4 and the disparate impact on the community -- I
5 serve in similar communities, I must vote this
6 time in the negative.

7 However, I want us to understand
8 that, even though sometimes it may appear that
9 there's just contentiousness coming from this
10 side of the aisle from this seat, it is not true
11 that it is universally the case, because
12 sometimes you state the case. You make the
13 case, and even though philosophically we are
14 apart, we are not universes apart.

15 Thank you, Madam President.

16 THE PRESIDENT: Senator
17 DeFrancisco.

18 SENATOR DeFRANCISCO: To explain
19 my vote.

20 First I, like Senator Padavan and
21 Senator Tully, have grave reservations about the
22 Quick Draw, first the amount of revenues that
23 would be forthcoming and also the negative

1 social impact of it.

2 However, I think that this bill
3 is so important on the other end, the tax
4 reductions, that it definitely merits a yes
5 vote.

6 Now, we've heard different
7 comments about the tax cut and the effect that
8 it's going to have, but there's one thing that
9 everybody that spoke seems to agree on, no
10 matter where they happen to sit in this chamber,
11 and that is that we need to create jobs in this
12 state. I don't think anyone can disagree with
13 the fact that we've done a miserable job of it
14 in the last several years.

15 So I guess what this bill is
16 saying, we may be right or we may be wrong, but
17 don't you think it's worth a chance? Don't you
18 think it's worth an opportunity to vote for this
19 bill and give us an opportunity to create jobs
20 that everyone wants to do in this -- in this
21 chamber?

22 The property tax issue, everyone
23 is concerned whether or not local property taxes

1 are being raised. Members of this august body,
2 we have been pouring money to the localities
3 year after year after year, and if any of you
4 have had a property tax reduction in your
5 community while we have had these high taxes,
6 let me know, because I want to know how you do
7 it.

8 Money being thrown at the
9 municipalities is not the answer for a property
10 tax reduction. It's spending cuts, and that's
11 the answer. We're worried about services; all
12 of us are, but there's one thing that you've got
13 to recognize is that we spend more than we have
14 to. When we spend in Medicaid fund -- Medicaid
15 expenses more than the second two highest
16 states, something is basically wrong.

17 So I think on balance, this is
18 the best way to go. We're going to change the
19 direction of this state. At least we're going
20 to give this state an opportunity to change the
21 direction that we've had over the past several
22 years, a direction that hasn't created jobs.
23 This will give us that opportunity.

1 THE PRESIDENT: Thank you.

2 Senator Marcellino.

3 SENATOR MARCELLINO: Madam

4 President, I rise to explain my vote.

5 This bill and this budget that
6 we're voting on tonight or the beginnings of it
7 is not perfect. It's the product of compromise
8 and compromise, by nature, probably pleases no
9 one.

10 This state, however, is in deep
11 trouble, and while I have concerns as have been
12 expressed by my colleagues with respect to the
13 Quick Draw aspect, I also have concerns with
14 respect to job loss which has been going on in
15 this state.

16 While the rest of the nation has
17 been coming out of a recession, we have been
18 getting deeper and deeper into it. This state
19 has to do some major surgery on the way it does
20 business. All levels of government have to
21 restructure and revise their thinking on how we
22 -- they deliver the services our people need
23 and want, and I think we have to look at it in

1 just that order, need and want, and need comes
2 first.

3 Those who are in need should be
4 protected and helped and assisted to the fullest
5 extent that we can be capable of, and those that
6 can afford to pull the wagon should pull the
7 wagon as much as they can afford to pull it.

8 The tax cuts in this bill go to
9 the lower end of the spectrum. They do not go
10 to the wealthiest end of the spectrum. By no
11 means by anybody's stretch of the imagination
12 can anyone making \$55,000 a year this time in
13 this day and age be considered wealthy. In my
14 district, that usually means two, probably even
15 more working people in the family to get to that
16 level of income, and that's probably the way the
17 norm is these days.

18 We are helping the middle class
19 with this tax cut. Hopefully we will bring some
20 jobs to our area and if all levels of government
21 do what the state is doing with the leadership
22 of Governor Pataki and the members of this body
23 and the members of the other house who are

1 voting for this bill, perhaps we can begin a new
2 age in the state of New York. Take that first
3 step, as Confucius said, "Every journey begins
4 with the first step." This is the first step
5 for a new generation for this state. I will
6 look forward to that and I will look forward to
7 its working for the benefit of all of our
8 citizens.

9 I will vote yes on this bill.

10 THE PRESIDENT: Senator Maziarz.

11 SENATOR MAZIARZ: Thank you,
12 Madam President. I rise to explain my vote.

13 In any large undertaking such as
14 this budget, there's always going to be some
15 parts of it that an individual Senator may have
16 some grave reservations about, as I do with the
17 Quick Draw, and I want to go on record today
18 saying that I do not think Quick Draw is the
19 avenue that this state should take for raising
20 money. It's not -- I think that the revenue
21 projections are greatly overstated, but the tax
22 cut portions of this bill far -- far outweigh
23 the negative aspects of Quick Draw, and I will

1 be voting yes on this bill.

2 Thank you.

3 THE PRESIDENT: Senator Jones.

4 SENATOR JONES: Yes. I rise to
5 explain my vote.

6 I listened to what Senator Tully
7 said and Senator Maziarz, and I think they said
8 it much more eloquently than I could.

9 I certainly have learned that
10 life is a compromise and clearly today we stand
11 here realizing government is as well. It's like
12 when you get a box and there's three things in
13 it you love as a gift and one you hate, but I
14 guess you have to take the box.

15 I came here certainly wanting to
16 cut spending in this state government. I was
17 very committed to relieving businesses of their
18 tax burdens and trying to get New York back on
19 the track. I'm hoping that many of the things
20 that are going to come out of this budget are
21 certainly at least going to get us on the road
22 to doing that.

23 I also have to agree, though,

1 with a couple of my colleagues. I feel very
2 uncomfortable that any portion of this tax
3 increase we're giving is coming from gambling to
4 make up the deficit. I don't support that. I
5 feel uncomfortable about that, and I came from
6 the field of education, and I can tell you
7 they're still out there waiting for the lottery
8 money that they thought was going to be in
9 excess years ago when we first put it in.

10 I hope you're right that this
11 will bring you the income. I really wish we had
12 looked for other ways to find it, and maybe in
13 time we can because I don't think that sends a
14 very good message that this is how we need to
15 support our state; but again, the rest of the
16 things in the box are things that I want to see
17 happen and -- so hopefully we take the good with
18 the bad and it will get New York back on the
19 track that we want it on.

20 I vote yes.

21 THE PRESIDENT: Thank you,
22 Senator Jones.

23 Senator Libous.

1 SENATOR LIBOUS: Thank you, Madam
2 President. I would like to rise to explain my
3 vote.

4 I am going to support this piece
5 of legislation for the same reasons that a lot
6 of my colleagues support it, and I know that
7 with 60 different colleagues in this room, we
8 have a very diverse state and various opinions,
9 and I certainly respect the opinions of my
10 colleagues, but I see this as a job generation.

11 Yesterday afternoon I spent two
12 hours in a meeting on the second floor with
13 officials from Hughes Aircraft who are talking
14 about pulling 1400 jobs out of my district and
15 out of New York State, and repeatedly time and
16 time again in those discussions, they continued
17 to say that the tax structure in this state is
18 not conducive to business and it is not
19 conducive to the employees that we employ in our
20 facility; it's too high. It doesn't compare
21 with Texas. It doesn't compare with Virginia.
22 It doesn't compare with California.

23 Hughes is just one big example of

1 an opportunity where we may lose 1400 jobs in
2 this state, but I have had discussions with head
3 hunters and other officials over the course of
4 the last couple of months, and what they
5 continue to tell me repeatedly is that if the
6 state changes direction, if some of the
7 proposals that the Governor had put forth back
8 in February become reality, that they will begin
9 to look at New York State again as a place to do
10 business, a place to have a home for corporate
11 -- for companies and their major corporations.

12 Up until now, they're not looking
13 at us. They're running away from us. They're
14 pulling out in bus loads. Company after company
15 continue -- they continue to tell me that if you
16 change the tax structure in this state, you make
17 some real effort for a new direction, reduce
18 spending, we will begin to look at your state to
19 generate jobs.

20 We have a lot of social problems
21 in this state. We have a lot of things that
22 people in this chamber have been committed to.
23 My number 1 commitment to the people who elect

1 me and send me here is to create jobs.

2 I vote aye on this bill.

3 THE PRESIDENT: Thank you.

4 Senator Rath.

5 SENATOR RATH: Yes, Madam

6 President.

7 I rise to also support the
8 measure in front of us today, and I think I may
9 take a tack that's a little different, taking a
10 look at what we will probably find when we get
11 home this weekend, if we're there this weekend,
12 certainly after the session is over and we start
13 to move around our communities.

14 I know in my community in western
15 New York, what I'm probably going to hear some
16 of is, "Well, now we're going to have local
17 property taxes and we're going to have local
18 school taxes go up because the state has not
19 fulfilled the requirements or the requests that
20 were made."

21 But let me point out a couple of
22 facts to you. State funding to local schools
23 went up \$4.2 billion, a total of 91 percent

1 between '93 -- '83 and '93. In spite of these
2 increases, local school taxes went up 6.5
3 billion, a total of 93 percent. Student
4 enrollment fell by 167,650. Numbers of teachers
5 rose by 20,000 or 11 percent. Number of school
6 administrators rose also. Staff increases alone
7 raised local costs more than \$1 billion. And so
8 what we're voting on today is a balanced package
9 between what we vote today and what we vote -
10 we finish on Tuesday; the balanced package that
11 is so necessary to provide services from the
12 state, provide services from the localities and
13 the schools, but not anyone takes the undue
14 responsibility of not cutting back.

15 We've cut back everywhere in this
16 state this year with this budget, but I don't
17 want to go home and hear that we didn't do our
18 jobs by not giving more money and more money and
19 more money when, indeed, the localities and the
20 schools have responsibilities also to tighten
21 their belt.

22 We're going to try to help
23 businesses stay in New York State, try to

1 encourage them to come to New York State and as
2 we do that, yes, more revenue will be produced
3 and, yes, we will then be able to fund possibly
4 additional revenue sharing, additional school
5 costs, et cetera but, in the meantime, let's
6 work towards a balanced approach and not be
7 allow it to be said that we were mean-spirited
8 and that we weren't concerned about the tenuous
9 balance that exists between the local tax burden
10 and the state tax burden.

11 Thank you.

12 My vote will be yes.

13 THE PRESIDENT: Senator
14 Oppenheimer -

15 SENATOR OPPENHEIMER: Yes.

16 THE PRESIDENT: -- did you ask to
17 explain your vote?

18 SENATOR OPPENHEIMER: Yes, yes.
19 I didn't think you saw me. Thank you, Madam
20 President.

21 Well, I'm going to be voting no
22 and it isn't because I don't love a tax cut, I
23 do, but I don't think that this tax cut is going

1 to turn New York State's economy around.

2 I guess in this case, which is
3 somewhat unusual, I do want to echo some of the
4 things that Senator Leichter said.

5 I think that national trends,
6 economic trends are really what determine the
7 fate of our state, even though, of course, we
8 would like to keep our tax rates somewhat in
9 line with those of our neighbors, but I do not
10 see our personal income tax as being the major
11 problem in New York State.

12 As I have mentioned earlier and
13 on many occasions it is really the property tax
14 in New York State that is so out of whack with
15 the rest of the United States. We are far and
16 away the first in property taxation in the
17 United States. I believe we are first and
18 double what the second state is, and I think
19 that is the area that we have to turn our
20 attention to. We are not number one in personal
21 income tax by any stretch of the imagination.

22 I think that this tax, if
23 continued to grow for three -- this tax

1 reduction, if continued to grow out for three
2 years, is really going to prove us very fiscally
3 irresponsible.

4 I think that tax cut that we all
5 took in 1986 -- and I was a member, and I was
6 happy to vote for it -- I think that has created
7 in our state a structural deficit in our budget,
8 and I think since that time, we have been faced
9 with a true imbalance between our revenues that
10 we take in and our expenditures, and I -- I
11 think that that was an error and it certainly
12 did not produce the kind of jobs that we hoped
13 that big tax reduction would produce. We
14 wouldn't be here now talking about all of these
15 half a billion jobs that have been lost were
16 that to have worked. So I don't truly believe
17 that "trickle down" has an impact on the
18 creation of jobs and creating a healthy economy.

19 I am very concerned about what
20 the third year of this tax cut will be. The
21 second year scares me enough with two and a half
22 billion, but \$4 billion will be the reduction in
23 year three, and I don't know what we're going to

1 do to cure that imbalance that we have made.

2 THE PRESIDENT: Thank you.

3 SENATOR OPPENHEIMER: No, I'm not
4 -- one more small thing.

5 I personally feel, and I think it
6 can be proven in many studies that our economic
7 future in this state depends on the training and
8 the education, the job skills that we give our
9 young people, and I think that from what I have
10 seen in this budget -- at least what I believe
11 will be in the budget because we haven't seen
12 the full budget, but in the local assistance
13 budget, I don't believe that there's a lot of
14 money that's been put aside to develop our
15 youth, to provide them with education, to give
16 them the job skills training and to prepare them
17 for a viable economy, nor is there a plenitude
18 of jobs out there for them to go into once they
19 receive the training.

20 The reduction in our top rate
21 over three years is going to go from seven and
22 seven-eighths to six and seven-eighths percent,
23 and I think this is much too small an amount of

1 money to warrant the pain that will be inflicted
2 on our sick, our elderly, our students and, as I
3 have mentioned before, it is only going to
4 exacerbate our major problem which, to me, is
5 the property tax.

6 So I will be voting no.

7 THE PRESIDENT: Thank you.

8 Senator Nozzolio.

9 SENATOR NOZZOLIO: Thank you,
10 Madam President. To explain my vote.

11 Madam President, my colleagues,
12 the Governor of this state promised to reduce
13 the size of government, to spend less this year
14 than last year, to cut New York's income taxes
15 and to replace a failed welfare system with
16 Workfare. Madam President, my colleagues,
17 that's exactly what this budget does.

18 For the first time since World
19 War II, we will be approving a spending package
20 that spends less than the previous year. That's
21 exactly the kind of change that New Yorkers
22 voted for last November and I'm proud to have
23 worked for a budget that does more with less.

1 We will be debating in further
2 bills -- and we have just passed in the State
3 Operations Budget some major reforms in the
4 state's criminal justice system. I particularly
5 am very proud to have been part of the debate
6 and established a proposal that we have worked
7 on for many years and is finally coming into
8 fruition, and it's especially meaningful when
9 the final outcome of our hard work will have a
10 positive impact on the community that I
11 represent.

12 Madam President, we have, in
13 establishing criminal justice reforms, taken a
14 giant step in ensuring that those who have
15 committed crimes because of substance abuse will
16 be placed in a facility of incarceration that
17 will do much to serve and to help them
18 rehabilitate themselves.

19 The new facility at the Willard
20 State Campus will, in fact, establish a new era
21 of drug and alcohol rehabilitation for those who
22 are committing crimes because of substance abuse
23 and, at the same time, ensure that those who are

1 committing violent crimes will be kept behind
2 bars.

3 This is part of the agenda that
4 has been forged in what I hope will be a new
5 dawn for this state, and that we are sending a
6 clear signal to our citizens that New York is
7 back on track to being the Empire State once
8 again.

9 THE PRESIDENT: Thank you.
10 Announce the results, please.

11 SENATOR STAFFORD: Madam
12 President.

13 THE PRESIDENT: Senator Stafford.

14 SENATOR STAFFORD: Please, if I
15 could very briefly. Thank you.

16 I would just like to point out
17 that this is a very complex bill. It affects
18 many, many things. I respect everyone's
19 opinion. I respect everyone's thoughts, and I
20 just don't want it to end this evening without
21 trying to put it in perspective here.

22 Now, interestingly enough,
23 whether it was right or whether it was wrong,

1 the lottery came into being in New York State.

2 It was an amendment and it passed.

3 Now, many of you may be a bit
4 surprised but probably not. I voted against it,
5 but we have it. It is something that is now
6 part of the structure, and I don't want anyone
7 to think that any of us -- probably many of us
8 who are supporting this -- are overly wild about
9 gambling, but we could debate it and we could
10 talk about it and we could say that if they're
11 going to gamble, then they're going to gamble,
12 and if they're going to take part in this,
13 they're going to take part in it; and I think in
14 all fairness it came up in the executive
15 budget. I'm sure many -- the Governor, possibly
16 and many of his people aren't overly wild about
17 the lottery, about gambling, but it is here, and
18 that was decided a long, long time ago, a long
19 time ago in the '60s, and I would just submit
20 that this is not something new, something that's
21 unheard of.

22 There are limits. The structure
23 is such that there are built-in limits, so to

1 speak, a safety valve, so to speak, and believe
2 you -- believe me, the odds are so large as far
3 as really ending up with anything in this that
4 people -- it isn't going to be something that
5 people are going to be playing 24 hours a day.
6 Those who are interested in wagering will be
7 doing so.

8 So I only say that so we don't
9 end this evening thinking that this is something
10 that really we -- is new. It's a step in the
11 wrong direction. It was decided almost 30 years
12 ago when the lottery amendment passed, and this
13 is just another -- it's a variable for the
14 lottery, frankly.

15 Thank you.

16 THE PRESIDENT: Thank you.

17 Announce the results, please.

18 THE SECRETARY: Those recorded in
19 the negative on Calendar 1090 are Senators
20 Abate, Babbush, Espada, Kruger, Leichter,
21 Maltese, Markowitz, Montgomery, Oppenheimer,
22 Padavan, Smith, Stavisky and Waldon.

23 Ayes 44, nays 13.

1 THE PRESIDENT: This tax relief
2 bill is passed.

3 SENATOR SKELOS: Madam President.

4 THE PRESIDENT: Senator Skelos.

5 SENATOR SKELOS: There will be an
6 immediate meeting of the Finance Committee in
7 Room 332 of the Capitol.

8 THE PRESIDENT: There will be an
9 immediate meeting of the Finance Committee
10 meeting -- Finance Committee in Room 322 -- 332,
11 I'm sorry.

12 SENATOR SKELOS: Madam President,
13 at this time if we could call up 827, Senate
14 4381-A.

15 THE PRESIDENT: The Secretary
16 will -

17 THE SECRETARY: Calendar Number
18 827, by Senator Volker, Senate Print 4381-A, an
19 act to amend the Penal Law, in relation to
20 criminal possession or sale of a controlled
21 substance or marijuana.

22 SENATOR VOLKER: Mr. President -

23 SENATOR SKELOS: Madam President,

1 is there a message of necessity at the desk?

2 THE PRESIDENT: There is a
3 message at the desk.

4 SENATOR SKELOS: I move we adopt
5 the message.

6 THE PRESIDENT: All those in
7 favor of accepting the message signify by saying
8 aye.

9 (Response of "Aye".)

10 Those opposed?

11 (There was no response.)

12 The message is accepted.

13 SENATOR SKELOS: Madam President,
14 would you please recognize Senator Volker.

15 THE PRESIDENT: Senator Volker.

16 SENATOR VOLKER: Madam President.
17 Madam President, this probably, I happen to
18 believe, is the most significant criminal
19 justice bill to pass this house and since it is
20 agreed on will pass the other house, in many,
21 many years.

22 It represents a bill that would,
23 in effect, repeal a decision that some people

1 have characterized -- and I'm one of those
2 people -- as the worst decision made by the
3 Court of Appeals in modern times.

4 I heard one prosecutor say that
5 the Ryan decision represented the worst decision
6 made by the Court of Appeals in this state in
7 this century. Certainly, it was the worst
8 decision made in this decade.

9 You will get estimates of what
10 the Ryan decision cost prosecutors in this state
11 as far as drug convictions of anywhere from 2
12 to 4,000. Some have estimated even higher.

13 Let me just say that the
14 difference in this bill and the bill that passed
15 here last year essentially is in the -- at the
16 end of the bill where the effective date of the
17 bill -- the reason for this, and I think those
18 of you who have dealt with Criminal Law will
19 understand, we would maybe prefer not to do
20 this, but under the circumstances, it is the
21 best way to ensure the constitutionality and the
22 legality of the bill, and what the effective
23 date says, "This act shall take effect

1 immediately and shall apply only to offenses
2 committed on or after such date and if the
3 offense is committed prior to date shall be
4 governed by the provisions of the law in effect
5 at the time the offense was committed."

6 The reason for that, of course,
7 is there's a lot of litigation involving these
8 -- this decision, and what this -- what this
9 legislation basically says is that from now on
10 we will go back to where we were prior to the
11 Ryan case.

12 Now, what did the Ryan case say?
13 It basically said the Court of Appeals decided
14 that what the Legislature plainly and clearly
15 meant was not what we said, and the Court of
16 Appeals said that not only did you have to prove
17 that someone intentionally committed the
18 offense, the drug offense involved, in that they
19 had to knowingly possess or sell the drugs, but
20 that they had to know the amount of the drugs
21 which was something that the Legislature never
22 envisioned and everyone knew that they didn't
23 envision that, but it represented -- and Senator

1 Marchi has pointed this out on the floor when he
2 has pointed to judicial legislation -- that this
3 is one of the clearest indications of judicial
4 legislation that we have seen in the last two or
5 three decades.

6 So what this bill does is -- and
7 it is supported by most of the known world,
8 prosecutors, bar associations, city of New York
9 -- I got a memo here from the city of New York,
10 all except for some people, frankly -- a number
11 of people in the Assembly who opposed this for
12 some years and there are some individuals who
13 opposed it and, of course, the defenders'
14 association basically opposes anything that
15 involves prosecution over the last number of
16 years and has opposed criminal justice packages,
17 and so forth; but this bill is strongly
18 supported by prosecutors and, in fact, I would
19 venture to say that from my information that,
20 although we are going to pass a tough criminal
21 justice package, an equitable one later on this
22 evening, this bill represents, I think, to the
23 prosecutors something that they really feel is

1 the most important thing that we can do in this
2 year or in the next years to come.

3 Senator Paterson.

4 ACTING PRESIDENT KUHL: Senator
5 Paterson.

6 SENATOR PATERSON: Mr. President,
7 if the sponsor would yield for a couple of
8 questions.

9 ACTING PRESIDENT KUHL: Senator
10 Volker, do you yield to Senator Paterson?

11 SENATOR PATERSON: Thank you,
12 Senator Volker.

13 ACTING PRESIDENT KUHL: The
14 Senator yields.

15 SENATOR PATERSON: Senator, one
16 of the concerns of Senator Galiber who has been
17 opposed to this bill and, as you know, is ill
18 and unable to be in the chamber today, just
19 relates to the type of individuals who are going
20 to be prosecuted under this legislation and
21 whether or not it really addresses the
22 underlying problem with drug dealing, the kind
23 of low-level drug messenger who is commonly

1 referred to as a "mule" is the individual who
2 is, in a sense, going to be the victim of the
3 strict liability enforcement of the overturning
4 of the Ryan decision and, for instance, the
5 individual who really is sponsoring the drug
6 trading, who knows not to touch the actual drugs
7 is not really going to be affected at all. So
8 are we really getting at the right people by
9 overturning Ryan?

10 SENATOR VOLKER: First of all,
11 Senator, let me just say what I said to Senator
12 Galiber previously and we, of course, as you
13 know, debated this before.

14 Ryan was not necessarily -- not
15 necessarily involved in being a small dealer.
16 Many of the people who were involved in the drug
17 cases that the Ryan -- and then also the Hill
18 case which was another case that followed up on
19 this -- are rather substantial drug dealers and
20 drug sellers and, of course, I think if you know
21 anything about prosecutions -- and I know that
22 you do, and I think there are a number of other
23 people in this chamber -- the fact that you are

1 arrested and sometimes convicted of comparative
2 ly small amounts does not necessarily mean that
3 you are a small possessor or a small dealer.

4 The truth is that some of the
5 major dealers in New York City have ended up
6 being convicted of possession of comparatively
7 -- comparatively small amounts of drugs and of
8 selling comparatively small amounts of drugs,
9 because that's all we were able to convict them
10 of.

11 The truth is this will involve
12 all sorts of people that are involved in the
13 sale and possession of drugs, but I think more
14 importantly the issue, Senator, is -- and I
15 debated this with Senator Galiber -- is the
16 issue of not using a statute and changing the
17 clear meaning of the statute because you don't
18 like what the law says or how the law is
19 applied.

20 The way to change that is to do
21 it by legislation, not by the court coming in
22 and changing the clear meaning of the statute,
23 and that has been what has created the havoc, I

1 think, out there in the field, and I really
2 believe that it has done a great deal more harm
3 than any small good that it might -- it might
4 effect by, as some would say, that it might have
5 a favorable impact on some small dealers.

6 Well, yes, that's fine, but the
7 truth is drugs is a scourge and it also allows
8 major dealers to "skate", as the saying goes,
9 and the so-called drug factories to continue to
10 operate at a level which I think all of us would
11 consider to be unacceptable.

12 ACTING PRESIDENT KUHL: Senator
13 Paterson.

14 SENATOR PATERSON: Thank you, Mr.
15 President.

16 If Senator Volker would be
17 willing to yield again.

18 SENATOR VOLKER: Sure.

19 ACTING PRESIDENT KUHL: The
20 Senator continues to yield.

21 SENATOR PATERSON: I want to try
22 to figure something out, Senator, with your
23 assistance. When you debated the bill last

1 year, you talked about the estimate that the Law
2 Enforcement Council made that 4,000 cases will
3 be dismissed as a result of the passage of this
4 legislation, and this year the Department of
5 Criminal Justice Services says that there were
6 2,000 -- I guess 2,000 less indictments as a
7 result of Ryan going into effect; is that
8 accurate?

9 SENATOR VOLKER: Yeah. I think
10 the difficulty is that -- and we kind of looked
11 into that sort of thing, Senator, and the
12 difficulty is, we may have a better impact idea
13 now that we changed it. I mean, you know the
14 difficulty here is that there are hundreds and
15 thousands of these cases that are in the
16 pipeline, and the real difficulty in determining
17 how many are directly impacted is that the D.A.s
18 tell us that a number of their assistants are
19 not even trying to prosecute the cases on the
20 level that they should prosecute them, because
21 they realized that they would come right up
22 against the Ryan case and, therefore, what they
23 do is they do what we call an immediate plea,

1 which is they actually either indict him at a
2 lower level and take the plea right away or in
3 some cases just take the plea and never get to
4 the -- to the level that they should really
5 indict for or charge for.

6 So I think the answer is that's
7 the difficulty in dealing with this. The D.A.s
8 that we've talked to all contend that there is
9 no obstacle that they have faced in the last ten
10 years greater than the Ryan case as far as
11 prosecuting drug cases.

12 So the estimates of 2- to 4,000
13 are greater, Senator, I think are hard to
14 quantify, in many cases, but virtually all of
15 the prosecutors that we have talked to indicate
16 that they believe those estimates may even be
17 conservative.

18 ACTING PRESIDENT KUHL: Senator
19 Paterson.

20 SENATOR PATERSON: Thank you, Mr.
21 President and thank you, Senator Volker.

22 I think that -- I couldn't agree
23 with Senator Volker more when he said that drugs

1 are a scourge and I think that this legislation
2 does set up a public policy that, if you're
3 involved in drugs at all, you're going to pay a
4 very strict penalty.

5 I don't know if I concur in the
6 opinion that the Court of Appeals rendered such
7 a difficult or such an incorrect decision in the
8 Ryan case. At the time it seemed to be somewhat
9 recognized by Judge Kaye when she wrote that the
10 legislation was inartfully drafted. I think
11 that the interpretation may have really been the
12 result of some ambiguity in the law for which
13 we, as a Legislature, are responsible. I guess
14 if we looked in the mirror, maybe we will try to
15 be a lot clearer. This legislation certainly is
16 clear.

17 I want to vote no on it to
18 represent the point of view of Senator Galiber.
19 I don't know if anyone else is voting against
20 it, but there is an argument that the strict
21 liability enforcement is really going to, in
22 many ways, punish really nominally involved
23 individuals while the ones who are really

1 responsible for the violent, vicious malady that
2 we know as drug abuse and drug dealing on our
3 streets go free.

4 ACTING PRESIDENT KUHL: The Chair
5 recognizes Senator Abate.

6 Senator Montgomery, why do you
7 rise? Would you like to be added to the list?

8 SENATOR MONTGOMERY: Yes, please.

9 ACTING PRESIDENT KUHL: Okay.

10 Senator Abate.

11 SENATOR ABATE: On the bill, and
12 I would like to address some of the issues that
13 Senator Paterson has raised.

14 I am very pleased to be able to
15 be on this bill. If you were to survey all the
16 district attorneys around this state, they would
17 probably say there is no issue more important to
18 them than the overturning of this Court of
19 Appeals case, and the reason they will say that
20 is this is about drug dealers who often carry
21 larger amounts of drugs, and what this Court of
22 Appeals case has done is severely handicap that
23 district attorney in prosecuting these cases.

1 The defendant still has to put
2 the district attorney to the burden that the
3 district attorney must prove beyond a reasonable
4 doubt that he or she possesses drugs knowingly
5 and voluntarily, but what it does is now that
6 district attorney is able to prosecute an
7 individual who may have four ounces of drugs.
8 It's a "C" felony or above, and now the district
9 attorney, after this Court of Appeals case, is
10 told, "You have to prove that the defendant knew
11 that he or she had four ounces" as opposed to
12 two ounces, as opposed to one ounce or a half an
13 ounce.

14 So the consequence of this is
15 that serious offenders who are carrying large
16 quantities of drugs are now being charged not
17 with the higher crimes of felonies, but some
18 times they're being pled down to misdemeanors
19 because the D.A. does not have the tools and
20 capability to prove these cases beyond a
21 reasonable doubt.

22 I could not support this. I
23 could not go on this bill if I felt that the

1 district attorney still did not have to prove
2 beyond a reasonable doubt that, one, a defendant
3 possessed the drugs and they knowingly knew it.
4 This is putting that burden beyond what I
5 believe is reasonable and rational.

6 I want to address the issues that
7 Senator Paterson has raised. I have been a
8 long-time advocate of criminal justice reform
9 sentencing. This bill -- in fact, I'm
10 co-sponsoring a small step in the Rockefeller
11 drug reform dealing with drug "mules". This
12 issue is not about sentencing. This is about
13 prosecution. While I believe that some drug
14 offenders do not necessarily have to do life
15 sentences in jail and that -- many of the drug
16 "mules", many of them are women who should not
17 be doing life sentences and we need to look at
18 those reforms.

19 We have to repeatedly ask
20 ourselves, why are two-thirds of the people in
21 prison non-violent? Almost one half are there
22 for drug possession and sales. So clearly there
23 is a need for criminal justice reform in terms

1 of sentencing. This bill is not about that.
2 This is -- the bill is about giving the district
3 attorney the ability and all the tools to
4 prosecute these serious cases.

5 Again, I'm very proud that
6 Senator Volker has shown the leadership on this
7 bill. It is a good bill. There is unanimous
8 consent and support from district attorneys
9 around this state, and I urge my colleagues to
10 support this bill.

11 Thank you.

12 ACTING PRESIDENT KUHL: The Chair
13 recognizes Senator Dollinger.

14 SENATOR DOLLINGER: Mr.
15 President, about eight months ago in the city of
16 Rochester, a sweep of the city in a drug
17 infested neighborhood produced the arrest of 129
18 people in one night buying "crack" cocaine and
19 marijuana from drug dealers. 129 people who
20 were arrested went into Rochester City Court
21 and, acting on the basis of People against Ryan,
22 the City Court judge dismissed the criminal
23 complaints that were filed against the 129

1 recipients of those drugs.

2 The people who were victimized by
3 that decision were the people who lived in that
4 neighborhood, the people who depended upon the
5 police to get the drug dealers out, but the drug
6 dealers won't get out so long as the customers
7 keep coming back, and if the customers know that
8 they can get off because they can claim they
9 didn't know how much they bought or they didn't
10 know how much they had in their hands, they'll
11 never leave. If we're going to end the retail
12 sale of drugs in our neighborhoods and the crime
13 and the violence that goes with them, we have to
14 pass this bill.

15 This bill will tell everyone that
16 comes into the city of Rochester from the
17 suburbs or comes from another part of the city,
18 that when you go into a drug-infested
19 neighborhood to buy your drugs, you can't stand
20 up in front of a judge and say, "You can't
21 charge me. I didn't know how much I bought. I
22 didn't know how much I had. It's not my fault.
23 I didn't know."

1 When those -- Mr. President,
2 could we -- when those arrests are effectuated,
3 when they go to jail, when they pay the price
4 for those crimes, the message will go out very
5 clear to people that come into our city and into
6 our neighborhoods -

7 ACTING PRESIDENT KUHL: Senator
8 Dollinger, let me interrupt a minute, if you
9 would. I'm having a tough time hearing you.
10 Can I ask the members to please take their
11 chairs, conversations out of the chamber if
12 you're going to talk? It's very rude not to let
13 a member speak and be heard.

14 Thank you, Senator Dollinger, for
15 indulging me for the interruption.

16 Senator Dollinger on the bill.

17 SENATOR DOLLINGER: Thank you,
18 Mr. President.

19 I just want to extend my thanks
20 to Senator Volker for his leadership on the
21 issue. I'm proud to be part of it. I thank him
22 for that. I also thank him on behalf of the
23 people that live in our neighborhoods in the

1 community that I represent, because this bill
2 will give police the tool to take those people
3 who buy the drugs off the street.

4 I'd like to add just one
5 concluding comment that Senator Abate made.
6 This bill isn't about what we do once we arrest
7 them. This bill isn't about what we do once we
8 convict them. This isn't about whether we send
9 them to jail or allow them to take treatment as
10 an alternative to going to jail. We can do
11 those things at the end of the product but, if
12 we don't have the ability to arrest them and
13 make the convictions stick, we're not going to
14 be able to send a message to our drug-infested
15 neighborhoods, that those who come in and buy
16 are at risk. Whatever you buy, no matter how
17 much it is, you're going to be stuck with that
18 crime and you're not going to be able to get
19 away by simply saying, "Gee, judge, I didn't
20 know."

21 I applaud Senator Volker. This
22 is a good bill. It will restore the weapon of
23 police enforcement to our neighborhoods that

1 need protection from drug activity.

2 ACTING PRESIDENT KUHL: The Chair
3 recognizes Senator Montgomery.

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

6 Briefly on the bill. Of course,
7 drugs are really the number one crime problem
8 for my district, along with the guns that
9 accompany them, which is why I always oppose any
10 attempt to expand the number of guns on the
11 streets, but I do want to point out to my
12 colleagues that this bill, as well intentioned
13 as it is, does contain a couple of items that
14 are of concern to me.

15 One of them is marijuana which
16 has, I think, after years of experience with the
17 Rockefeller Laws and having people who are
18 experts in the fields -- in the field of drug
19 abuse and drug treatment recognize that there is
20 a question as to whether or not we should
21 continue to include marijuana as a major
22 criminal offense based on the fact that it has
23 not been proven to be as big of a menace and we

1 certainly, I think, need to consider that.

2 And the other one that is
3 included is Methadone, and there are a number of
4 Methadone clinics in my district. That is a
5 legal substitute drug and, though I am
6 definitely not in favor of the use of Methadone
7 as a way of getting off of hard drugs, I do want
8 to point out to the sponsors of this legislation
9 that it is included here and that, in fact, is a
10 drug that is legal and that is used as a means
11 of curtailing drug use in -- in the
12 neighborhoods and communities across the state.

13 So with that, I will support the
14 legislation, though I think those two -- those
15 two things are not necessarily substances that
16 ought to be included in this kind of
17 legislation.

18 Thank you, Mr. President.

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

21 Senator Volker to explain his
22 vote.

23 SENATOR VOLKER: Yeah, just one

1 thing I might say just so you understand. There
2 is nothing new in this legislation as far as any
3 additional drugs. We just changed the -- the
4 changes in this bill all relate to either re...
5 making the law clearer or, obviously, on the
6 issue of taking care of the issue of the Ryan
7 decision, but there are -- in other words, we
8 are not either raising penalties in this or
9 adding -- we are not adding any new drugs or any
10 new -- new types of drugs to this bill, just so
11 that you're aware.

12 We're restating the same
13 quantities and the same drugs that were in the
14 previous legislation, just so that you realize
15 that.

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

18 THE SECRETARY: Section 20. This
19 act shall take effect immediately.

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT KUHL: Announce

1 the results when tabulated.

2 Senator Montgomery to explain her
3 vote? Announce the results.

4 THE SECRETARY: Those recorded in
5 the negative on Calendar 827 are Senators
6 Paterson and Waldon. Ayes 55, nays 2.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 The Chair would recognize Senator
10 DeFrancisco.

11 SENATOR DeFRANCISCO: Could you
12 please return to the order of messages from the
13 Assembly.

14 ACTING PRESIDENT KUHL: Return to
15 the messages from the Assembly. I'll ask the
16 Secretary to read.

17 THE SECRETARY: The Assembly
18 returns Senate Bill Number 1554-A, Assembly
19 Reprint Number 30,001 entitled, "An act making
20 appropriations for the support of government and
21 to amend Chapter 52 of the Laws of 1995,
22 enacting the State Debt Service Budget for the
23 support of government."

1 ACTING PRESIDENT KUHL: The
2 Secretary -- Senator DeFrancisco.

3 SENATOR DeFRANCISCO: Mr.
4 President, I move that the Senate not concur in
5 said amendments and move to reconsider the vote
6 by which this bill was passed.

7 ACTING PRESIDENT KUHL: The
8 Secretary will call the roll on
9 reconsideration.

10 (The Secretary called the roll on
11 reconsideration.)

12 THE SECRETARY: Ayes 57.

13 ACTING PRESIDENT KUHL: The bill
14 is before the house. Restored to the Third
15 Reading Calendar.

16 Senator DeFrancisco.

17 SENATOR DeFRANCISCO: Mr.
18 President, I now offer the following amendments.

19 ACTING PRESIDENT KUHL: The
20 amendments are received and adopted.

21 SENATOR DeFRANCISCO: Please lay
22 the bill aside.

23 ACTING PRESIDENT KUHL: Lay the

1 bill aside.

2 SENATOR DeFRANCISCO: Would you
3 please return to the reports of standing
4 committees for a report from the Finance
5 Committee.

6 ACTING PRESIDENT KUHL: Senator
7 DeFrancisco, I'm informed by the desk that we do
8 have a couple housekeeping matters here, if we
9 could do that before we take up the bill.

10 SENATOR DeFRANCISCO: Please do
11 so.

12 ACTING PRESIDENT KUHL: The Chair
13 would recognize Senator Present.

14 SENATOR PRESENT: Mr. President,
15 on page 44, on behalf of Senator Hannon, I offer
16 the following amendments to Calendar Number 503,
17 Senate Print 3467, and ask that it retain its
18 place on the Third Reading Calendar, and also
19 remove the star.

20 ACTING PRESIDENT KUHL: The
21 amendments to Calendar Number 503 are received
22 and adopted. The bill will retain its place on
23 the Third Reading Calendar, and at the request

1 of the sponsor, the star is removed.

2 Senator Present.

3 SENATOR PRESENT: Mr. President,
4 on behalf of Senator Volker, on page 13, I offer
5 the following amendments to Calendar 490, Senate
6 Print 2960 and ask that it retain its place.

7 ACTING PRESIDENT KUHL: The
8 amendments to Calendar Number 490 are received
9 and adopted. The bill will retain its place on
10 the Third Reading Calendar.

11 Senator DeFrancisco, we'll return
12 to reports of standing committees. I'll ask the
13 Secretary to read the report of the Finance
14 Committee.

15 The Secretary will read.

16 THE SECRETARY: Senator Stafford,
17 from the Committee on Finance, reports the
18 following bill directly to third reading:

19 Senate Print 5278, Budget Bill,
20 an act to provide for payments to cities with a
21 population of one million or more under the
22 municipal assistance program.

23 ACTING PRESIDENT KUHL: Without

1 objection, the bill is ordered directly to third
2 reading.

3 Senator DeFrancisco.

4 SENATOR DeFRANCISCO: Would you
5 please call up Senate Bill 5278, Calendar Number
6 1091.

7 ACTING PRESIDENT KUHL: There is
8 a substitution at the desk. I'll ask the
9 Secretary to read.

10 THE SECRETARY: Senator Stafford
11 moves to discharge from the Committee on
12 Finance, Assembly Bill 7973 and substitute it
13 for the identical Calendar Number 1091.

14 ACTING PRESIDENT KUHL: Without
15 objection, the substitution is ordered. Ask the
16 Secretary to read the title to Calendar Number
17 1091.

18 THE SECRETARY: 1091, by the
19 Assembly budget -- Assembly 7973, an act to
20 provide for payments to cities with a population
21 of one million or more under the Municipal
22 Assistance Program.

23 ACTING PRESIDENT KUHL: Senator

1 DeFrancisco.

2 SENATOR DeFRANCISCO: Is there a
3 message of necessity at the desk?

4 ACTING PRESIDENT KUHL: The
5 Secretary tells me there is, Senator
6 DeFrancisco.

7 SENATOR DeFRANCISCO: I move that
8 we adopt the message.

9 ACTING PRESIDENT KUHL: The
10 motion is to adopt the message of necessity.
11 All those in favor signify by saying aye.

12 (Response of "Aye".)

13 Opposed, nay.

14 (There was no response.)

15 The message is accepted.

16 The Secretary will read the last
17 section.

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

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 57.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 The Chair recognizes Senator
4 DeFrancisco.

5 SENATOR DeFRANCISCO: I request
6 that we stand at ease at this point since we are
7 awaiting a criminal justice bill which should be
8 here momentarily, followed by a Finance
9 Committee meeting and we expect to take up the
10 bill after the Finance Committee meeting.

11 ACTING PRESIDENT KUHL: The
12 Senate will stand at ease.

13 (Whereupon, at 7:40 p.m., the
14 Senate stood at ease.)

15 ACTING PRESIDENT DiCARLO:
16 Senator DeFrancisco.

17 SENATOR DeFRANCISCO: I would
18 like to call an immediate meeting of the Finance
19 Committee in Room 332 of the Capitol.

20 ACTING PRESIDENT DiCARLO: There
21 will be an immediate meeting of the Finance
22 Committee in Room 332 of the Capitol.

23 (Whereupon, at 7:50 p.m., the

1 Senate stood at ease.)

2 ACTING PRESIDENT KUHL: The
3 Senate will come to order for a moment for an
4 announcement.

5 The Chair would recognize Senator
6 Olga Mendez.

7 SENATOR MENDEZ: Thank you, Mr.
8 President.

9 I want to announce that there
10 will be a Minority Conference after the Finance
11 Committee meeting.

12 ACTING PRESIDENT KUHL: There
13 will be an immediate Minority Conference in the
14 Minority Conference Room right after the Senate
15 Finance Committee concludes, which would be
16 shortly.

17 (Whereupon, at 7:55 p.m., the
18 Senate stood at ease.)

19 ACTING PRESIDENT KUHL: The
20 Senate will come to order just briefly for an
21 announcement.

22 Again, Senator Mendez.

23 SENATOR MENDEZ: Mr. President, I

1 am pleased to announce that there will be an
2 immediate conference of the Minority in the
3 Minority Conference Room, Room 314.

4 ACTING PRESIDENT KUHL: There
5 will be an immediate meeting of the Minority in
6 the Minority Conference Room, Room 314.
7 Immediate meeting of the Minority in the
8 Minority Conference Room.

9 (Whereupon, at 7:57 p.m., the
10 Senate stood at ease.)

11 ACTING PRESIDENT KUHL: The
12 Senate will come to order for an announcement.

13 The Chair recognizes Senator
14 Skelos.

15 SENATOR SKELOS: Mr. President,
16 there will be an immediate conference of the
17 Majority in Room 332 at the request of Senator
18 DiCarlo.

19 ACTING PRESIDENT KUHL: There
20 will be an immediate meeting of the Majority in
21 the Majority Conference Room, Room 332.
22 Immediate meeting of the Majority Conference in
23 the Majority Conference Room, Room 332.

1 (Whereupon, the Senate stood at
2 ease from 8:00 p.m. until 9:25 p.m.)

3 ACTING PRESIDENT KUHL: The
4 Senate will come to order. Members please find
5 their chairs.

6 The Chair recognizes Senator
7 Skelos.

8 SENATOR SKELOS: Mr. President,
9 there will be an immediate meeting of the Rules
10 Committee in Room 332 of the Capitol.

11 ACTING PRESIDENT KUHL: Immediate
12 meeting of the Rules Committee -- it's now 9:25
13 -- Majority Conference Room, Room 332. Immed
14 iate meeting of the Rules Committee, Majority
15 Conference Room, Room 332. The Senate will
16 continue to stand at ease.

17 (Whereupon, the Senate stood at
18 ease from 9:26 p.m. until 9:35 p.m.)

19 ACTING PRESIDENT KUHL: The
20 Senate will come to order. Members please find
21 their places, the staff their places. Sergeant
22 at-arms, close the doors.

23 The Chair recognizes Senator

1 Skelos.

2 SENATOR SKELOS: Mr. President,
3 if we could return to reports of standing
4 committees, I believe there's a report of the
5 Rules Committee at the desk.

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

11 THE SECRETARY: Senator Bruno,
12 from the Committee on Rules, reports the
13 following bill directly to third reading:

14 Senate Print 5281, by the
15 Committee on Rules, an act enacting the
16 Sentencing Reform Act of 1995 to amend the Penal
17 Law, the Correction Law, the Criminal Procedure
18 Law and the Executive Law, in relation to
19 providing for the sentencing of certain felony
20 offenders.

21 ACTING PRESIDENT KUHL: Senator
22 Skelos.

23 SENATOR SKELOS: Mr. President,

1 at this time could you call up Calendar Number
2 1092.

3 ACTING PRESIDENT KUHL: On the
4 motion to accept the Rules report, all those in
5 favor signify by saying aye.

6 (Response of "Aye".)

7 Opposed, nay.

8 (There was no response.)

9 The report is adopted.

10 The Secretary will read the title
11 to Calendar Number 1092.

12 THE SECRETARY: Calendar Number
13 1092, by the Senate Committee on Rules, Senate
14 5281, an act enacting the Sentencing Reform Act
15 of 1995 to amend the Penal Law, the Correction
16 Law, the Criminal Procedure Law and the
17 Executive Law, in relation to providing for the
18 sentencing of certain felony offenders.

19 ACTING PRESIDENT KUHL: Senator
20 Skelos.

21 SENATOR SKELOS: Mr. President,
22 is there a message of necessity at the desk?

23 ACTING PRESIDENT KUHL: I'm

1 informed by the Secretary that there is a
2 message of necessity at the desk.

3 SENATOR SKELOS: I move we
4 accept.

5 ACTING PRESIDENT KUHL: The
6 motion is to accept the message of necessity.
7 All those in favor signify by saying aye.

8 (Response of "Aye".)

9 Opposed, nay.

10 (There was no response.)

11 The message is accepted.

12 SENATOR SKELOS: Read the last
13 section, please.

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

16 SENATOR PATERSON: Explanation.

17 ACTING PRESIDENT KUHL: Senator
18 Volker, an explanation of Calendar Number 1092
19 has been asked for by Senator Paterson.

20 SENATOR VOLKER: Just very
21 quickly, this is known as the Sentencing Reform
22 Act of 1995 and does include sentencing changes
23 for first, second and multiple felony offenders

1 on the VFO side, in other words, on the violent
2 felony offender side, which basically increases
3 the minimum sentences, indeterminate sentences.
4 In other words, it does not increase the
5 maximums but increases the minimums. Those are
6 for violent felony offenders.

7 On the other hand, as far as the
8 so-called lesser felonies, "C", "D" and "E"
9 felonies and drug felonies, we set up a
10 diversion program, a diversion sentencing
11 program using Willard which is opened up in this
12 proposal and would allow for drug and alcohol
13 treatment at Willard for 30 to 90 days. We
14 commence with 750 people -- or up to 750 people
15 and this bill also, by the way, provides for -
16 yeah, yeah.

17 We set up, by the way, as I said
18 previously, for determinate sentences for
19 violent felony offenders and second violent
20 felony offenders. We also set up a sentencing
21 commission in this bill which is established at
22 nine members of -- part of that commission, five
23 from the Legislature -- or five by the Governor,

1 two from the Legislature and two by the chief
2 judge of the Court of Appeals, and we establish
3 the so-called "truth in sentencing" which
4 enables us to comply with the federal rules that
5 state that we need to have -- in certain violent
6 felony offenders that we have to have 85 percent
7 of the sentence served under the determinate
8 sentencing rules, and we comply with the federal
9 rules, so we will be eligible for \$20 million of
10 federal money for our prison system.

11 SENATOR HOFFMANN: Would Senator
12 Volker yield for a question?

13 SENATOR VOLKER: Certainly.

14 ACTING PRESIDENT KUHL: Senator
15 Volker yields to Senator Hoffmann.

16 SENATOR HOFFMANN: Thank you, Mr.
17 President.

18 Senator Volker, you indicated
19 that Willard will house 750 people. I was
20 pleased to hear you use the term "people". Does
21 that mean women inmates as well as male drug
22 offenders will be treated at Willard?

23 SENATOR VOLKER: The answer is

1 yes. By the way, this is an authorization of up
2 to 750 people at that facility, and the answer
3 is both men and women.

4 SENATOR HOFFMANN: Is there a
5 breakdown on gender balance anticipated or is
6 that -

7 SENATOR VOLKER: I don't think
8 so. No, no, because it will just obviously
9 depend on who was eligible as to how many people
10 would go into this facility.

11 SENATOR HOFFMANN: Thank you,
12 Senator.

13 ACTING PRESIDENT KUHL: Senator
14 Hoffmann.

15 SENATOR HOFFMANN: On the bill,
16 Mr. President.

17 ACTING PRESIDENT KUHL: Senator
18 Hoffmann on the bill.

19 SENATOR HOFFMANN: First of all,
20 I want to compliment Senator Volker for his
21 ongoing interest on this issue and my many
22 colleagues across the aisle who apparently have
23 been working on this; and I say "apparently"

1 because I have been very much in the dark about
2 it despite the fact that I am an 11-year member
3 of the Corrections Committee in this house and
4 it's an issue of tremendous concern for me, not
5 only because I represent several large DOCS
6 facilities in the 48th Senate District, but also
7 because the constituents who have sent me here
8 to work for them are very worried about the need
9 for reform of our entire sentencing system; and
10 I know that they are disappointed that we are
11 handling this very significant measure in this
12 inappropriate fashion on a Friday evening with
13 so little preliminary discussion.

14 If, in fact, this is the sweeping
15 reform that it is purported to be and certainly
16 on first blush it appears to do many, many
17 things; it will change sentencing in New York
18 State, it deserves a public hearing. It
19 deserves to be aired across the state. It
20 deserves to be heard in open committee meetings
21 in these halls. It deserves an opportunity to
22 be digested by people who have experience in
23 this field. Particularly in the area of the

1 drug treatment aspect, I am gravely concerned
2 about how my district will be affected.

3 I represent, as everyone knows, a
4 large rural area. I also represent suburbs and
5 I represent a large urban core in the city of
6 Syracuse, a smaller urban core in Rome and the
7 city of Oneida. All of these communities fear
8 the scourge of drugs. All of these communities
9 worry about what will happen when people are
10 arrested on a drug charge and are sentenced to
11 jail, and they deserve to know that we are
12 making changes that will have a long-term,
13 beneficial effect upon sentencing guidelines and
14 not simply be a panacea and not, God forbid,
15 make the situation even worse further down the
16 road.

17 It's my understanding -- and I
18 say it's my understanding because I have only
19 seen the bill an hour ago when it was presented
20 to us in the Democratic Conference -- that the
21 Willard facility will provide drug treatment,
22 either at the front end or at the tail end of
23 sentencing, depending upon the status of the

1 inmate and treatment will be for either a 30- or
2 a 90-day time period, and every expert that I
3 have talked with and worked with over many years
4 in this area has convinced me that we need to
5 think in a much longer term for inpatient drug
6 treatment, and we need to be sure that upon
7 completion of the treatment at Willard, that
8 those inmates are then going to have adequate -
9 and I do mean adequate -- aftercare, and that
10 has to include, in most cases, a halfway house.
11 We simply don't have the halfway houses around
12 this state. It's very difficult to site halfway
13 houses, and yet there appears to be no funding
14 in this bill that will provide halfway house
15 location, will stimulate the development of
16 halfway houses and adequate aftercare around the
17 state and, to be very candid, DOCS does not have
18 a sterling history in developing treatment
19 programs.

20 Some of the treatment that has
21 gone in past years in the Department of
22 Corrections has been -

23 SENATOR NOZZOLIO: Mr. President.

1 ACTING PRESIDENT KUHL: Senator
2 Hoffmann, excuse me.

3 Senator Nozzolio, why do you
4 rise?

5 SENATOR NOZZOLIO: Will Senator
6 Hoffmann yield?

7 ACTING PRESIDENT KUHL: Senator
8 Hoffmann, do you yield to Senator Nozzolio?

9 SENATOR HOFFMANN: Yes, I'll
10 yield briefly, yes. Yes, Mr. President.

11 ACTING PRESIDENT KUHL: The
12 Senator yields.

13 SENATOR NOZZOLIO: Thank you, Mr.
14 President. Thank you, Senator Hoffmann.

15 Senator, one of the unique
16 facil... one of the unique aspects of this
17 facility will be unlike any other DOCS-related
18 facility that does have a component of
19 drug/alcohol treatment. This facility blends
20 for the first time in our state, and I believe
21 in the nation -- OASAS will be doing drug and
22 alcohol treatment and be responsible for that
23 drug and alcohol treatment on the Willard

1 campus.

2 I rise because your comment
3 suggested your concerns relative to DOCS
4 managing the drug and alcohol treatment, and
5 your point is well taken.

6 I rise not to interrupt you but
7 to add to your knowledge since you evidenced
8 lack of knowledge of the bill -

9 SENATOR HOFFMANN: Is there a
10 question, Mr. President? I have not yet heard
11 the question. Is there a question from Senator
12 Nozzolio, Mr. President?

13 ACTING PRESIDENT KUHL: Well, I'm
14 waiting for it. I'm waiting for it.

15 SENATOR HOFFMANN: Thank you.

16 I appreciate the desire to
17 provide more knowledge, Mr. President, and that
18 opportunity will be forthcoming the minute I
19 relinquish the floor.

20 ACTING PRESIDENT KUHL: Let's -
21 let's see if he can find a question here,
22 Senator Hoffmann.

23 SENATOR NOZZOLIO: It won't be

1 difficult, Senator.

2 The question is this: Are you
3 aware that in the bill, in this proposal, that
4 OASAS will be running the drug treatment?

5 SENATOR HOFFMANN: Yes, I am
6 aware. Mr. President, please inform Senator
7 Nozzolio I am aware of OASAS' connection within
8 the Willard program.

9 Thank you.

10 SENATOR NOZZOLIO: Will the
11 Senator continue to yield?

12 ACTING PRESIDENT KUHL: Senator
13 Hoffmann, do you continue to yield to Senator
14 Nozzolio?

15 SENATOR HOFFMANN: I think I
16 would yield for one -- one brief question and
17 then I'll be happy to relinquish the floor
18 shortly.

19 I'm sure Senator Nozzolio has a
20 great deal to offer on this issue, Mr.
21 President, and I will look forward to hearing
22 his comments in greater detail when I have
23 completed mine.

1 ACTING PRESIDENT KUHL: The
2 Senator yields.

3 SENATOR NOZZOLIO: Does Senator
4 Hoffmann believe that OASAS is an appropriate
5 drug treatment body, drug treatment group?

6 SENATOR HOFFMANN: The issue here
7 is not whether OASAS is the appropriate drug
8 treatment group. The issue is that the entire
9 drug treatment protocol has not yet been spelled
10 out in any kind of detail that would allow a
11 thoughtful analysis by those of us who will now
12 be voting to change the sentencing guidelines
13 that the state implemented.

14 SENATOR NOZZOLIO: Is that a yes,
15 Mr. President?

16 SENATOR HOFFMANN: Thank you, Mr.
17 President.

18 ACTING PRESIDENT KUHL: Senator
19 Hoffmann, you have the floor.

20 SENATOR HOFFMANN: Thank you.

21 As I said before, I am looking
22 forward to hearing a greater explanation of this
23 bill. I just wish that we were not doing it on

1 such short notice, at a quarter to 10:00 on a
2 Friday evening when we're seeing this bill for
3 the first time.

4 A brief history of sentencing
5 guidelines will show even the most casual
6 observer that New York State has made many
7 grievous errors in sentencing guidelines. The
8 Rockefeller Drug Laws continue to be an example
9 of over-reaction at a time of hysteria in this
10 state. This bill, which does not address the
11 Rockefeller Drug Laws, is a reaction. I don't
12 know if it's a hysterical reaction or not
13 because it has not been given the kind of
14 thoughtful analysis. It is the work of a
15 negotiated, political process that is all too
16 prevalent in this Capitol, and the people of
17 this state deserve better.

18 I truly believe that this
19 Governor, in his campaign and his early days in
20 office, sincerely wants to change the way we
21 handle violent offenders in this state, and
22 every taxpayer in this state wants to change the
23 way we handle violent offenders. We want to

1 keep them locked up. We want to keep the
2 prisons clear so that there are beds available
3 for violent offenders who should serve the
4 maximum amount of time allowable. If that, in
5 fact, is going to happen under this bill, that's
6 -- that's going to be a tremendous assist in
7 addressing the problems of violence in New York
8 State; but if there is another price being paid
9 to free up beds for violent felons and that
10 price is that drug offenders are going to go
11 through a revolving door under the guise of
12 treatment, not, in fact, be treated and then
13 violate parole and wind up being resentenced,
14 all we will do is compound the burden upon the
15 Department of Corrections by increasing inmates
16 and increasing them with inmates who have third
17 felony convictions and longer sentences.

18 Somebody needs to sit down and
19 analyze these numbers and we should have the
20 benefit of that analysis before we undertake
21 this vote. We should be reviewing this at a
22 series of hearings. We should be reviewing this
23 over a period of time and not rushing headlong

1 into this vote tonight so we can simply announce
2 that we have another portion of the budget
3 reached. It is much too serious an issue for
4 that.

5 It is my intention to vote for
6 this bill and to hope -- to fervently hope that
7 it will do all of the things that we want. I
8 understand that there is a sunset provision and
9 ten years hence some members of this house and
10 the other house who are still around will be
11 addressing it again.

12 We should not be putting
13 something in place that has the potential for
14 being a time bomb. We should be looking at it
15 so that we can say, in all comfort, we have come
16 up with a thoughtful, a well-reasoned solution,
17 not one that represents the worst kind of
18 political wrangling between two houses and a
19 couple of leaders and the Governor meeting in
20 closed doors with only a handful of other
21 legislators having input.

22 So for all of those reasons, Mr.
23 President, I would ask Senator Volker and

1 Majority Leader Bruno if they would consider
2 laying this bill aside so that it might be given
3 a more timely review and we could have a vote on
4 it perhaps as early as next week, but certainly
5 not in the middle of our desire to wrap up other
6 budget negotiations tonight.

7 ACTING PRESIDENT KUHL: The Chair
8 recognizes Senator Smith, who defers to Senator
9 Abate.

10 SENATOR ABATE: Yes, Mr.
11 President. Would Senator Volker yield to a
12 number of questions?

13 SENATOR VOLKER: Certainly.

14 ACTING PRESIDENT KUHL: The
15 Senator yields.

16 SENATOR ABATE: I have more
17 questions concerning this bill because I have
18 just had an opportunity over the last 45 minutes
19 to review it and by looking at the legislation,
20 I cannot get the answers I need.

21 The first is it's my
22 understanding that if we're going to receive
23 federal money, we have to develop a sentencing

1 guidelines system that mandates that anyone who
2 is a violent offender and is incarcerated must
3 do 85 percent of their sentence, is that right?

4 SENATOR VOLKER: That's right.

5 SENATOR ABATE: And when would
6 that -- compliance with that federal regulation
7 kick in? When would we be at risk of losing
8 federal dollars?

9 SENATOR VOLKER: When would it
10 kick in?

11 SENATOR ABATE: Yes.

12 SENATOR VOLKER: Well, as I
13 understand the federal compliance rules, we have
14 to do that in order to -- as soon as possible in
15 order to be eligible for the \$20 million that we
16 intend to use, by the way, for Willard, and
17 that's where the money that we intend to spend
18 on the -- on the Willard facility is, and so
19 that what we have done in this bill is to raise
20 the minimum -- the minimum sentences in -- in
21 the VFOs, in the second and third violent felony
22 offenders to comply with that 85 percent
23 requirement. So the answer is that when this

1 bill passes and is signed into law, we will
2 then, we believe, comply with those
3 requirements.

4 SENATOR ABATE: It's my
5 understanding -- the date of when we must be in
6 compliance is a very important date because
7 we're driving this legislation very quickly
8 without public debate, without a lot of
9 discussion, and I believe not a lot of
10 planning. It's my understanding -- and maybe if
11 there's someone else available to confirm this
12 -- that the federal government hasn't even
13 developed regulations around what is a violent
14 offense yet, so we can't even be in compliance
15 with their regulations until they develop their
16 own guidelines. So it's my understanding we
17 have at least another year to be in compliance
18 with other -- with whatever the federal
19 government devises, is that correct?

20 SENATOR VOLKER: Senator, I don't
21 think that is correct, Senator. As far as I
22 know, we have been -- the federal mandate -
23 whether they develop -- whatever they develop,

1 we are complying with the 85 percent require
2 ment. There may be some other requirements, but
3 this is the central requirement to access the
4 money.

5 Senator, let me point out to you
6 that the discussion on this bill has been going
7 on for a long, long time and it's been out in
8 the public for a great deal -- in fact, this
9 bill was actually agreed on over a week ago but,
10 frankly, the -- it was basically agreed on
11 entirely and then there was back and forth over
12 the last week just on -- mainly on language.

13 I think some of the best people
14 that deal in the criminal justice area, more
15 involved in it is Paul Shechtman who is the head
16 of DCJS now for the Governor, somebody who is an
17 extremely bright fellow, Ken Connolly who is
18 from my office and Ken Riddett, a group of
19 people from the Assembly have been working on
20 this for a very, very long time in consultation,
21 by the way, with district attorneys, with
22 various law enforcement people. District
23 attorneys have given their approval for this and

1 law enforcement people have also.

2 I don't think this has been a
3 rush to come up with this -- with this
4 legislation. We have been dealing with this for
5 a long period of time. I guess it's always easy
6 to say we should have hearings on legislation
7 but not so simple in a time like this to do
8 that, and I think we also are in a situation
9 where we have an ongoing prison problem and the
10 feeling is, I think, that it is time to deal
11 with it, especially in the case of Willard where
12 the faster that we get the prison open and get
13 people access to drug and alcohol treatment, I
14 think the better off they'll be and the better
15 off we'll be also.

16 SENATOR ABATE: Would Senator
17 Volker yield to another question?

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

20 SENATOR VOLKER: Sure.

21 ACTING PRESIDENT KUHL: The
22 Senator yields.

23 SENATOR ABATE: You said that

1 this bill has been subject to enormous debate,
2 and I don't disagree with you. There are a lot
3 of very capable people involved in these
4 negotiations, but clearly, none of us -- or most
5 of us in this chamber -- and correct me if I'm
6 wrong -- never received the legislation in
7 advance to comment. Most of us weren't in that
8 room, behind those closed doors. To my
9 knowledge, has any committee within this chamber
10 held hearings on the changes in these guidelines
11 or any part of this legislation?

12 SENATOR VOLKER: Well, the answer
13 as far as holding hearings on guidelines, we've
14 held hearings on guidelines over the years many
15 times. In fact, my committee has held
16 guidelines hearings, I think two or three years
17 ago, if I'm not mistaken. The issue of
18 determinate and indeterminate sentencing and
19 sentencing has been one that's been kicked
20 around for a long, long time. No one has
21 obviously held hearings on this bill, and I
22 guess one of the problems with the budget
23 process -- this is part of the budget process -

1 is you can't very well sit back and just decide
2 to hold hearings, particularly, I think, in a
3 situation like this where you have two houses
4 with, in many ways, divergent philosophies and
5 this was obviously a difficult bill to resolve
6 and some people say it was a major factor in
7 holding up the budget process, and I think,
8 Senator, that the answer is it's something that
9 we felt, I think the people in -- many people in
10 this chamber felt was important to get done, and
11 I think it's an important bill for the people of
12 this state and I regret that we don't have the
13 ability and the time to hold hearings, but I
14 think it is something that, I think, will
15 withstand the test of time.

16 SENATOR ABATE: Will the Senator
17 yield?

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

20 SENATOR VOLKER: Sure.

21 ACTING PRESIDENT KUHL: The
22 Senator continues to yield.

23 SENATOR ABATE: I have a number

1 of questions.

2 SENATOR VOLKER: Certainly.

3 SENATOR ABATE: Thank you,
4 Senator.

5 You're absolutely right that
6 these are complex issues and in 1985 there was
7 an attempt through a sentence guideline
8 commission and I was a staff member involved in
9 that commission then, and I know how laborious a
10 process that was. There were district attorneys
11 involved and people from the Legislature, and
12 after an entire year, because the matter was so
13 complex, there was no agreement reached, and yet
14 what circumstances have changed that ten years
15 later we think we have all the knowledge within
16 this chamber and the other chamber within a
17 matter of weeks to dramatically change the
18 sentence guidelines in this state? What has
19 changed over ten years that has made this
20 process an acceptable process?

21 SENATOR VOLKER: Let me just say
22 to you, Senator, we don't -- I don't think
23 there's anyone that would say that we have all

1 the knowledge or that we profess to be the
2 experts on any of this stuff, but I will tell
3 you this: I guess the answer to you is that a
4 governor -- and a governor who I think has shown
5 himself to be very, very knowledgeable in the
6 area of criminal justice and willing to deal in
7 some very difficult areas and two houses of the
8 Legislature have gotten together and felt that
9 we need it now in 1995 to move in the area of
10 sentencing reform, and that's what we did and,
11 you know, I think that you can always sit back,
12 I suppose, and say we could wait another ten
13 years to do sentencing reform, but I'm not sure
14 the people of this state are ready to do that
15 and certainly I think there's a number of people
16 on both sides of this Capitol who felt that we
17 couldn't wait that long and, very honestly, the
18 people in the Governor's office felt that way
19 also.

20 SENATOR ABATE: Senator Volker, I
21 agree with you, we should not wait another year,
22 maybe not even another six months, another ten
23 years for sentencing reform, but you talk about

1 urgency, because I don't see any positive fiscal
2 impact. No savings are going to come about
3 because of this bill or at least I haven't seen
4 a document that shows this, why are we passing
5 this bill in the middle of a very contentious,
6 difficult budget? Why don't we pass the budget,
7 even take the next two weeks to hold hearings
8 and everyone is better educated? What is the
9 urgency, because I don't see the link between
10 the budget and necessarily passing this
11 programmatic, very difficult bill.

12 SENATOR VOLKER: I can assure
13 you, Senator, there is a very big budgetary
14 impact on this. In fact, some people across the
15 hall claim there's this huge impact that they've
16 been giving down the road, but I think the
17 biggest thing is that if we genuinely are going
18 to deal with the issue of diversion, then the
19 faster we get Willard up and operating and the
20 faster we can get inmates to -- into the alcohol
21 and drug diversion program, obviously we'll be
22 saving some money, and many people on your side
23 of the aisle have been suggesting that we do

1 this sort of thing and have been saying that
2 it's important for us to get into this sort of
3 thing.

4 By the way, the date was just
5 told as far as the federal money -- access to
6 the federal money is October 1st. After that
7 date, we will be able to access the \$20 million,
8 and with the sentencing changes in this bill,
9 the estimates are that we could save up to \$30
10 million.

11 SENATOR ABATE: Where are we
12 going to -

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

15 SENATOR VOLKER: Yes.

16 ACTING PRESIDENT KUHL: The
17 Senator continues to yield.

18 SENATOR ABATE: Yes. Thank you.

19 You estimate that the fiscal
20 impact would be a savings of \$30 million per
21 year?

22 SENATOR VOLKER: That's right.

23 SENATOR ABATE: And that is

1 taking into consideration the violent felons
2 that are going to stay much longer and that the
3 -- either the incarcerated... existing incarcerated
4 population is going to be diverted to the
5 street -

6 SENATOR VOLKER: Right.

7 SENATOR ABATE: -- or the
8 incoming second felony offender that may be
9 diverted?

10 SENATOR VOLKER: Right.

11 SENATOR ABATE: Can you give me
12 an estimate of how many more -- I don't know if
13 there's a bed capacity analysis done. I would
14 like to see that and maybe could that be shared
15 with the members of the conference. How many
16 bed/day savings will there be as a result of
17 this per year because, clearly, we cannot pass
18 this bill without a clear bed/day savings so we
19 really understand the impact of these judicial
20 sentencing decisions.

21 SENATOR VOLKER: According to our
22 best estimates, it will mean about 2,000 bed
23 days for our inmates. Of course, taken into

1 consideration, this is -- this is June -- what,
2 June 2nd, and we have to get this program up and
3 moving and that, of course, is one of the
4 reasons why this has to get going.

5 Keep in mind, this is not April
6 1st, this is June 2nd, and a lot of the things
7 that we're talking about here need to move as
8 quickly as possible because bed days for inmates
9 are not cheap, so that getting them into this
10 program will save us a considerable amount of
11 money and that's where I think a good deal of
12 the money comes in.

13 SENATOR ABATE: I guess I'd like
14 to have a better understanding of the 2,000 bed
15 days. Is that an assumption that the 750 days
16 that Willard would be fully occupied 12 months
17 of the year?

18 SENATOR VOLKER: Well, keep in
19 mind that these people are not -- when you say
20 "750", we will have some people accessing from
21 the prison itself and, of course, people
22 obviously coming in from outside. The way it
23 works is when you talk about 750, that's 750 at

1 any one time.

2 SENATOR ABATE: That's right.

3 SENATOR VOLKER: In other words,
4 the people keep rolling over.

5 SENATOR ABATE: It could be 30
6 days.

7 SENATOR VOLKER: In on 30- to
8 90-day periods, you're rolling over a great
9 number of people. So that's where the numbers
10 come from. The numbers presumably would be
11 greater, by the way, in the future obviously
12 when this site is up and running for a longer
13 period of time.

14 SENATOR ABATE: But has some -
15 would the Senator -

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

18 SENATOR VOLKER: Sure.

19 ACTING PRESIDENT KUHL: The
20 Senator continues to yield.

21 SENATOR ABATE: Has someone done
22 any planning to say that a certain percentage
23 will be doing 30 days at Willard, another

1 percentage 60, another percentage 90 and that
2 there will be a 90 percent filled capacity of
3 those 750 beds and then comparing it to the
4 additional bed days that are needed to house the
5 violent felons that are now going to have to do
6 longer time?

7 Has there been a comparative
8 analysis to come up with that 30 million?

9 SENATOR VOLKER: Yeah, but let's
10 keep in mind something that some of the people
11 in the Assembly didn't understand. Since we're
12 increasing the minimum sentences here -- in
13 other words, we're bobbing up the minimums, the
14 impact of this bill on -- on people will not be
15 felt for a number of years down the line. This
16 bill should not generally -- obviously, you
17 know, you have some other issues involved, but
18 the increase in the felony VFO sentences,
19 primarily the impact of that will be felt down
20 the line some years because, if you increase the
21 minimum, for instance, from four to eight years,
22 that person is going to get four years anyway.
23 Now he or she is going to get eight years. Some

1 people say, "Well, that may increase the
2 pressure for police." That may be true.
3 Whether he will get, some people claim, the
4 lesser sentences or something, that's another
5 thing, but it will not increase immediately the
6 -- the amount of people -- the amount of the
7 sentence. So that actually it will not increase
8 for some years and we would hope by then, by the
9 way, that all of the things that we're doing
10 will decrease the number of inmates so that
11 we'll have fewer inmates anyway.

12 So the answer to your question is
13 we expect that this will see a positive impact
14 on the prison system and that's where we'll see
15 the savings.

16 SENATOR ABATE: When do you
17 think -

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

20 SENATOR VOLKER: Sure.

21 ACTING PRESIDENT KUHL: The
22 Senator continues to yield.

23 SENATOR ABATE: You say the

1 prisons will feel an impact some time down the
2 road. At what year?

3 SENATOR VOLKER: We can't say.

4 SENATOR ABATE: Third year,
5 fourth year, fifth year?

6 SENATOR VOLKER: There's no way
7 -- we could make some -- we could make some
8 estimates, but remember what we're talking
9 about. Since you're raising the minimums, it
10 would just depend on how -- who is sentenced to
11 what, whether it's four years down the line, in
12 some cases it maybe eight years down the line or
13 even ten or twelve. So you're staggering the
14 number of people depending on -- and who is
15 convicted and on what charges.

16 SENATOR ABATE: My concern is how
17 did the individuals that negotiated this
18 legislation come up with a ten-year sunset? Why
19 isn't it five years? Because there's so many
20 unanswered questions. You yourself would say,
21 "I don't know how many D.A.s would sign off on
22 people being diverted or agreeing upon a second
23 felony offender to get immediate parole

1 release." There's so many intangibles to this
2 bill, and it's further complicated by the lack
3 of planning.

4 Why put off a sunset to ten years
5 when it could be really disastrous? We could
6 have a prison system beyond 150 percent
7 capacity, 200 percent capacity. We don't have
8 the money potentially to build more prisons. We
9 could be in a crisis. Don't we need to evaluate
10 this much before the ten-year sunset?

11 SENATOR VOLKER: Senator, we are
12 the Legislature and we have a governor. The way
13 you develop plans -- and I think there was a lot
14 more planning into this than you say. Sunsets
15 don't provide planning. Personally, I think the
16 ten-year sunset was something that is really -
17 is really something that's not really needed but
18 the Assembly thought they had to have some sort
19 of sunset. You don't set criminal justice on
20 sunsets.

21 In fact, let me tell you
22 something. The truth is that there was talk of
23 some even earlier sunset. That creates, in my

1 mind, some real planning problems of bigger
2 proportions and, in fact, I think could create
3 some other kinds of criminal justice problems.

4 The truth is that, if we have
5 problems, we'll deal with them. That's why we
6 have two houses of the Legislature and a
7 governor, and I don't think we really need the
8 sunset provision, but I think the feeling of the
9 parties was that there was some pressure, very
10 honestly, by the Assembly to set up some sort of
11 a sunset ten years down the line. Frankly, I
12 don't expect to be here and you probably will be
13 here and lot of maybe some other people here,
14 but I doubt very seriously I'll be here, but
15 hopefully by then the criminal justice system
16 will have righted itself even more and we won't
17 have to worry about it, but if there are
18 problems, we'll deal with them, but I personally
19 think that this is a rational plan and I think
20 that it will work out much better than I think a
21 lot of people think.

22 SENATOR ABATE: Thank you,
23 Senator.

1 On the bill.

2 ACTING PRESIDENT KUHL: Senator
3 Abate on the bill.

4 SENATOR ABATE: I have taken -- I
5 have written some Op Ed pieces recently
6 applauding the Governor around his courage to
7 talk about criminal justice reform, particularly
8 around second felony, non-violent drug offenders
9 and Rockefeller Drug Laws, so I see this
10 legislation as a monumental moment. Many of us
11 in the criminal justice have been talking about
12 reform for a very long time, and to have this
13 piece in a -- in a critical piece of legislation
14 is absolutely heartening, and clearly the other
15 side of the legislation which talks about giving
16 violent offenders, particularly second felony
17 offender, violent offenders more time is
18 something that's rational, people can't fight
19 against.

20 My problem is doing this bill in
21 this way is so reprehensible to me -- I mean,
22 maybe these words are a little bit strong -
23 without all the data. I don't feel responsibly

1 that I could make an informed decision around
2 this bill when there's no urgency. We're not
3 talking about a system that's going to fail
4 because staff is not going to be funded, that
5 there has to be revenue or local assistance
6 that's going out there, that there is tremendous
7 savings immediately. We heard that the savings
8 may not occur. We don't know exactly when the
9 savings -- what I'm suggesting is, I think we
10 would all be more comfortable if we could put
11 this aside for a short period of time, get input
12 from the professionals in the field, from parole
13 -- I haven't heard from parole. I haven't
14 heard from correction what the impact will be,
15 what the judiciary thinks about this, what the
16 D.A.s, what Legal Aid, what the not-for-profits,
17 the alternative to incarceration people, what
18 the treatment people feel about a 30- or 60- or
19 90- day quasi-treatment program. What will the
20 aftercare program look like in parole?

21 There's so many unanswered
22 questions and this will have such long-term,
23 dramatic impact on our criminal justice system,

1 and I say "our criminal justice system". We're
2 fooling ourselves. Any decision that's made on
3 the front end in the sentencing end will impact
4 obviously all the way through the system, and we
5 need to be able to measure that impact.

6 I think we all owe it to
7 ourselves to make an informed decision. I'm not
8 saying that I am philosophically, totally
9 against what we're doing here. I just don't
10 know whether our goals that we are -- intend
11 will be produced by this bill. We owe it to
12 ourselves. We owe it to the state to put this
13 aside a little bit longer, hold some hearings,
14 get some of the data that I'm talking about, the
15 bed capacity analysis, the fiscal impact. What
16 are we going to do for the offenders when they
17 get to the streets so we don't jeopardize public
18 safety that much further?

19 I wish -- I never thought I would
20 be standing on the floor voting against a
21 criminal justice reform that honestly looked -
22 and not -- a second felony offender reform, but
23 I think I would be irresponsible to push this

1 legislation through with as little information
2 as we have before us today; and with all due
3 respect, Senator Volker, you were at the table.
4 You have a lot more information than many of us
5 have, but I think you need and others of us need
6 to have a public debate, a public forum so all
7 of these issues can be addressed.

8 I respect you. I know you have
9 been involved in this process. My opposition to
10 this has nothing to do with your integrity, your
11 work around this issue. I just think this is
12 premature to take on such a huge issue such as
13 this.

14 ACTING PRESIDENT KUHL: Excuse
15 me, Senator Abate.

16 Why do you rise, Senator
17 Padavan?

18 SENATOR PADAVAN: I would like to
19 be put on the list, if there is one.

20 ACTING PRESIDENT KUHL: There is
21 a list running.

22 The Chair recognizes Senator
23 Waldon.

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

3 Would the chairman of our
4 Committee on Crimes and Correction yield to a
5 question?

6 ACTING PRESIDENT KUHL: Senator
7 Volker, do you -- excuse me, Senator Nozzolio.

8 SENATOR WALDON: Codes. Did I
9 misquote your committee, Senator?

10 ACTING PRESIDENT KUHL: You gave
11 him -

12 SENATOR WALDON: I apologize for
13 that. The hour is late.

14 SENATOR VOLKER: It's okay.

15 ACTING PRESIDENT KUHL: Would you
16 like Senator Volker to yield?

17 SENATOR WALDON: I haven't been
18 taking coffee with caffeine.

19 ACTING PRESIDENT KUHL: Senator
20 Volker, do you yield to Senator Waldon? The
21 Senator yields.

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

1 Thank you, Senator.

2 Senator, is there any information
3 on the number of people who are in prison at
4 this moment who would qualify for consideration
5 to go to Willard under this program?

6 SENATOR VOLKER: Yeah. The
7 estimates are -- I am just figuring on the ones
8 who would actually do it versus the ones who
9 would be eligible. The estimates are that about
10 3- to 4,000 people would be eligible. That
11 doesn't mean that they're actually going to be
12 diverted, but they would be eligible to be
13 diverted -- to be diverted.

14 SENATOR WALDON: Mr. President,
15 may I continue?

16 ACTING PRESIDENT KUHL: The
17 Senator continues to yield.

18 SENATOR VOLKER: Yes.

19 SENATOR WALDON: Thank you, Mr.
20 President.

21 Senator, is that for immediate
22 diversion?

23 SENATOR VOLKER: No, not

1 necessarily, not immediate diversion but -- the
2 pool would be 4,000 for those people that would
3 be eligible. They're estimating the likelihood
4 at about 1500 of that -- of that pool who would
5 be -- would be diverted for alcohol and drug
6 treatment.

7 SENATOR WALDON: Mr. President,
8 may I continue?

9 SENATOR VOLKER: Sure.

10 ACTING PRESIDENT KUHL:
11 Certainly. Senator Volker, do you continue to
12 yield?

13 SENATOR VOLKER: Sure.

14 ACTING PRESIDENT KUHL: The
15 Senator yields.

16 SENATOR WALDON: Senator Volker,
17 is there any information in the universe of
18 criminal justice regarding the anticipated
19 number of people in this state who are arrested,
20 indicted, tried, prosecuted and who would become
21 eligible on a monthly basis for this program?

22 SENATOR VOLKER: The estimates
23 are about 125 a month, would be -- would be

1 diverted. You're talking about people who are
2 on the streets now?

3 SENATOR WALDON: Yes.

4 SENATOR VOLKER: About 125 a
5 month.

6 SENATOR WALDON: Mr. President,
7 may I continue?

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

10 SENATOR VOLKER: Sure.

11 ACTING PRESIDENT KUHL: The
12 Senator continues to yield.

13 SENATOR WALDON: If I understand
14 the information you have just given us, Senator
15 Volker, there would be 1500 on an annual basis
16 who would qualify for Willard from within the
17 prison system and 125 per month from without the
18 prison system. I understand that there are only
19 750 beds in Willard, is that correct?

20 SENATOR VOLKER: That's right, up
21 to 750.

22 SENATOR WALDON: Okay. Up to 750
23 beds, and the question -- let me preface the

1 question with an assumption. Assuming that of
2 the 1500 available for the first fiscal -- not
3 fiscal, but the first operative year of this
4 process, then the next year another number would
5 become eligible and the next year another number
6 -- technically -- not technically, but in
7 theory, the 30-, 60-, 90-day phase within
8 Willard, we could find Willard fully occupied
9 with the first group of people who become
10 eligible; is that a fair assumption?

11 SENATOR VOLKER: That's -- I
12 don't fully occupy, but I think what you're
13 saying is that -- remember, these people, the
14 way it would work is they would go in and
15 obviously go out, depending when they're
16 finished with their treatment. So that I would
17 think that in a short period of time you would
18 probably have it fully occupied, and if you're
19 going to ask me whether at some point you may
20 need to expand it, that may very well be true.

21 SENATOR WALDON: Thank you for
22 anticipating my question, Senator Volker, if the
23 gentleman would continue to yield.

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

3 SENATOR VOLKER: Sure.

4 ACTING PRESIDENT KUHL: The
5 Senator continues to yield.

6 SENATOR WALDON: Assuming from
7 your statement just now that there does come a
8 time when Willard is max'ed out, the population
9 in the prison has continued to grow for several
10 reasons: One, people are still committing crime
11 which qualifies them and also now we have an
12 increased length of time serving within the
13 prison system, and those who are on the street
14 are continuing to commit crime and qualifying
15 for this program, and we now have perhaps a
16 mushrooming of the base of people who could
17 qualify for the program but no place to put
18 them. The question then is what do we do now,
19 Senator Volker?

20 SENATOR VOLKER: Well, we would
21 probably do the same thing we did here. By the
22 way, the estimates are -- I was just looking at
23 the estimates on the violent felony offender

1 side and the estimates are that this bill would
2 have virtually no fiscal impact for the first
3 several years. The first impact would really be
4 felt after the third year.

5 The answer to that, I guess, is
6 that, if that situation occurred, we would have
7 to look for a further place to provide treatment
8 at that point. I think that's something down
9 the road. We think this would be sufficient for
10 the time being, but when that -- when that time
11 occurred, of course, we would look for further
12 help.

13 SENATOR WALDON: May I continue,
14 Mr. President?

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

17 SENATOR VOLKER: Sure.

18 ACTING PRESIDENT KUHL: The
19 Senator continues to yield.

20 SENATOR WALDON: May I, Senator
21 Volker, preface my next question with some
22 information.

23 I thought I read today in one of

1 the papers, the Times Union or New York Times, I
2 don't know which one, that the writer of the
3 article anticipates that this program will cost
4 us, beyond current and present expectation, \$20
5 billion because it will dictate proliferation of
6 prison cells in this state because this program
7 is not really one of mandatory minimums but
8 because of the construct of this bill, it is
9 really mandatory maximums.

10 Do you have any thoughts on
11 whether or not we will need that many prison
12 cells, meaning equaling about \$20 billion above
13 what we're doing now in terms of construction of
14 prison cells?

15 SENATOR VOLKER: There were some
16 incredibly outrageous and irresponsible
17 accusations made by some people over in the
18 Assembly, and I would hope that the person that
19 gave some of those figures who also, by the way,
20 gave some of those same outrageous figures
21 during the death penalty debate, it would be
22 wise for him to do his job that he was supposed
23 to do and stop interfering -- I think

1 "interfering" is a good word -- in legislative
2 matters and do the job that his job suggested
3 that he do.

4 He really doesn't have any better
5 information than we do. We have better
6 information than he does, and to give estimates
7 of billions of dollars and outrageous numbers on
8 prison population is pretty ridiculous.

9 The answer is there was just
10 absolutely no basis for that and the reporter -
11 one of the reporters called me and asked me and
12 I said, "Where did you get those figures from?"
13 He said, "Well, they just estimated it."

14 The answer is there's absolutely
15 no basis for any numbers of that nature and, in
16 fact, no one could come up with those figures, I
17 don't think, even if you came up with a worst
18 case scenario, could you come up with the kind
19 of numbers that was estimated.

20 Of course, on the other hand, let
21 me tell you something. We do not know obviously
22 what the future is going to hold. This bill is
23 not going to create any kind of havoc as has

1 been said, but we do not know what the future
2 holds in this state. We would hope that this
3 bill will help the prison situation and will
4 actually help to cure our population of some of
5 its ills.

6 There's obviously a lot of other
7 things that have to be done in addition to
8 this. I'm not a believer that we're going to
9 solve the problems of society with this bill,
10 but I do say to you that this is not going to
11 create any kind of havoc in the prison system as
12 has been suggested by a few people.

13 SENATOR WALDON: Would the
14 distinguished chairman continue to yield?

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

17 SENATOR VOLKER: Yes.

18 ACTING PRESIDENT KUHL: The
19 Senator continues to yield.

20 SENATOR WALDON: I will make an
21 effort, Mr. President, to be as quick as I can
22 regarding what I am trying to find out, but I
23 need to ask some more questions.

1 Senator Volker, suppose someone
2 qualifies for this program and they arrive at
3 Willard from outside or inside, it doesn't
4 matter, and they are actually treated for the 90
5 days. They are sent to some -- outside of the
6 prison setting, outside of the DOCS facility,
7 perhaps OASAS is the local development
8 corporation or whatever we want to call it, not
9 for-profit corporation involved with the
10 treatment modality, and they fail the dole
11 test. What happens to that person when they
12 have failed the dole test and what sentence will
13 they receive compared to what they could receive
14 under today's law?

15 SENATOR VOLKER: They would be -
16 their parole would be revoked and they would get
17 whatever sentence they were sentenced to
18 originally.

19 Let me just point out to you,
20 there seems to be an impression being given by
21 some people in the Assembly and some other
22 people -- I don't mean to say the Assembly -
23 that somehow these are drug addicts, and so

1 forth. Many of these people don't have serious
2 drug and alcohol problems, but some do. A
3 number of them that have been in prison for a
4 period of time presumably have already been
5 dried out or whatever and hopefully don't need
6 long-term -- don't really need long-term help.
7 Some will, but the hope is that some, I think,
8 will not. So the answer is that a number of
9 these people, probably the 30 to 90 days will
10 take care of their problems.

11 The others, that's something that
12 has to be taken care of in the -- as part of the
13 parole process, and if they violate that
14 process, they'll be back in the prison system.

15 SENATOR WALDON: Mr. President, I
16 have, I think, just two more questions.

17 ACTING PRESIDENT KUHL: The
18 Senator continues to yield.

19 SENATOR WALDON: Senator, I have
20 read in a number of publications over the years
21 that -- two things, that most of the people in
22 our prison system are there as a direct result
23 of having been using -- at the moment they

1 committed the crime involved which caused them
2 to be sentenced, using alcohol or drugs, and the
3 second part of these articles I have read said
4 in sum and substance that once one becomes an
5 alcoholic or once one becomes a drug addict,
6 there is no quick fix to turning that person's
7 life around. It requires a long-range approach
8 and it is not unusual for a person to be in
9 treatment for five or more years until they can
10 be sanctioned by the particular treatment
11 facility or treatment modality as having a
12 chance at successfully facing life.

13 Have you seen anything similar to
14 that, and if so -- and if not, do you have any
15 comments about the statement I just made?

16 SENATOR VOLKER: Well, first of
17 all, I think there are a number of people in our
18 prison system, no question, who, as part of
19 their criminal background, have alcohol and drug
20 problems, possibly the percentage -- I guess the
21 percentage would vary depending on the area and
22 the situation, but there's no question there is
23 a fairly substantial percentage of people who -

1 who have alcohol and drug problems.

2 Obviously, not as many as some
3 people think because there's something, an
4 assumption that we have this huge number of
5 Rockefeller drug people in the prison system who
6 don't exist much anymore. We have a lot more
7 people who are there because of second felony
8 offender than because of the Rockefeller Drug
9 Laws.

10 Certainly, there are some people
11 who would need long-term treatment, and that is
12 something that we certainly realize, but there
13 have been some -- I think some studies that have
14 shown that a number of people can be dealt with
15 on a -- on a reasonably short-term but intensive
16 basis and with aftercare afterwards, and I think
17 that's what we're looking at here. Some people,
18 frankly, need very little treatment if their -
19 if they're comparatively, I don't want to say
20 minor offenders, because everybody that goes
21 through our prison system is a fairly major
22 offender one way or another, but comparatively
23 minor offenders and we are hopeful that the

1 treatment that they will get at Willard will
2 resolve their problems and they'll become good
3 citizens again.

4 SENATOR WALDON: My last
5 question, if I may, Mr. President.

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

8 SENATOR VOLKER: Certainly.

9 ACTING PRESIDENT KUHL: The
10 Senator continues to yield.

11 SENATOR WALDON: Thank you, Mr.
12 President. Thank you very much, Senator Volker,
13 for your indulgence to this moment.

14 I'm going to do as I have done on
15 the previous questions or at least on most of
16 them, I'm going to preface my question with a
17 kind of statement. We have a long history in
18 the state of professionals in our criminal
19 justice system. Each component of the criminal
20 justice system, for the most part, are doing a
21 very fine job. We have police officers as you
22 and I were in different parts of the state doing
23 their job, the judges in the courts and court

1 officers doing their job, the district attorneys
2 doing their job. We've had people in the
3 correctional system both at the city or county
4 or state level doing their job, and we have had
5 for those who are not in the prison per se but
6 under the jurisdiction of the criminal justice
7 system having very decent, professional
8 probation and/or parole officers involved with
9 them ensuring that they are monitored and
10 hopefully transitioned into being productive
11 citizens.

12 I did not notice any money in
13 this bill for probation or parole specifically.
14 I did not notice anything in the bill which said
15 we will shore up the parole system so that it
16 can monitor these people along with whatever
17 treatment modality they are in and transitioned
18 out of, so our society can be less fearful of
19 their return to the streets of the cities and
20 state of New York.

21 Can you tell us, one, is there
22 such money; two, what amount and what role
23 parole and probation will play and then, three,

1 which is really the reason I'm asking the
2 question, why was there not a greater
3 opportunity for parole and probation to be not
4 involved in but immersed in this process because
5 the success, as I understand it at least, of one
6 making it back on the street is determined by -
7 regarding drug addicts, they have kicked the
8 habit permanently. They now feel good about
9 themselves and can be productive citizens and
10 there's someone to ensure that what they say
11 they will be, they will be representing the
12 state of New York.

13 I apologize for the lengthiness
14 of the question, but I think I needed to say all
15 of that.

16 SENATOR VOLKER: Sure. Let me
17 just start out with the last of your questions
18 and answer it that way. The Parole Department
19 and the Department of Correctional Services has
20 been very much involved in setting up the
21 program at Willard. The decision to do this or
22 to set this program up was made in conjunction
23 with them and the -- both departments have been

1 working to -- with the idea -- in fact, I have
2 talked myself on several occasions with
3 Commissioner Coombe about -- you know, about
4 this -- this potential program and how it would
5 operate, and so forth, and I know Senator
6 Nozzolio has even communicated even more with
7 the Correction Department and with parole on
8 this issue.

9 The second question was on
10 aftercare money. I'm sorry. It's 5.8 million,
11 which is part of the federal -- is going to be
12 part of the federal drug money which we will be
13 -- I presume be passing I hope in the next week
14 or so. That's something that still remains to
15 be done, but there is 5.8 million in there that
16 I think has been virtually agreed on by everyone
17 and that will be part of this.

18 And finally there is money in the
19 intensive supervision lines of the Parole
20 Department which would also be used to assist in
21 this program.

22 SENATOR WALDON: Thank you very
23 much, Senator Volker.

1 I appreciate your indulgence and,
2 Mr. President, if I may on the bill.

3 ACTING PRESIDENT KUHL: Senator
4 Waldon on the bill.

5 SENATOR WALDON: Thank you very
6 kindly, Mr. President.

7 I sincerely am looking for hope,
8 not a panacea, but hope in regard to those who,
9 unfortunately, are the predators in our society
10 and who need to be dealt with in a prison
11 system, need to be dealt with harshly by the
12 criminal justice system.

13 I don't think that this bill is
14 the answer. I think that this bill will become
15 known one day down the road as the mandatory
16 maximum bill.

17 The idea of sentencing reform is
18 long overdue and it's great, because in this
19 state, the Rockefeller Drug Law failed miserably
20 and that's one of the reasons that our prisons
21 were bursting at the seams for so many years
22 with people that should have been treated from
23 the first day and in the first instance in a

1 medicological, pharmacological setting, and if
2 that's what we want to do, turn people around in
3 terms of their drug addiction and alcohol
4 addiction, then this approach won't work.

5 I'm not antagonistic towards
6 those who tried to make something work and came
7 up with this proposal. I believe that they
8 worked well and were trying to do the best
9 thing. I just think the pressure is on them to
10 take a hard line regarding violent felony
11 offenders who forced us to have to deal with
12 what we're dealing with here.

13 Unfortunately, I think that we're
14 going to find a proliferation of prison cells.
15 I think we're going to find a lot of technical
16 violators who will cause the cells to be
17 bursting on the front end and back end, because
18 there will not be sufficient treatment of those
19 who have a problem.

20 Now, some of us in this room have
21 gone into the prisons. I know I have. Some of
22 us have worked with local development
23 corporations which deal with the people who have

1 addictions. I have. Some of us may even have
2 seen firsthand what happens to family structures
3 when people are drug addicted or alcohol
4 addicted. It is a terrible, terrible problem.
5 It is not one easily treated.

6 There's no piece of candy that
7 turns someone around when they have been an
8 alcoholic and abusive for many, many years or
9 drug addicted and self-abusive for many, many
10 years. It's a long, hard struggle.

11 I don't think that this is the
12 answer. I wish it were. I wish I could support
13 it because I think the direction that Senator
14 Volker is trying to take us in is a right
15 direction, meaning putting those in prisons for
16 long times who should be there. They are not
17 the drug addicted and alcohol addicted. They
18 are sick people and we should treat them as
19 such.

20 So regrettably, Mr. President,
21 even though I think that the credo, the
22 movement, the motivation for Senator Volker was
23 well founded and was positively directed, I

1 think that the result is not what we need at
2 this moment in time, and I'll state -- and I
3 will have to vote against this and I regret
4 that.

5 ACTING PRESIDENT KUHL: The Chair
6 recognizes Senator Nozzolio on the bill.

7 SENATOR NOZZOLIO: Thank you, Mr.
8 President, my colleagues.

9 The Governor, in formulating this
10 bill, acting as we are as policymakers, has an
11 extremely important objective of taking violent
12 felons off the streets of the state.

13 Some of my colleagues on the
14 other side of the aisle have discussed revolving
15 doors in the criminal justice system. Absolute
16 ly right, but that revolving door isn't neces
17 sarily revolving with drug offenders at this
18 time. It is revolving with those who have
19 committed the most violent and heinous crimes
20 that could be committed in this state. That
21 revolving door has been used during the process
22 of work release where work release was placing
23 24,000 inmates in this state out into the

1 streets every year before their sentences were
2 up, many of whom had no work to be released to,
3 many of whom went into the environment without
4 the proper review, without the proper super
5 vision, without the proper understanding of who
6 those criminals were being let out into the
7 street by prior administrations in a willy-nilly
8 fashion, because there was no room at the inn.
9 The prisons were packed. There was no room for
10 violent felons.

11 Last year, the Corrections
12 Committee of this Senate held a hearing on work
13 release. Then Commissioner Coughlin indicated
14 that there are 12,000 inmates a year who are out
15 on work release that have committed violent
16 crimes, and of those who have been out on work
17 release last year alone, there were 4,000 who
18 absconded, half of whom have committed violent
19 crimes. In every city of this state, not just
20 New York, but every city of this state -- in
21 Rochester, Syracuse, Buffalo, there have been
22 incidents of those who are out on work release
23 and parole who have committed violent crimes

1 while out on work release.

2 That is the circumstance that the
3 Governor was faced with, violent criminals out
4 before their sentences were up, into society
5 committing very criminal conduct in most cases,
6 very disruptive conduct, very violent conduct.
7 Our prisons were crowded and busting at the
8 seams. The Governor took a very progressive, a
9 very dramatic step this winter, in one of his
10 first acts, establishing an executive order to
11 stop work release for violent felons.

12 Now, we're trying to change other
13 aspects of the criminal justice system and the
14 criminal penalty system. Senator Volker is to
15 be complimented for his tremendous activity, his
16 tremendous guidance of this entire process. I
17 for one thank him immensely.

18 The Governor is to be thanked for
19 his approach to trying to do something about
20 those who are non-violent but are taking,
21 because of their sentence, because of their drug
22 offense, because of their, in some cases, second
23 felony DWIs where they have been sentenced to

1 places like Cayuga Correctional Facility, a
2 medium correctional facility, special housing,
3 some who have committed second felony DWI, yet
4 that facility is geared to those who have
5 committed more significant conduct, dangerous to
6 society -- not that DWI is not dangerous, but
7 the inmates in and of themselves and the
8 criminals in and of themselves would not have
9 exhibited as violent behavior as those who have
10 committed rape, robbery and other larceny with
11 armed weapons, those types of individuals who
12 are incarcerated, are instead of being put out
13 into the street the Governor is trying to keep
14 them behind bars in order to enhance and
15 increase their penalties, in order for New York
16 to comply with federal crime bill money, in
17 order to assist us in complying with the federal
18 statutes that we nonetheless have to do more to
19 keep violent criminals off the streets.

20 I dare say no one on the other
21 side of the aisle, no one in the Assembly in the
22 Majority wishes to build new prisons. The
23 Governor had to do something to keep violent

1 criminals off the streets, and what he has come
2 up with, in my opinion, is a very unique concept
3 in allowing those non-violent drug offenders
4 into a treatment mode as a condition of their
5 sentence. They are to participate in drug
6 rehabilitation -- drug rehabilitation in this
7 proposal that is modeled after the same type of
8 drug rehabilitation now given by OASAS across
9 this state. As a matter of fact, OASAS is going
10 to manage the drug treatment operations at the
11 Willard campus.

12 Parole will be very much involved
13 in this entire process and the carrot will be
14 participating in drug treatment, getting into
15 this new system and, in effect, getting out in a
16 more rehabilitated way than any other time in
17 our state's history.

18 We have a Governor not just
19 giving lip service to rehabilitation. We're
20 saying, the Governor is saying, this proposal is
21 saying, and hopefully we will be saying soon
22 that this is the way to go to stop the revolving
23 door of drug offenders.

1 To those who have criticized the
2 process, in terms of it being not less than
3 open, I must say that this issue has been
4 discussed at length. It was discussed by the
5 Governor at length in a variety of open forums.
6 It's been discussed before those in the budget
7 committee when the Corrections Commissioner came
8 before us. It was discussed when the head of
9 the Department of Criminal Justice Services, the
10 head of the Division of Criminal Justice
11 Services came before the Crime and Corrections
12 Committee, when the heads of probation, the
13 heads of parole came before the Corrections
14 Committee this issue was discussed.

15 Mr. President, what we have is an
16 ideal alternative, one unique to New York State
17 and I dare say unique to the nation, where the
18 Department of Corrections is going to be
19 cooperating with OASAS in providing the type of
20 clinical rehabilitation necessary to reform
21 those who have committed crimes because of drugs
22 and alcohol, those non-violent criminals who but
23 for drugs and alcohol would not have engaged in

1 criminal conduct; and what this does, as Senator
2 Volker has explained very well, is free up cell
3 space at medium and maximum security facilities
4 in this state to use that cell space to keep the
5 violent criminals off the streets, something
6 that each and every one of us, I know, shares as
7 an objective, and what I believe, Mr. President,
8 is the best step that the Governor and this body
9 can take in order for us to make our streets
10 safe again.

11 I applaud those who have been
12 involved in this effort. I compliment the
13 Governor for his steadfast approach to this
14 problem, and I urge its passage.

15 ACTING PRESIDENT KUHL: The Chair
16 recognizes Senator Dollinger.

17 SENATOR DOLLINGER: Thank you,
18 Mr. President.

19 I can't be unmindful of the
20 President when he informs me that the speakers
21 list is not as long as the list of those who
22 want to leave. So I'll make my comments in that
23 context.

1 I promised my colleague, Senator
2 Jones, that I would quote a great American
3 philosopher, and I intend to do that. Passing a
4 bill that reforms the sentencing system in New
5 York State in one fell swoop is a little bit
6 like that comment that his mother made to
7 Forrest Gump, about life, Passing a bill is like
8 a box of chocolates. You never quite know what
9 you're going to get. You open the box of
10 chocolates and on the cover it says sort of
11 Pataki chocolates, says it's got -- advertises
12 that it's going to be good tasting and it's
13 going to be appetizing and it will solve some
14 problems, and you open up the box and what do
15 you see? You immediately see some kinds of
16 chocolates that you've eaten before, some thing
17 that look good, look appetizing that you've seen
18 before -- determinate sentencing, taking violent
19 felons and putting them in for longer periods of
20 time. Sounds like a good idea. I've tasted
21 that before; I think it will work.

22 I'd love to sample some of those
23 chocolates, so I pick up some of those, and I'm

1 prepared to eat those, but there are some other
2 things in there that I've never had before. You
3 know, the big sort of fluffy ones that may have
4 all kinds of creams in them. I'm not a cream
5 chocolate eater; I'm not quite sure what they're
6 going to taste like. So what do I do? I take a
7 little bit of a taste and I try to figure out
8 what's in them. Well, doesn't taste too bad,
9 but, lo and behold, I eat a couple of those that
10 don't taste too bad upon the first bite and I
11 find out, however, when they get into my
12 stomach, several hours later I realize I've got
13 a stomach ache because although -- even though
14 it didn't taste too bad when it got in my
15 system, it got in my stomach, then I wound up
16 being sick.

17 Well, at least from my point of
18 view, some of the things that are -- that are in
19 this bill may be just those kinds of
20 chocolates. You may have to wait until you
21 digest them a bit to find out that either the
22 taste at the start was a good indication that
23 they weren't going to be successful at the end.

1 The issue of the drug treatment
2 that is in this program I'm concerned about. I
3 think it may end up being one of those cream
4 filled chocolates that isn't good for you. It
5 may look good. It may have a nice appearance on
6 the top of the chocolate, but it may not be good
7 for our body politick in the long run. It may
8 be difficult to digest.

9 We may end up in a system where
10 90 days of drug treatment, if you've talked to
11 people in the drug treatment base, is a little
12 tiny bit. I went with Father Young -- Senator
13 Jones and I went with Father Young on the
14 Altamont Program, tremendous program. Four,
15 five years to get people out of drugs, serious
16 drug problems, coming out of jails and it seems
17 to me that today what we're asked to do is buy
18 that box of chocolates.

19 I have no choice. I'm not in the
20 Majority. I see parts of this box that I want
21 to buy, that I want to take. I see other parts
22 of it that are just as risky as that box of
23 chocolates. I don't know what they're going to

1 taste like. I don't know if they're going to
2 end up being good for me in the long run. They
3 may be, may all turn out to work. It may turn
4 out that all of the chocolates are good for me,
5 I'm not sure of it.

6 I know enough that I'm going to
7 vote yes. I'm going to take the chocolates that
8 I like, but I have a fear and Senator Waldon has
9 talked about the consequences, and Senator Abate
10 has talked about the consequences, but I have
11 this fear that like Forrest Gump, this state may
12 be waiting for a long time to get on the right
13 bus that will take us to where we really want to
14 go, and all we've got is a box of chocolates and
15 we never know quite which one we're going to
16 get.

17 ACTING PRESIDENT KUHL: Chair
18 recognizes Senator Padavan.

19 SENATOR PADAVAN: Very, very
20 briefly, there are two parts, two issues, that I
21 would like to address, one that has not been
22 spoken of up to this point.

23 On page 20 and 21 of this bill

1 you'll see an entire section that deals with the
2 deportation of illegal aliens in our prison
3 system. In 1983, the Department of Correctional
4 Services reported to our Senate Majority Task
5 Force on Immigration that there were
6 approximately 4,000 visitors in the state system
7 who were identified as undocumented illegal
8 aliens.

9 That was out of a total
10 population of immigrants of over 8,000. In our
11 local correctional facility such as Rikers
12 Island in the city of New York, there are also
13 significant numbers of illegal aliens. What
14 this bill provides for is a very well structured
15 mechanism whereby deportation procedures can be
16 initiated for certain categories of offenders
17 where deportation orders are generated through
18 INS on an expedited basis.

19 The net result of all of this is
20 that we will empty out a number of our cells by
21 deporting these illegal aliens whom we are
22 providing, at great expense, at great cost,
23 accommodations which could be used obviously for

1 other inmates for other reasons, for other
2 purposes.

3 So that's one very positive part
4 of this bill. It's not hypothetical. It's
5 being done in Florida. During 1994, they were
6 able to deport approximately 1500 prisoners out
7 of their jail system using a very similar if not
8 only identical procedure. We had urged our
9 governor, Governor Cuomo, to implement that
10 process. He was considering it and trying to
11 develop it. His criminal justice coordinator
12 was in support of it, but the bottom line is
13 they didn't do it.

14 We are now doing it in this bill,
15 and I think it's a major step forward. It's
16 going to save us a great deal of money. It's
17 going to provide additional space for other
18 types of prisoners, and I think it's a major
19 step forward.

20 And the other thing I would like
21 to touch on very briefly -- and a number of you
22 have spoken to it. In 1986, the Senate
23 committee then was Mental Hygiene and Addiction

1 Control, put out a report after a number of
2 hearings dealing with drug abuse priorities in
3 New York.

4 One section of the report dealt
5 specifically with the treatment of alcohol and
6 drug-addicted individuals in our state system
7 and in the report, too extensive for me to start
8 quoting here, but voluntary providers,
9 professional effort professionals came before
10 the committee people from Phoenix House and
11 other well known organizations and said mandated
12 drug treatment and alcohol treatment, wherever
13 you can mandate it in prison, produces positive
14 results. It reduces recidivism. It overcomes a
15 number of hurdles which voluntary providers
16 unfortunately are burdened with. Now, granted
17 six months is better than 90 days, a year is
18 better than six months, but the fact remains
19 this mandated program cannot help but produce
20 some positive results.

21 How many of those who go through
22 it and then are followed back to their locali
23 ties for follow-up, review and treatment, and so

1 on, who will not get in the recidivism pattern
2 is an open question. No one's going to be able
3 to answer that, but I would say to you and you
4 mentioned Father Young, and I've been to the
5 Altamont Program too, if you talk to him, he
6 will tell you that the more people he can reach
7 in prison, the better off we are. If he can
8 pigeonhole them into a program and when they are
9 released, the better off they are and the better
10 off we are.

11 So I would say to you that while
12 nothing is perfect either in this bill or in
13 anything else we ever do, this too is a major
14 step forward.

15 ACTING PRESIDENT KUHL: Secretary
16 will read the last section.

17 THE SECRETARY: Section 74. This
18 act shall take effect immediately.

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 SENATOR MARKOWITZ: Explain my
23 vote.

1 ACTING PRESIDENT KUHL: Announce
2 the results when tabulated.

3 SENATOR MARKOWITZ: Explain my
4 vote.

5 ACTING PRESIDENT KUHL: Senator
6 Markowitz to explain his vote.

7 SENATOR MARKOWITZ: Thank you,
8 Mr. President.

9 I want to make it clear no matter
10 how we vote on this bill, that every one of us,
11 Republican and Democrat alike, are committed to
12 reducing criminal activity in our state,
13 municipalities, counties and cities and
14 boroughs, number one, and number two, cracking
15 down to the greatest degree possible on violent
16 crime.

17 It's areas like ours from
18 Brooklyn, South Queens, Bronx, Manhattan, that
19 suffer the most, the result of violent crime and
20 that's why we care the most to get the kind of
21 legislation that will really make an impact on
22 the lives of all of us in our society that want
23 to live the best way we know how.

1 Now, you and I know the short
2 cuts that fail and the job, jobs, jobs, family
3 development, role counseling, family support
4 programs, quality education, decent health care,
5 we know you've heard it all before, there are no
6 short-cuts to losing weight except by exercise
7 and less consumption of food. There are no
8 short-cuts to resolving this problem that our
9 society continues to face. That's for sure.

10 I hope that we'll come back with
11 a bill in the near future, Senator Volker, that
12 will really move on resolving the issues to the
13 greatest degree that the society can in terms of
14 preventing crime, cracking down on those that
15 abuse our system, but on the other hand, on the
16 other hand, not resulting in a prison expansion
17 that takes away even more money from society to
18 help prevent the very crime we're trying to
19 impact on this evening and, secondly, will not
20 be dumping more of those that are drug afflicted
21 into our communities.

22 I vote no.

23 ACTING PRESIDENT KUHL: Senator

1 Markowitz will be recorded in the negative.

2 Senator Leichter to explain his
3 vote.

4 SENATOR LEICHTER: Yes, Mr.
5 President. I think some good concepts have
6 become terribly convoluted because of the
7 secretive process that was -- that has
8 characterized this bill, and nowhere have the
9 people of the state of New York paid a greater
10 price for the failure to have open deliberative
11 legislative consideration than in this
12 particular bill, because I think the potential
13 that we had a few new incarcerated prisoners
14 deal in a more rational way with people who are
15 not violent, I think, has become so twisted, I
16 think what we have here is a mish-mash.

17 We don't have the programs; we
18 don't have the support, the financial support
19 for the programs. We have not had the
20 opportunity to really let the law enforcement
21 community comment on this, have an input and
22 Senator Volker said, Well, the D.A.s have
23 approved this. I've seen absolutely nothing by

1 the D.A.s to approve it. I don't know what they
2 could have approved because, when I got the bill
3 two hours ago, held it, it was hot. It had just
4 come off the press.

5 There has been no review of this
6 bill by people who certainly should have had an
7 input and who could have guided us. Three men
8 in a room with a budget for weeks after weeks,
9 failure to include the whole Legislature,
10 refusal to let the public in on the process,
11 results in taking a good idea and ending up with
12 something that I don't believe is going to
13 work.

14 Yes, like every -- like everyone
15 else here, I want to deal with crime, but I
16 don't believe this is the way to do it.

17 Mr. President, I vote in the
18 negative.

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

21 Results.

22 THE SECRETARY: Those recorded in
23 the negative on Calendar Number 1092 are

1 Senators Abate, Babbush, Connor, Leichter,
2 Markowitz, Nanula, Paterson and Waldon, also
3 Senator Montgomery, also Senator Smith. Ayes
4 47, nays 10.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 Senator Stachowski, why do you
8 rise?

9 SENATOR STACHOWSKI: Mr.
10 President, I'd like to request unanimous consent
11 to be recorded in the negative on Calendar
12 Number 1091.

13 ACTING PRESIDENT KUHL: Without
14 objection, hearing no objection, Senator
15 Stachowski will be recorded in the negative on
16 Calendar Number 1091.

17 Senator Nanula.

18 SENATOR NANULA: I, too, Mr.
19 President, would like to request unanimous
20 consent to be recorded in the negative on
21 Calendar Number 1091.

22 ACTING PRESIDENT KUHL: Hearing
23 no objection, without objection, Senator Nanula

1 will be recorded in the negative on Calendar
2 Number 1091.

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

5 ACTING PRESIDENT KUHL: No
6 housekeeping. It's been all taken care of,
7 apparently Senator Skelos.

8 Senator Skelos.

9 SENATOR SKELOS: There being no
10 further business, I move that we adjourn until
11 Monday, June 5th, 1995 at 3:00 p.m., intervening
12 days to be legislative days.

13 ACTING PRESIDENT KUHL: Without
14 objection, the Senate stands adjourned until
15 Monday, June 5th, at 3:00 p.m.

16 (Whereupon at 10:55 p.m., the
17 Senate adjourned.)

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