ALBANY, NEW YORK

June 2, 1995

10:05 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

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

(A moment of silence was observed.)

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

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

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

THE SECRETARY: Senator Abate.
SENATOR ABATE: Here.
THE SECRETARY: Senator Babbush.
(There was no response.)
Senator Bruno.
SENATOR BRUNO: Here.
THE SECRETARY: Senator Connor.
(Affirmative indication.)
THE SECRETARY: Senator Cook.
(There was no response.)
Senator DeFrancisco.
SENATOR DeFRANCISCO: Here.
THE SECRETARY: Senator DiCarlo.
SENATOR DiCARLO: Here.
THE SECRETARY: Senator Dollinger.
(There was no response.)
Senator Espada.
(There was no response.)
Senator Farley.
(Affirmative indication.)
THE SECRETARY: Senator Galiber.
(There was no response.)

Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
(There was no response.)
Senator Hoblock.
(There was no response.)
Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Here.
THE SECRETARY: Senator Johnson.
(There was no response.)
Senator Jones.
SENATOR JONES: Here.
THE SECRETARY: Senator Kruger.
(There was no response.)
Senator Kuhl.
SENATOR KUHL: Present.
THE SECRETARY: Senator Lack.

(There was no response.)
Senator Larkin.
SENATOR LARKIN: Here.
THE SECRETARY: Senator LaValle.
(There was no response.)
Senator Leibell.
SENATOR LEIBELL: Here.
THE SECRETARY: Senator Leichter.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: Here.
THE SECRETARY: Senator Maltese.
(There was no response.)
Senator Marcellino.
SENATOR MARCELLINO: Here.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Present.
THE SECRETARY: Senator Markowitz.
(There was no response.)
Senator Maziarz.

SENATOR MAZIARZ: Present.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
(There was no response.)
Senator Nanula.
(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Present.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: To explain my presence, Mr. President.
(Laughter.)
THE SECRETARY: Senator Oppenheimer.
(There was no response.)
Senator Padavan.
SENATOR PADAVAN: Here.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: Here.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Here.
THE SECRETARY: Senator Rath.

SENATOR RATH: Here.
THE SECRETARY: Senator Saland.
(There was no response.)
Senator Santiago.
(There was no response.)
Senator Sears.
SENATOR SEARS: Present.
THE SECRETARY: Senator Seward.
(There was no response.)
Senator Skelos.
(There was no response.)
Senator Smith.
(There was no response.)
Senator Solomon.
(There was no response.)
Senator Spano.
(There was no response.)
Senator Stachowski.
(There was no response.)
Senator Stafford.
SENATOR STAFFORD: Here.
THE SECRETARY: Senator Stavisky.
(There was no response.)

Senator Trunzo.

SENATOR TRUNZO: Here.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Here.

THE SECRETARY: Senator Velella.

(There was no response.)

Senator Volker.

SENATOR VOLKER: Here.

THE SECRETARY: Senator Waldon.

(There was no response.)

Senator Wright.

SENATOR WRIGHT: Present.

SENATOR LAVALLE: Mr. President.

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

SENATOR LAVALLE: May I ask my name be called, please?

ACTING PRESIDENT KUHL: The Secretary will call -

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Here.

ACTING PRESIDENT KUHL: The Secretary will call the absentees.

THE SECRETARY: Senator Babbush.
(There was no response.)
Senator Cook.
(There was no response.)
Senator Dollinger.
(There was no response.)
Senator Espada.
(There was no response.)
Senator Galiber.
(There was no response.)
Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
(There was no response.)
Senator Hoblock.
SENATOR HOBLOCK: Here.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Johnson.

(There was no response.)

Senator Kruger.

(There was no response.)

Senator Lack.

(There was no response.)

Senator Leichter.

(There was no response.)

Senator Levy.

(There was no response.)

Senator Maltese.

(There was no response.)

Senator Markowitz.

(There was no response.)

Senator Mendez.

(There was no response.)

Senator Montgomery.

(There was no response.)

Senator Nanula.

(There was no response.)

Senator Oppenheimer.

(There was no response.)

Senator Saland.

(There was no response.)

Senator Santiago.
(There was no response.)
Senator Seward.
(There was no response.)
Senator Skelos.
(There was no response.)
Senator Smith.
(Affirmative indication.)
THE SECRETARY: Senator Solomon.
(There was no response.)
Senator Spano.
SENATOR SPANO: Present.
THE SECRETARY: Senator Stachowski.
(Affirmative indication.)
Senator Stavisky.
(There was no response.)
Senator Velella.
SENATOR VELELLA: Here.
THE SECRETARY: Senator Waldon.
(There was no response.)
ACTING PRESIDENT KUHL: Senator Bruno, there is a quorum present.

Reading of the Journal.

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

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The reading of the Journal.

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

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

read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Farley.

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

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

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

ACTING PRESIDENT KUHL: The

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

The Chair recognizes Senator Bruno.

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

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

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

ACTING PRESIDENT KUHL: The Secretary -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

THE SECRETARY: Section 6. This

act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

or discharge passengers.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay it aside.

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

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

upon issuance of certain orders of protection.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR BRUNO: Mr. President,

can we at this time take up the controversial calendar.

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

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

SENATOR PATERSON: Explanation.

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

SENATOR KUHL: Thank you, Mr. President.

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

look.

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

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

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

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Would the Senator yield for a question?

ACTING PRESIDENT DeFRANCISCO: Would Senator Kuhl yield?

SENATOR KUHL: Yes.

ACTING PRESIDENT DeFRANCISCO: He will.

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

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

for most participants.

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

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Kuhl would yield for another question?

SENATOR KUHL: Yes.

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

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

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

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

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

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl.

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator.

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

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

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

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

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

ACTING PRESIDENT DeFRANCISCO: Read -- Senator Leichter.

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

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl, will you yield?

SENATOR KUHL: I would be happy to.

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

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

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

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

that I gave you may not be considered gross negligence.

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

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

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

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

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

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

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

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

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

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

it really doesn't happen that way.

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

SENATOR KUHL: I would be happy to.

SENATOR LEICHTER: I thank you for that explanation.

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

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

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

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

SENATOR LEICHTER: I know.

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

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

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

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

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

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

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

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

SENATOR LEICHTER: You convinced me.

Thank you.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

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

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl?

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

(Laughter.)

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

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

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

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

Thank you.

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

SENATOR KUHL: I honestly don't

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

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

ACTING PRESIDENT DeFRANCISCO: Read the last section.

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

ACTING PRESIDENT DeFRANCISCO: Please call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT DeFRANCISCO: Results.

THE SECRETARY: Ayes 48.

ACTING PRESIDENT DeFRANCISCO: The bill is passed.

The Secretary will read.

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

ACTING PRESIDENT DeFRANCISCO: Excuse me. Excuse me.

Senator Velella.

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

ACTING PRESIDENT DeFRANCISCO: There will be an immediate meeting of the Rules Committee in Room 332.

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

ACTING PRESIDENT DeFRANCISCO: The Secretary will please read.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DeFRANCISCO: Explanation, Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

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

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

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

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

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

ACTING PRESIDENT DeFRANCISCO: Senator Saland.

SENATOR SALAND: Yes, Mr. President.

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

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

SENATOR PATERSON: Then, just in terms of -

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

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

SENATOR PATERSON: Okay.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

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

SENATOR SALAND: Yes, Mr. President.

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

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

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

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

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

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

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

ACTING PRESIDENT DeFRANCISCO: Senator Saland.

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

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

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

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

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

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

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

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

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator.

I just wanted to see how you felt about that.

ACTING PRESIDENT DeFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DeFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT DeFRANCISCO: The bill is passed.

That completes the controversial calendar.

SENATOR VELELLA: Do we have any housekeeping?

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

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

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

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

ACTING PRESIDENT KUHL: The Senate will come to order.

The Chair recognizes Senator Velella.

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

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

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

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

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

relation to non-hazardous municipal landfill closure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2302, by Senator Stavisky, an act

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

All bills ordered directly for Third Reading.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Velella.

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Rules report is adopted.

All bill are directed to third reading.

Senator Velella.

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

ACTING PRESIDENT KUHL: We do.

The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

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

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

Senator Farley.

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

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

Senator Farley.

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

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

Senator Montgomery, did you have something?

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

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

Senator Velella.

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

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

THE SECRETARY: Calendar Number

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: The substitution is ordered.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: The

substitution -- the substitution is ordered. The Secretary will read the title.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

SENATOR LEICHTER: Mr. President,

can I have -

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote?

SENATOR LEICHTER: -- my name called?

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: To explain my vote.

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

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

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

ACTING PRESIDENT KUHL: Senator

Dollinger will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1085, by Senator Present, Senate Print 5154, an act to amend the Highway Law, in relation to construction and maintenance of streets and highways within the city of Salamanca and on the Allegheny Indian Reservation.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR VELELLA: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR VELELLA: Lay it aside for the day.

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

Senator Velella, that completes the non-controversial calendar.

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

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

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

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

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

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

rule or regulation.

SENATOR LEICHTER: Yeah -

ACTING PRESIDENT KUHL: Senator Leichter.

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

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

SENATOR WRIGHT: Certainly, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator

Wright, do you continue to yield?

SENATOR WRIGHT: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

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

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

SENATOR WRIGHT: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Wright continues to yield.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Wright to respond.

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

recommendations that reflect our concern about job losses.

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

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

SENATOR LEICHTER: Senator Wright, I thank you.

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

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

I thank you.

ACTING PRESIDENT KUHL: Senator Wright to respond.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

precursors of controlled substances.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: An explanation has been asked for.

SENATOR VOLKER: Mr. President, this -

ACTING PRESIDENT KUHL: Senator Volker.

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

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

problems in Dallas and various cities in the country.

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

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

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Volker would certainly yield.

SENATOR VOLKER: Certainly.

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

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

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

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

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

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

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

have not heard of any opposition to this.

SENATOR LEICHTER: Thanks.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

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

ACTING PRESIDENT KUHL: Senator Volker yields to Senator Abate.

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

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

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

SENATOR ABATE: Thank you.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

SENATOR PATERSON: Explanation.

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

Senator Paterson.

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

ACTING PRESIDENT KUHL: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

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

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If I could just ask Senator Marcellino -

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

SENATOR MARCELLINO: It's my pleasure.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

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

SENATOR LEICHTER: Excuse me?

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

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

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

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

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

Thank you.

ACTING PRESIDENT KUHL: The Secretary -- Senator Paterson.

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

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

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Solomon, why do you rise?

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

and Calendar Number 1073.

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

Senator DiCarlo.

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

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

SENATOR DiCARLO: Let's do the housekeeping.

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

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

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

The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

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

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

Senator Dollinger, why do you rise?

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

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

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

recorded in the negative on Number 1073?

ACTING PRESIDENT KUHL: Without objection.

SENATOR DiCARLO: No.

ACTING PRESIDENT KUHL: Hearing no objection -

SENATOR DOLLINGER: Thank you.

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

Senator Abate.

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

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

Senator DiCarlo.

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

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

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

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

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

Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

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

Mr. President, my colleagues,

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

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

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

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

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

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

Thank you.

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

SENATOR CONNOR: Let it go.

ACTING PRESIDENT KUHL: Senator Bruno.

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

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

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

ACTING PRESIDENT KUHL: Senator Bruno.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 55.

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

Senator Bruno.

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

1550B, move it have its third reading.

ACTING PRESIDENT KUHL: Amendments are received and adopted. Bill is before the house. Would you read the title.

THE SECRETARY: Calendar -

ACTING PRESIDENT KUHL: Secretary will read the title.

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

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

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is adopted.

SENATOR BRUNO: Mr. President, can we at this time take up Senate 1550B.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Connor on the State Operations Budget Bill.

SENATOR CONNOR: Thank you, Mr. President.

Senator Bruno introduced the budget in general. I just wanted to point out to the members this is not the tax cut bill. This is not -- this is just one part of the budget. It's State Operations and, while it does represent some cuts, I think for many of us there are reasons to support this in the spirit of compromise because some significant restorations were made in this; for example, the

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

Thank you, Mr. President.

SENATOR BRUNO: Last section.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

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

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

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

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

SENATOR LEICHTER: Mr. President.

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

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

ACTING PRESIDENT KUHL: Yes.

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

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

Senator Stavisky.

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

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

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

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

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

SENATOR DiCARLO: Thank you, Mr. President.

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

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

Senator DiCarlo.

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

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

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

ACTING PRESIDENT KUHL: The

Senate will come to order for a couple minutes.

The Chair recognizes Senator Wright.

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

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

Senator Wright.

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

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

Third Reading Calendar.

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

ACTING PRESIDENT KUHL: The Senate will come to order.

Senator Paterson for an announcement.

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

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

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

THE PRESIDENT: The Senate will come to order.

Senator Skelos.

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

Finance Committee.

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

The Secretary will read.

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

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

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

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

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

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

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

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

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

SENATOR SKELOS: Move we accept.

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

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The message is accepted.

Senator Skelos.

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

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: Senator Stafford, an explanation, please.

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

THE PRESIDENT: 5279.

SENATOR DOLLINGER: Thank you.

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

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

THE PRESIDENT: Some order,

please.

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

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

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

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

Now, we have a long way to go and we're going to have to do much more, but I would suggest we are making a start. I could also mention, and I should, the motor fuel refund tax, the real estate transfer tax spin-up. We've mentioned revisions in the lottery. I've mentioned the pari-mutuel, the utilities and some other recommendations from the Governor.

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

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Thank you, Madam President.

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

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

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

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

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

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

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

this state lose out.

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

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

Thank you, Mr. President.

THE PRESIDENT: Senator Leichter.

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

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

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

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

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

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

be significantly or at all affected by these tax decreases.

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

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

eliminated.

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

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

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

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

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

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

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

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

Now, in New Jersey where Governor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE PRESIDENT: There are two amendments at the desk.

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

THE PRESIDENT: Yes.

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

THE PRESIDENT: The reading of the amendment is waived.

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

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

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

Madam President, I move the amendment.

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

(Response of "Aye.")

All those opposed please signify by saying nay.

(Response of "Nay.")

The amendment is defeated.

Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

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

SENATOR STAFFORD: By all means.

THE PRESIDENT: Yes.

SENATOR WALDON: Thank you, Madam President.

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

THE PRESIDENT: Senator Stafford.

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

SENATOR WALDON: Answer the question, please, sir.

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

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

THE PRESIDENT: Yes, Senator Waldon.

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

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

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

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you very much.

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

neighborhoods from which they are generated, to your knowledge?

THE PRESIDENT: Senator Stafford.

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

THE PRESIDENT: Senator Waldon.

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

SENATOR STAFFORD: I think I -

SENATOR WALDON: Let me rephrase the question.

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

SENATOR WALDON: Yes. Historically -

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

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

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

SENATOR WALDON: If I may.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you, Madam President.

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

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

THE PRESIDENT: Senator Stafford.

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

THE PRESIDENT: Senator, please.

SENATOR STAFFORD: -- that this

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

SENATOR WALDON: Thank you, Senator.

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

THE PRESIDENT: Proceed, Senator Waldon.

SENATOR WALDON: Thank you, Madam President.

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

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

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

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

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

SENATOR WALDON: Thank you very much, Senator Stafford.

Madam President, if I may, on the

bill.

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

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

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

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

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

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

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

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

Thank you very much.

THE PRESIDENT: Senator Goodman.

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

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

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

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

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

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

highest tax paying people an enormous amount of revenue.

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

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

by 1997.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

run will be to the benefit of us all.

THE PRESIDENT: Thank you, Senator Goodman.

Senator Leichter, why do you rise?

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

SENATOR GOODMAN: Indeed, Senator.

THE PRESIDENT: Senator Goodman, will you yield?

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

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

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

SENATOR GOODMAN: Even the Battle

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

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

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

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

SENATOR GOODMAN: No, you're never nasty.

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

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

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

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

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

SENATOR LEICHTER: Senator -

SENATOR GOODMAN: Do you recall that?

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

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

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

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

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

SENATOR LEICHTER: Senator.

THE PRESIDENT: Senator Leichter.

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

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

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

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

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

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

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

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

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

THE PRESIDENT: Thank you, Senator Goodman.

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

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

SENATOR GOODMAN: Yes, Senator, with pleasure.

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

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

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

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

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

evil.

Thank you, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Thank you, Madam President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE PRESIDENT: Senator

Dollinger.

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

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

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

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

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

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

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

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

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

I think it will have the

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

SENATOR LIBOUS: I'd ask if Senator Dollinger would yield to a question.

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

ACTING PRESIDENT DiCARLO: Senator Dollinger will not yelled.

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

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

ACTING PRESIDENT DiCARLO: Senator DeFrancisco.

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

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

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

SENATOR DeFRANCISCO: Would you yield for another question?

ACTING PRESIDENT DiCARLO: Would you yield?

SENATOR DOLLINGER: I'll be glad to.

ACTING PRESIDENT DiCARLO: He will yield, sir.

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

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

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

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

SENATOR DeFRANCISCO: Will the Senator yield to another question?

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

SENATOR DOLLINGER: I'll be glad to.

ACTING PRESIDENT DiCARLO: Senator, he will.

SENATOR DeFRANCISCO: If you

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

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

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

SENATOR DeFRANCISCO: One last

question, if you'd yield.

SENATOR DOLLINGER: I'd be glad to.

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

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

SENATOR DOLLINGER: I do, Mr. President.

SENATOR DeFRANCISCO: I have no other questions.

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

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

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

next few hours, perhaps few days.

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

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

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

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

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

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

SENATOR MARKOWITZ: On the

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

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

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

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

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

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

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

SENATOR MARKOWITZ: Just a question of Senator Stafford.

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

SENATOR STAFFORD: By all means,

Senator.

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

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

SENATOR STAFFORD: Well, Mr. President.

ACTING PRESIDENT DiCARLO: Senator Stafford.

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

SENATOR MARKOWITZ: Well, Senator, obviously -

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

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

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

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

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

ACTING PRESIDENT DiCARLO: Thank you, Senator Stafford.

Senator Markowitz, did you wish to continue?

SENATOR MARKOWITZ: Let me just conclude on that.

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

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

Thank you very much.

ACTING PRESIDENT KUHL: Senator Stachowski.

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

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

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

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

SENATOR STAFFORD: You're exactly right.

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

SENATOR STAFFORD: I think I could.

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

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

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

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

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

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

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

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

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

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

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

year commitment to attend -

SENATOR STACHOWSKI: Senator, if I could.

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

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

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

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

SENATOR STACHOWSKI: If the Senator would continue to yield.

ACTING PRESIDENT DiCARLO:

Senator Stafford, will you continue to yield? Sir? Yes, I believe he will.

SENATOR STAFFORD: Yes.

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

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

SENATOR STACHOWSKI: If the Senator would continue to yield.

SENATOR STAFFORD: Yes.

ACTING PRESIDENT DiCARLO: Senator Stafford will continue to yield.

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

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

ACTING PRESIDENT DiCARLO:

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

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

SENATOR STACHOWSKI: Senator -

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

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

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

SENATOR STAFFORD: Yes, I will.

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

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

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

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

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

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

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

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

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

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

SENATOR STACHOWSKI: If the

Senator would continue to yield.

ACTING PRESIDENT DiCARLO: Senator Stafford, would you continue to yield to Senator Stachowski? He will.

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

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

SENATOR STACHOWSKI: Thank you,

Senator.

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

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

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

ACTING PRESIDENT LACK: Senator Abate.

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

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

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

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

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

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

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

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

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

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

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

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Announce the results, please.

Oh, Senator Waldon -- Senator Tully.

SENATOR TULLY: Thank you, Madam President.

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

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

I have never voted for gambling

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

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

I vote aye.

THE PRESIDENT: Thank you, Senator Tully.

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

And Senator Waldon to explain your vote.

SENATOR WALDON: Thank you very much, Madam President.

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

This bill, I must vote no on, but I want you to understand that it's a very reasoned vote, in my opinion. There are parts of this bill that I applaud.

For example, I recognize the need to help the racing industry, and I think what was done, Mr. Chairman, Senator Stafford, in that regard, was tremendous. I think we need to keep people in New York State and increasing the amount of money that our state can receive certainly will help in that regard, and there are other phases of this proposal which are

excellent, in my opinion.

However, because of the reasons I expressed earlier, especially in regard to Keno and the disparate impact on the community -- I serve in similar communities, I must vote this time in the negative.

However, I want us to understand that, even though sometimes it may appear that there's just contentiousness coming from this side of the aisle from this seat, it is not true that it is universally the case, because sometimes you state the case. You make the case, and even though philosophically we are apart, we are not universes apart.

Thank you, Madam President.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

First I, like Senator Padavan and Senator Tully, have grave reservations about the Quick Draw, first the amount of revenues that would be forthcoming and also the negative

social impact of it.

However, I think that this bill is so important on the other end, the tax reductions, that it definitely merits a yes vote.

Now, we've heard different comments about the tax cut and the effect that it's going to have, but there's one thing that everybody that spoke seems to agree on, no matter where they happen to sit in this chamber, and that is that we need to create jobs in this state. I don't think anyone can disagree with the fact that we've done a miserable job of it in the last several years.

So I guess what this bill is saying, we may be right or we may be wrong, but don't you think it's worth a chance? Don't you think it's worth an opportunity to vote for this bill and give us an opportunity to create jobs that everyone wants to do in this -- in this chamber?

The property tax issue, everyone is concerned whether or not local property taxes

are being raised. Members of this august body, we have been pouring money to the localities year after year after year, and if any of you have had a property tax reduction in your community while we have had these high taxes, let me know, because I want to know how you do it.

Money being thrown at the municipalities is not the answer for a property tax reduction. It's spending cuts, and that's the answer. We're worried about services; all of us are, but there's one thing that you've got to recognize is that we spend more than we have to. When we spend in Medicaid fund -- Medicaid expenses more than the second two highest states, something is basically wrong.

So I think on balance, this is the best way to go. We're going to change the direction of this state. At least we're going to give this state an opportunity to change the direction that we've had over the past several years, a direction that hasn't created jobs. This will give us that opportunity.

THE PRESIDENT: Thank you.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, I rise to explain my vote.

This bill and this budget that we're voting on tonight or the beginnings of it is not perfect. It's the product of compromise and compromise, by nature, probably pleases no one.

This state, however, is in deep trouble, and while I have concerns as have been expressed by my colleagues with respect to the Quick Draw aspect, I also have concerns with respect to job loss which has been going on in this state.

While the rest of the nation has been coming out of a recession, we have been getting deeper and deeper into it. This state has to do some major surgery on the way it does business. All levels of government have to restructure and revise their thinking on how we -- they deliver the services our people need and want, and I think we have to look at it in

just that order, need and want, and need comes first.

Those who are in need should be protected and helped and assisted to the fullest extent that we can be capable of, and those that can afford to pull the wagon should pull the wagon as much as they can afford to pull it.

The tax cuts in this bill go to the lower end of the spectrum. They do not go to the wealthiest end of the spectrum. By no means by anybody's stretch of the imagination can anyone making $55,000 a year this time in this day and age be considered wealthy. In my district, that usually means two, probably even more working people in the family to get to that level of income, and that's probably the way the norm is these days.

We are helping the middle class with this tax cut. Hopefully we will bring some jobs to our area and if all levels of government do what the state is doing with the leadership of Governor Pataki and the members of this body and the members of the other house who are

voting for this bill, perhaps we can begin a new age in the state of New York. Take that first step, as Confucius said, "Every journey begins with the first step." This is the first step for a new generation for this state. I will look forward to that and I will look forward to its working for the benefit of all of our citizens.

I will vote yes on this bill.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President. I rise to explain my vote.

In any large undertaking such as this budget, there's always going to be some parts of it that an individual Senator may have some grave reservations about, as I do with the Quick Draw, and I want to go on record today saying that I do not think Quick Draw is the avenue that this state should take for raising money. It's not -- I think that the revenue projections are greatly overstated, but the tax cut portions of this bill far -- far outweigh the negative aspects of Quick Draw, and I will

be voting yes on this bill.

Thank you.

THE PRESIDENT: Senator Jones.

SENATOR JONES: Yes. I rise to explain my vote.

I listened to what Senator Tully said and Senator Maziarz, and I think they said it much more eloquently than I could.

I certainly have learned that life is a compromise and clearly today we stand here realizing government is as well. It's like when you get a box and there's three things in it you love as a gift and one you hate, but I guess you have to take the box.

I came here certainly wanting to cut spending in this state government. I was very committed to relieving businesses of their tax burdens and trying to get New York back on the track. I'm hoping that many of the things that are going to come out of this budget are certainly at least going to get us on the road to doing that.

I also have to agree, though,

with a couple of my colleagues. I feel very uncomfortable that any portion of this tax increase we're giving is coming from gambling to make up the deficit. I don't support that. I feel uncomfortable about that, and I came from the field of education, and I can tell you they're still out there waiting for the lottery money that they thought was going to be in excess years ago when we first put it in.

I hope you're right that this will bring you the income. I really wish we had looked for other ways to find it, and maybe in time we can because I don't think that sends a very good message that this is how we need to support our state; but again, the rest of the things in the box are things that I want to see happen and -- so hopefully we take the good with the bad and it will get New York back on the track that we want it on.

I vote yes.

THE PRESIDENT: Thank you, Senator Jones.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President. I would like to rise to explain my vote.

I am going to support this piece of legislation for the same reasons that a lot of my colleagues support it, and I know that with 60 different colleagues in this room, we have a very diverse state and various opinions, and I certainly respect the opinions of my colleagues, but I see this as a job generation.

Yesterday afternoon I spent two hours in a meeting on the second floor with officials from Hughes Aircraft who are talking about pulling 1400 jobs out of my district and out of New York State, and repeatedly time and time again in those discussions, they continued to say that the tax structure in this state is not conducive to business and it is not conducive to the employees that we employ in our facility; it's too high. It doesn't compare with Texas. It doesn't compare with Virginia. It doesn't compare with California.

Hughes is just one big example of

an opportunity where we may lose 1400 jobs in this state, but I have had discussions with head hunters and other officials over the course of the last couple of months, and what they continue to tell me repeatedly is that if the state changes direction, if some of the proposals that the Governor had put forth back in February become reality, that they will begin to look at New York State again as a place to do business, a place to have a home for corporate -- for companies and their major corporations.

Up until now, they're not looking at us. They're running away from us. They're pulling out in bus loads. Company after company continue -- they continue to tell me that if you change the tax structure in this state, you make some real effort for a new direction, reduce spending, we will begin to look at your state to generate jobs.

We have a lot of social problems in this state. We have a lot of things that people in this chamber have been committed to. My number 1 commitment to the people who elect

me and send me here is to create jobs.

I vote aye on this bill.

THE PRESIDENT: Thank you.

Senator Rath.

SENATOR RATH: Yes, Madam President.

I rise to also support the measure in front of us today, and I think I may take a tack that's a little different, taking a look at what we will probably find when we get home this weekend, if we're there this weekend, certainly after the session is over and we start to move around our communities.

I know in my community in western New York, what I'm probably going to hear some of is, "Well, now we're going to have local property taxes and we're going to have local school taxes go up because the state has not fulfilled the requirements or the requests that were made."

But let me point out a couple of facts to you. State funding to local schools went up $4.2 billion, a total of 91 percent

between '93 -- '83 and '93. In spite of these increases, local school taxes went up 6.5 billion, a total of 93 percent. Student enrollment fell by 167,650. Numbers of teachers rose by 20,000 or 11 percent. Number of school administrators rose also. Staff increases alone raised local costs more than $1 billion. And so what we're voting on today is a balanced package between what we vote today and what we vote - we finish on Tuesday; the balanced package that is so necessary to provide services from the state, provide services from the localities and the schools, but not anyone takes the undue responsibility of not cutting back.

We've cut back everywhere in this state this year with this budget, but I don't want to go home and hear that we didn't do our jobs by not giving more money and more money and more money when, indeed, the localities and the schools have responsibilities also to tighten their belt.

We're going to try to help businesses stay in New York State, try to

encourage them to come to New York State and as we do that, yes, more revenue will be produced and, yes, we will then be able to fund possibly additional revenue sharing, additional school costs, et cetera but, in the meantime, let's work towards a balanced approach and not be allow it to be said that we were mean-spirited and that we weren't concerned about the tenuous balance that exists between the local tax burden and the state tax burden.

Thank you.

My vote will be yes.

THE PRESIDENT: Senator Oppenheimer -

SENATOR OPPENHEIMER: Yes.

THE PRESIDENT: -- did you ask to explain your vote?

SENATOR OPPENHEIMER: Yes, yes. I didn't think you saw me. Thank you, Madam President.

Well, I'm going to be voting no and it isn't because I don't love a tax cut, I do, but I don't think that this tax cut is going

to turn New York State's economy around.

I guess in this case, which is somewhat unusual, I do want to echo some of the things that Senator Leichter said.

I think that national trends, economic trends are really what determine the fate of our state, even though, of course, we would like to keep our tax rates somewhat in line with those of our neighbors, but I do not see our personal income tax as being the major problem in New York State.

As I have mentioned earlier and on many occasions it is really the property tax in New York State that is so out of whack with the rest of the United States. We are far and away the first in property taxation in the United States. I believe we are first and double what the second state is, and I think that is the area that we have to turn our attention to. We are not number one in personal income tax by any stretch of the imagination.

I think that this tax, if continued to grow for three -- this tax

reduction, if continued to grow out for three years, is really going to prove us very fiscally irresponsible.

I think that tax cut that we all took in 1986 -- and I was a member, and I was happy to vote for it -- I think that has created in our state a structural deficit in our budget, and I think since that time, we have been faced with a true imbalance between our revenues that we take in and our expenditures, and I -- I think that that was an error and it certainly did not produce the kind of jobs that we hoped that big tax reduction would produce. We wouldn't be here now talking about all of these half a billion jobs that have been lost were that to have worked. So I don't truly believe that "trickle down" has an impact on the creation of jobs and creating a healthy economy.

I am very concerned about what the third year of this tax cut will be. The second year scares me enough with two and a half billion, but $4 billion will be the reduction in year three, and I don't know what we're going to

do to cure that imbalance that we have made.

THE PRESIDENT: Thank you.

SENATOR OPPENHEIMER: No, I'm not -- one more small thing.

I personally feel, and I think it can be proven in many studies that our economic future in this state depends on the training and the education, the job skills that we give our young people, and I think that from what I have seen in this budget -- at least what I believe will be in the budget because we haven't seen the full budget, but in the local assistance budget, I don't believe that there's a lot of money that's been put aside to develop our youth, to provide them with education, to give them the job skills training and to prepare them for a viable economy, nor is there a plenitude of jobs out there for them to go into once they receive the training.

The reduction in our top rate over three years is going to go from seven and seven-eights to six and seven-eights percent, and I think this is much too small an amount of

money to warrant the pain that will be inflicted on our sick, our elderly, our students and, as I have mentioned before, it is only going to exacerbate our major problem which, to me, is the property tax.

So I will be voting no.

THE PRESIDENT: Thank you.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President. To explain my vote.

Madam President, my colleagues, the Governor of this state promised to reduce the size of government, to spend less this year than last year, to cut New York's income taxes and to replace a failed welfare system with Workfare. Madam President, my colleagues, that's exactly what this budget does.

For the first time since World War II, we will be approving a spending package that spends less than the previous year. That's exactly the kind of change that New Yorkers voted for last November and I'm proud to have worked for a budget that does more with less.

We will be debating in further bills -- and we have just passed in the State Operations Budget some major reforms in the state's criminal justice system. I particularly am very proud to have been part of the debate and established a proposal that we have worked on for many years and is finally coming into fruition, and it's especially meaningful when the final outcome of our hard work will have a positive impact on the community that I represent.

Madam President, we have, in establishing criminal justice reforms, taken a giant step in ensuring that those who have committed crimes because of substance abuse will be placed in a facility of incarceration that will do much to serve and to help them rehabilitate themselves.

The new facility at the Willard State Campus will, in fact, establish a new era of drug and alcohol rehabilitation for those who are committing crimes because of substance abuse and, at the same time, ensure that those who are

committing violent crimes will be kept behind bars.

This is part of the agenda that has been forged in what I hope will be a new dawn for this state, and that we are sending a clear signal to our citizens that New York is back on track to being the Empire State once again.

THE PRESIDENT: Thank you.

Announce the results, please.

SENATOR STAFFORD: Madam President.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Please, if I could very briefly. Thank you.

I would just like to point out that this is a very complex bill. It affects many, many things. I respect everyone's opinion. I respect everyone's thoughts, and I just don't want it to end this evening without trying to put it in perspective here.

Now, interestingly enough, whether it was right or whether it was wrong,

the lottery came into being in New York State. It was an amendment and it passed.

Now, many of you may be a bit surprised but probably not. I voted against it, but we have it. It is something that is now part of the structure, and I don't want anyone to think that any of us -- probably many of us who are supporting this -- are overly wild about gambling, but we could debate it and we could talk about it and we could say that if they're going to gamble, then they're going to gamble, and if they're going to take part in this, they're going to take part in it; and I think in all fairness it came up in the executive budget. I'm sure many -- the Governor, possibly and many of his people aren't overly wild about the lottery, about gambling, but it is here, and that was decided a long, long time ago, a long time ago in the '60s, and I would just submit that this is not something new, something that's unheard of.

There are limits. The structure is such that there are built-in limits, so to

speak, a safety valve, so to speak, and believe you -- believe me, the odds are so large as far as really ending up with anything in this that people -- it isn't going to be something that people are going to be playing 24 hours a day. Those who are interested in wagering will be doing so.

So I only say that so we don't end this evening thinking that this is something that really we -- is new. It's a step in the wrong direction. It was decided almost 30 years ago when the lottery amendment passed, and this is just another -- it's a variable for the lottery, frankly.

Thank you.

THE PRESIDENT: Thank you.

Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar 1090 are Senators Abate, Babbush, Espada, Kruger, Leichter, Maltese, Markowitz, Montgomery, Oppenheimer, Padavan, Smith, Stavisky and Waldon.

Ayes 44, nays 13.

THE PRESIDENT: This tax relief bill is passed.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Finance Committee in Room 332 of the Capitol.

THE PRESIDENT: There will be an immediate meeting of the Finance Committee meeting -- Finance Committee in Room 322 -- 332, I'm sorry.

SENATOR SKELOS: Madam President, at this time if we could call up 827, Senate 4381-A.

THE PRESIDENT: The Secretary will -

THE SECRETARY: Calendar Number 827, by Senator Volker, Senate Print 4381-A, an act to amend the Penal Law, in relation to criminal possession or sale of a controlled substance or marijuana.

SENATOR VOLKER: Mr. President -

SENATOR SKELOS: Madam President,

is there a message of necessity at the desk?

THE PRESIDENT: There is a message at the desk.

SENATOR SKELOS: I move we adopt the message.

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

(Response of "Aye".)

Those opposed?

(There was no response.)

The message is accepted.

SENATOR SKELOS: Madam President, would you please recognize Senator Volker.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President. Madam President, this probably, I happen to believe, is the most significant criminal justice bill to pass this house and since it is agreed on will pass the other house, in many, many years.

It represents a bill that would, in effect, repeal a decision that some people

have characterized -- and I'm one of those people -- as the worst decision made by the Court of Appeals in modern times.

I heard one prosecutor say that the Ryan decision represented the worst decision made by the Court of Appeals in this state in this century. Certainly, it was the worst decision made in this decade.

You will get estimates of what the Ryan decision cost prosecutors in this state as far as drug convictions of anywhere from 2 to 4,000. Some have estimated even higher.

Let me just say that the difference in this bill and the bill that passed here last year essentially is in the -- at the end of the bill where the effective date of the bill -- the reason for this, and I think those of you who have dealt with Criminal Law will understand, we would maybe prefer not to do this, but under the circumstances, it is the best way to ensure the constitutionality and the legality of the bill, and what the effective date says, "This act shall take effect

immediately and shall apply only to offenses committed on or after such date and if the offense is committed prior to date shall be governed by the provisions of the law in effect at the time the offense was committed."

The reason for that, of course, is there's a lot of litigation involving these -- this decision, and what this -- what this legislation basically says is that from now on we will go back to where we were prior to the Ryan case.

Now, what did the Ryan case say? It basically said the Court of Appeals decided that what the Legislature plainly and clearly meant was not what we said, and the Court of Appeals said that not only did you have to prove that someone intentionally committed the offense, the drug offense involved, in that they had to knowingly possess or sell the drugs, but that they had to know the amount of the drugs which was something that the Legislature never envisioned and everyone knew that they didn't envision that, but it represented -- and Senator

Marchi has pointed this out on the floor when he has pointed to judicial legislation -- that this is one of the clearest indications of judicial legislation that we have seen in the last two or three decades.

So what this bill does is -- and it is supported by most of the known world, prosecutors, bar associations, city of New York -- I got a memo here from the city of New York, all except for some people, frankly -- a number of people in the Assembly who opposed this for some years and there are some individuals who opposed it and, of course, the defenders' association basically opposes anything that involves prosecution over the last number of years and has opposed criminal justice packages, and so forth; but this bill is strongly supported by prosecutors and, in fact, I would venture to say that from my information that, although we are going to pass a tough criminal justice package, an equitable one later on this evening, this bill represents, I think, to the prosecutors something that they really feel is

the most important thing that we can do in this year or in the next years to come.

Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would yield for a couple of questions.

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

SENATOR PATERSON: Thank you, Senator Volker.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, one of the concerns of Senator Galiber who has been opposed to this bill and, as you know, is ill and unable to be in the chamber today, just relates to the type of individuals who are going to be prosecuted under this legislation and whether or not it really addresses the underlying problem with drug dealing, the kind of low-level drug messenger who is commonly

referred to as a "mule" is the individual who is, in a sense, going to be the victim of the strict liability enforcement of the overturning of the Ryan decision and, for instance, the individual who really is sponsoring the drug trading, who knows not to touch the actual drugs is not really going to be affected at all. So are we really getting at the right people by overturning Ryan?

SENATOR VOLKER: First of all, Senator, let me just say what I said to Senator Galiber previously and we, of course, as you know, debated this before.

Ryan was not necessarily -- not necessarily involved in being a small dealer. Many of the people who were involved in the drug cases that the Ryan -- and then also the Hill case which was another case that followed up on this -- are rather substantial drug dealers and drug sellers and, of course, I think if you know anything about prosecutions -- and I know that you do, and I think there are a number of other people in this chamber -- the fact that you are

arrested and sometimes convicted of comparatively small amounts does not necessarily mean that you are a small possessor or a small dealer.

The truth is that some of the major dealers in New York City have ended up being convicted of possession of comparatively -- comparatively small amounts of drugs and of selling comparatively small amounts of drugs, because that's all we were able to convict them of.

The truth is this will involve all sorts of people that are involved in the sale and possession of drugs, but I think more importantly the issue, Senator, is -- and I debated this with Senator Galiber -- is the issue of not using a statute and changing the clear meaning of the statute because you don't like what the law says or how the law is applied.

The way to change that is to do it by legislation, not by the court coming in and changing the clear meaning of the statute, and that has been what has created the havoc, I

think, out there in the field, and I really believe that it has done a great deal more harm than any small good that it might -- it might effect by, as some would say, that it might have a favorable impact on some small dealers.

Well, yes, that's fine, but the truth is drugs is a scourge and it also allows major dealers to "skate", as the saying goes, and the so-called drug factories to continue to operate at a level which I think all of us would consider to be unacceptable.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Volker would be willing to yield again.

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: I want to try to figure something out, Senator, with your assistance. When you debated the bill last

year, you talked about the estimate that the Law Enforcement Council made that 4,000 cases will be dismissed as a result of the passage of this legislation, and this year the Department of Criminal Justice Services says that there were 2,000 -- I guess 2,000 less indictments as a result of Ryan going into effect; is that accurate?

SENATOR VOLKER: Yeah. I think the difficulty is that -- and we kind of looked into that sort of thing, Senator, and the difficulty is, we may have a better impact idea now that we changed it. I mean, you know the difficulty here is that there are hundreds and thousands of these cases that are in the pipeline, and the real difficulty in determining how many are directly impacted is that the D.A.s tell us that a number of their assistants are not even trying to prosecute the cases on the level that they should prosecute them, because they realized that they would come right up against the Ryan case and, therefore, what they do is they do what we call an immediate plea,

which is they actually either indict him at a lower level and take the plea right away or in some cases just take the plea and never get to the -- to the level that they should really indict for or charge for.

So I think the answer is that's the difficulty in dealing with this. The D.A.s that we've talked to all contend that there is no obstacle that they have faced in the last ten years greater than the Ryan case as far as prosecuting drug cases.

So the estimates of 2- to 4,000 are greater, Senator, I think are hard to quantify, in many cases, but virtually all of the prosecutors that we have talked to indicate that they believe those estimates may even be conservative.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President and thank you, Senator Volker.

I think that -- I couldn't agree with Senator Volker more when he said that drugs

are a scourge and I think that this legislation does set up a public policy that, if you're involved in drugs at all, you're going to pay a very strict penalty.

I don't know if I concur in the opinion that the Court of Appeals rendered such a difficult or such an incorrect decision in the Ryan case. At the time it seemed to be somewhat recognized by Judge Kaye when she wrote that the legislation was inartfully drafted. I think that the interpretation may have really been the result of some ambiguity in the law for which we, as a Legislature, are responsible. I guess if we looked in the mirror, maybe we will try to be a lot clearer. This legislation certainly is clear.

I want to vote no on it to represent the point of view of Senator Galiber. I don't know if anyone else is voting against it, but there is an argument that the strict liability enforcement is really going to, in many ways, punish really nominally involved individuals while the ones who are really

responsible for the violent, vicious malady that we know as drug abuse and drug dealing on our streets go free.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

Senator Montgomery, why do you rise? Would you like to be added to the list?

SENATOR MONTGOMERY: Yes, please.

ACTING PRESIDENT KUHL: Okay.

Senator Abate.

SENATOR ABATE: On the bill, and I would like to address some of the issues that Senator Paterson has raised.

I am very pleased to be able to be on this bill. If you were to survey all the district attorneys around this state, they would probably say there is no issue more important to them than the overturning of this Court of Appeals case, and the reason they will say that is this is about drug dealers who often carry larger amounts of drugs, and what this Court of Appeals case has done is severely handicap that district attorney in prosecuting these cases.

The defendant still has to put the district attorney to the burden that the district attorney must prove beyond a reasonable doubt that he or she possesses drugs knowingly and voluntarily, but what it does is now that district attorney is able to prosecute an individual who may have four ounces of drugs. It's a "C" felony or above, and now the district attorney, after this Court of Appeals case, is told, "You have to prove that the defendant knew that he or she had four ounces" as opposed to two ounces, as opposed to one ounce or a half an ounce.

So the consequence of this is that serious offenders who are carrying large quantities of drugs are now being charged not with the higher crimes of felonies, but some times they're being pled down to misdemeanors because the D.A. does not have the tools and capability to prove these cases beyond a reasonable doubt.

I could not support this. I could not go on this bill if I felt that the

district attorney still did not have to prove beyond a reasonable doubt that, one, a defendant possessed the drugs and they knowingly knew it. This is putting that burden beyond what I believe is reasonable and rational.

I want to address the issues that Senator Paterson has raised. I have been a long-time advocate of criminal justice reform sentencing. This bill -- in fact, I'm co-sponsoring a small step in the Rockefeller drug reform dealing with drug "mules". This issue is not about sentencing. This is about prosecution. While I believe that some drug offenders do not necessarily have to do life sentences in jail and that -- many of the drug "mules", many of them are women who should not be doing life sentences and we need to look at those reforms.

We have to repeatedly ask ourselves, why are two-thirds of the people in prison non-violent? Almost one half are there for drug possession and sales. So clearly there is a need for criminal justice reform in terms

of sentencing. This bill is not about that. This is -- the bill is about giving the district attorney the ability and all the tools to prosecute these serious cases.

Again, I'm very proud that Senator Volker has shown the leadership on this bill. It is a good bill. There is unanimous consent and support from district attorneys around this state, and I urge my colleagues to support this bill.

Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Mr. President, about eight months ago in the city of Rochester, a sweep of the city in a drug infested neighborhood produced the arrest of 129 people in one night buying "crack" cocaine and marijuana from drug dealers. 129 people who were arrested went into Rochester City Court and, acting on the basis of People against Ryan, the City Court judge dismissed the criminal complaints that were filed against the 129

recipients of those drugs.

The people who were victimized by that decision were the people who lived in that neighborhood, the people who depended upon the police to get the drug dealers out, but the drug dealers won't get out so long as the customers keep coming back, and if the customers know that they can get off because they can claim they didn't know how much they bought or they didn't know how much they had in their hands, they'll never leave. If we're going to end the retail sale of drugs in our neighborhoods and the crime and the violence that goes with them, we have to pass this bill.

This bill will tell everyone that comes into the city of Rochester from the suburbs or comes from another part of the city, that when you go into a drug-infested neighborhood to buy your drugs, you can't stand up in front of a judge and say, "You can't charge me. I didn't know how much I bought. I didn't know how much I had. It's not my fault. I didn't know."

When those -- Mr. President, could we -- when those arrests are effectuated, when they go to jail, when they pay the price for those crimes, the message will go out very clear to people that come into our city and into our neighborhoods -

ACTING PRESIDENT KUHL: Senator Dollinger, let me interrupt a minute, if you would. I'm having a tough time hearing you. Can I ask the members to please take their chairs, conversations out of the chamber if you're going to talk? It's very rude not to let a member speak and be heard.

Thank you, Senator Dollinger, for indulging me for the interruption.

Senator Dollinger on the bill.

SENATOR DOLLINGER: Thank you, Mr. President.

I just want to extend my thanks to Senator Volker for his leadership on the issue. I'm proud to be part of it. I thank him for that. I also thank him on behalf of the people that live in our neighborhoods in the

community that I represent, because this bill will give police the tool to take those people who buy the drugs off the street.

I'd like to add just one concluding comment that Senator Abate made. This bill isn't about what we do once we arrest them. This bill isn't about what we do once we convict them. This isn't about whether we send them to jail or allow them to take treatment as an alternative to going to jail. We can do those things at the end of the product but, if we don't have the ability to arrest them and make the convictions stick, we're not going to be able to send a message to our drug-infested neighborhoods, that those who come in and buy are at risk. Whatever you buy, no matter how much it is, you're going to be stuck with that crime and you're not going to be able to get away by simply saying, "Gee, judge, I didn't know."

I applaud Senator Volker. This is a good bill. It will restore the weapon of police enforcement to our neighborhoods that

need protection from drug activity.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Montgomery.

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

Briefly on the bill. Of course, drugs are really the number one crime problem for my district, along with the guns that accompany them, which is why I always oppose any attempt to expand the number of guns on the streets, but I do want to point out to my colleagues that this bill, as well intentioned as it is, does contain a couple of items that are of concern to me.

One of them is marijuana which has, I think, after years of experience with the Rockefeller Laws and having people who are experts in the fields -- in the field of drug abuse and drug treatment recognize that there is a question as to whether or not we should continue to include marijuana as a major criminal offense based on the fact that it has not been proven to be as big of a menace and we

certainly, I think, need to consider that.

And the other one that is included is Methadone, and there are a number of Methadone clinics in my district. That is a legal substitute drug and, though I am definitely not in favor of the use of Methadone as a way of getting off of hard drugs, I do want to point out to the sponsors of this legislation that it is included here and that, in fact, is a drug that is legal and that is used as a means of curtailing drug use in -- in the neighborhoods and communities across the state.

So with that, I will support the legislation, though I think those two -- those two things are not necessarily substances that ought to be included in this kind of legislation.

Thank you, Mr. President.

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

Senator Volker to explain his vote.

SENATOR VOLKER: Yeah, just one

thing I might say just so you understand. There is nothing new in this legislation as far as any additional drugs. We just changed the -- the changes in this bill all relate to either re... making the law clearer or, obviously, on the issue of taking care of the issue of the Ryan decision, but there are -- in other words, we are not either raising penalties in this or adding -- we are not adding any new drugs or any new -- new types of drugs to this bill, just so that you're aware.

We're restating the same quantities and the same drugs that were in the previous legislation, just so that you realize that.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce

the results when tabulated.

Senator Montgomery to explain her vote? Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar 827 are Senators Paterson and Waldon. Ayes 55, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair would recognize Senator DeFrancisco.

SENATOR DeFRANCISCO: Could you please return to the order of messages from the Assembly.

ACTING PRESIDENT KUHL: Return to the messages from the Assembly. I'll ask the Secretary to read.

THE SECRETARY: The Assembly returns Senate Bill Number 1554-A, Assembly Reprint Number 30,001 entitled, "An act making appropriations for the support of government and to amend Chapter 52 of the Laws of 1995, enacting the State Debt Service Budget for the support of government."

ACTING PRESIDENT KUHL: The Secretary -- Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President, I move that the Senate not concur in said amendments and move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is before the house. Restored to the Third Reading Calendar.

Senator DeFrancisco.

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

ACTING PRESIDENT KUHL: The amendments are received and adopted.

SENATOR DeFRANCISCO: Please lay the bill aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

SENATOR DeFRANCISCO: Would you please return to the reports of standing committees for a report from the Finance Committee.

ACTING PRESIDENT KUHL: Senator DeFrancisco, I'm informed by the desk that we do have a couple housekeeping matters here, if we could do that before we take up the bill.

SENATOR DeFRANCISCO: Please do so.

ACTING PRESIDENT KUHL: The Chair would recognize Senator Present.

SENATOR PRESENT: Mr. President, on page 44, on behalf of Senator Hannon, I offer the following amendments to Calendar Number 503, Senate Print 3467, and ask that it retain its place on the Third Reading Calendar, and also remove the star.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 503 are received and adopted. The bill will retain its place on the Third Reading Calendar, and at the request

of the sponsor, the star is removed.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Volker, on page 13, I offer the following amendments to Calendar 490, Senate Print 2960 and ask that it retain its place.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 490 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator DeFrancisco, we'll return to reports of standing committees. I'll ask the Secretary to read the report of the Finance Committee.

The Secretary will read.

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

Senate Print 5278, Budget Bill, an act to provide for payments to cities with a population of one million or more under the municipal assistance program.

ACTING PRESIDENT KUHL: Without

objection, the bill is ordered directly to third reading.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would you please call up Senate Bill 5278, Calendar Number 1091.

ACTING PRESIDENT KUHL: There is a substitution at the desk. I'll ask the Secretary to read.

THE SECRETARY: Senator Stafford moves to discharge from the Committee on Finance, Assembly Bill 7973 and substitute it for the identical Calendar Number 1091.

ACTING PRESIDENT KUHL: Without objection, the substitution is ordered. Ask the Secretary to read the title to Calendar Number 1091.

THE SECRETARY: 1091, by the Assembly budget -- Assembly 7973, an act to provide for payments to cities with a population of one million or more under the Municpal Assistance Program.

ACTING PRESIDENT KUHL: Senator

DeFrancisco.

SENATOR DeFRANCISCO: Is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: The Secretary tells me there is, Senator DeFrancisco.

SENATOR DeFRANCISCO: I move that we adopt the message.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator DeFrancisco.

SENATOR DeFRANCISCO: I request that we stand at ease at this point since we are awaiting a criminal justice bill which should be here momentarily, followed by a Finance Committee meeting and we expect to take up the bill after the Finance Committee meeting.

ACTING PRESIDENT KUHL: The Senate will stand at ease.

(Whereupon, at 7:40 p.m., the Senate stood at ease.)

ACTING PRESIDENT DiCARLO: Senator DeFrancisco.

SENATOR DeFRANCISCO: I would like to call an immediate meeting of the Finance Committee in Room 332 of the Capitol.

ACTING PRESIDENT DiCARLO: There will be an immediate meeting of the Finance Committee in Room 332 of the Capitol.

(Whereupon, at 7:50 p.m., the

Senate stood at ease.)

ACTING PRESIDENT KUHL: The Senate will come to order for a moment for an announcement.

The Chair would recognize Senator Olga Mendez.

SENATOR MENDEZ: Thank you, Mr. President.

I want to announce that there will be a Minority Conference after the Finance Committee meeting.

ACTING PRESIDENT KUHL: There will be an immediate Minority Conference in the Minority Conference Room right after the Senate Finance Committee concludes, which would be shortly.

(Whereupon, at 7:55 p.m., the Senate stood at ease.)

ACTING PRESIDENT KUHL: The Senate will come to order just briefly for an announcement.

Again, Senator Mendez.

SENATOR MENDEZ: Mr. President, I

am pleased to announce that there will be an immediate conference of the Minority in the Minority Conference Room, Room 314.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Minority in the Minority Conference Room, Room 314. Immediate meeting of the Minority in the Minority Conference Room.

(Whereupon, at 7:57 p.m., the Senate stood at ease.)

ACTING PRESIDENT KUHL: The Senate will come to order for an announcement.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate conference of the Majority in Room 332 at the request of Senator DiCarlo.

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

(Whereupon, the Senate stood at ease from 8:00 p.m. until 9:25 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. Members please find their chairs.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: Immediate meeting of the Rules Committee -- it's now 9:25 -- Majority Conference Room, Room 332. Immediate meeting of the Rules Committee, Majority Conference Room, Room 332. The Senate will continue to stand at ease.

(Whereupon, the Senate stood at ease from 9:26 p.m. until 9:35 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. Members please find their places, the staff their places. Sergeant at-arms, close the doors.

The Chair recognizes Senator

Skelos.

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

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

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill directly to third reading:

Senate Print 5281, by the Committee on Rules, an act enacting the Sentencing Reform Act of 1995 to amend the Penal Law, the Correction Law, the Criminal Procedure Law and the Executive Law, in relation to providing for the sentencing of certain felony offenders.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President,

at this time could you call up Calendar Number 1092.

ACTING PRESIDENT KUHL: On the motion to accept the Rules report, all those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is adopted.

The Secretary will read the title to Calendar Number 1092.

THE SECRETARY: Calendar Number 1092, by the Senate Committee on Rules, Senate 5281, an act enacting the Sentencing Reform Act of 1995 to amend the Penal Law, the Correction Law, the Criminal Procedure Law and the Executive Law, in relation to providing for the sentencing of certain felony offenders.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: I'm

informed by the Secretary that there is a message of necessity at the desk.

SENATOR SKELOS: I move we accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

SENATOR SKELOS: Read the last section, please.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of Calendar Number 1092 has been asked for by Senator Paterson.

SENATOR VOLKER: Just very quickly, this is known as the Sentencing Reform Act of 1995 and does include sentencing changes for first, second and multiple felony offenders

on the VFO side, in other words, on the violent felony offender side, which basically increases the minimum sentences, indeterminate sentences. In other words, it does not increase the maximums but increases the minimums. Those are for violent felony offenders.

On the other hand, as far as the so-called lesser felonies, "C", "D" and "E" felonies and drug felonies, we set up a diversion program, a diversion sentencing program using Willard which is opened up in this proposal and would allow for drug and alcohol treatment at Willard for 30 to 90 days. We commence with 750 people -- or up to 750 people and this bill also, by the way, provides for - yeah, yeah.

We set up, by the way, as I said previously, for determinate sentences for violent felony offenders and second violent felony offenders. We also set up a sentencing commission in this bill which is established at nine members of -- part of that commission, five from the Legislature -- or five by the Governor,

two from the Legislature and two by the chief judge of the Court of Appeals, and we establish the so-called "truth in sentencing" which enables us to comply with the federal rules that state that we need to have -- in certain violent felony offenders that we have to have 85 percent of the sentence served under the determinate sentencing rules, and we comply with the federal rules, so we will be eligible for $20 million of federal money for our prison system.

SENATOR HOFFMANN: Would Senator Volker yield for a question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: Senator Volker yields to Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

Senator Volker, you indicated that Willard will house 750 people. I was pleased to hear you use the term "people". Does that mean women inmates as well as male drug offenders will be treated at Willard?

SENATOR VOLKER: The answer is

yes. By the way, this is an authorization of up to 750 people at that facility, and the answer is both men and women.

SENATOR HOFFMANN: Is there a breakdown on gender balance anticipated or is that -

SENATOR VOLKER: I don't think so. No, no, because it will just obviously depend on who was eligible as to how many people would go into this facility.

SENATOR HOFFMANN: Thank you, Senator.

ACTING PRESIDENT KUHL: Senator Hoffmann.

SENATOR HOFFMANN: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Hoffmann on the bill.

SENATOR HOFFMANN: First of all, I want to compliment Senator Volker for his ongoing interest on this issue and my many colleagues across the aisle who apparently have been working on this; and I say "apparently"

because I have been very much in the dark about it despite the fact that I am an 11-year member of the Corrections Committee in this house and it's an issue of tremendous concern for me, not only because I represent several large DOCS facilities in the 48th Senate District, but also because the constituents who have sent me here to work for them are very worried about the need for reform of our entire sentencing system; and I know that they are disappointed that we are handling this very significant measure in this inappropriate fashion on a Friday evening with so little preliminary discussion.

If, in fact, this is the sweeping reform that it is purported to be and certainly on first blush it appears to do many, many things; it will change sentencing in New York State, it deserves a public hearing. It deserves to be aired across the state. It deserves to be heard in open committee meetings in these halls. It deserves an opportunity to be digested by people who have experience in this field. Particularly in the area of the

drug treatment aspect, I am gravely concerned about how my district will be affected.

I represent, as everyone knows, a large rural area. I also represent suburbs and I represent a large urban core in the city of Syracuse, a smaller urban core in Rome and the city of Oneida. All of these communities fear the scourge of drugs. All of these communities worry about what will happen when people are arrested on a drug charge and are sentenced to jail, and they deserve to know that we are making changes that will have a long-term, beneficial effect upon sentencing guidelines and not simply be a panacea and not, God forbid, make the situation even worse further down the road.

It's my understanding -- and I say it's my understanding because I have only seen the bill an hour ago when it was presented to us in the Democratic Conference -- that the Willard facility will provide drug treatment, either at the front end or at the tail end of sentencing, depending upon the status of the

inmate and treatment will be for either a 30- or a 90-day time period, and every expert that I have talked with and worked with over many years in this area has convinced me that we need to think in a much longer term for inpatient drug treatment, and we need to be sure that upon completion of the treatment at Willard, that those inmates are then going to have adequate - and I do mean adequate -- aftercare, and that has to include, in most cases, a halfway house. We simply don't have the halfway houses around this state. It's very difficult to site halfway houses, and yet there appears to be no funding in this bill that will provide halfway house location, will stimulate the development of halfway houses and adequate aftercare around the state and, to be very candid, DOCS does not have a sterling history in developing treatment programs.

Some of the treatment that has gone in past years in the Department of Corrections has been -

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT KUHL: Senator Hoffmann, excuse me.

Senator Nozzolio, why do you rise?

SENATOR NOZZOLIO: Will Senator Hoffmann yield?

ACTING PRESIDENT KUHL: Senator Hoffmann, do you yield to Senator Nozzolio?

SENATOR HOFFMANN: Yes, I'll yield briefly, yes. Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR NOZZOLIO: Thank you, Mr. President. Thank you, Senator Hoffmann.

Senator, one of the unique facil... one of the unique aspects of this facility will be unlike any other DOCS-related facility that does have a component of drug/alcohol treatment. This facility blends for the first time in our state, and I believe in the nation -- OASAS will be doing drug and alcohol treatment and be responsible for that drug and alcohol treatment on the Willard

campus.

I rise because your comment suggested your concerns relative to DOCS managing the drug and alcohol treatment, and your point is well taken.

I rise not to interrupt you but to add to your knowledge since you evidenced lack of knowledge of the bill -

SENATOR HOFFMANN: Is there a question, Mr. President? I have not yet heard the question. Is there a question from Senator Nozzolio, Mr. President?

ACTING PRESIDENT KUHL: Well, I'm waiting for it. I'm waiting for it.

SENATOR HOFFMANN: Thank you.

I appreciate the desire to provide more knowledge, Mr. President, and that opportunity will be forthcoming the minute I relinquish the floor.

ACTING PRESIDENT KUHL: Let's - let's see if he can find a question here, Senator Hoffmann.

SENATOR NOZZOLIO: It won't be

difficult, Senator.

The question is this: Are you aware that in the bill, in this proposal, that OASAS will be running the drug treatment?

SENATOR HOFFMANN: Yes, I am aware. Mr. President, please inform Senator Nozzolio I am aware of OASAS' connection within the Willard program.

Thank you.

SENATOR NOZZOLIO: Will the Senator continue to yield?

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

SENATOR HOFFMANN: I think I would yield for one -- one brief question and then I'll be happy to relinquish the floor shortly.

I'm sure Senator Nozzolio has a great deal to offer on this issue, Mr. President, and I will look forward to hearing his comments in greater detail when I have completed mine.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR NOZZOLIO: Does Senator Hoffmann believe that OASAS is an appropriate drug treatment body, drug treatment group?

SENATOR HOFFMANN: The issue here is not whether OASAS is the appropriate drug treatment group. The issue is that the entire drug treatment protocol has not yet been spelled out in any kind of detail that would allow a thoughtful analysis by those of us who will now be voting to change the sentencing guidelines that the state implemented.

SENATOR NOZZOLIO: Is that a yes, Mr. President?

SENATOR HOFFMANN: Thank you, Mr. President.

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

SENATOR HOFFMANN: Thank you.

As I said before, I am looking forward to hearing a greater explanation of this bill. I just wish that we were not doing it on

such short notice, at a quarter to 10:00 on a Friday evening when we're seeing this bill for the first time.

A brief history of sentencing guidelines will show even the most casual observer that New York State has made many grievous errors in sentencing guidelines. The Rockefeller Drug Laws continue to be an example of over-reaction at a time of hysteria in this state. This bill, which does not address the Rockefeller Drug Laws, is a reaction. I don't know if it's a hysterical reaction or not because it has not been given the kind of thoughtful analysis. It is the work of a negotiated, political process that is all too prevalent in this Capitol, and the people of this state deserve better.

I truly believe that this Governor, in his campaign and his early days in office, sincerely wants to change the way we handle violent offenders in this state, and every taxpayer in this state wants to change the way we handle violent offenders. We want to

keep them locked up. We want to keep the prisons clear so that there are beds available for violent offenders who should serve the maximum amount of time allowable. If that, in fact, is going to happen under this bill, that's -- that's going to be a tremendous assist in addressing the problems of violence in New York State; but if there is another price being paid to free up beds for violent felons and that price is that drug offenders are going to go through a revolving door under the guise of treatment, not, in fact, be treated and then violate parole and wind up being resentenced, all we will do is compound the burden upon the Department of Corrections by increasing inmates and increasing them with inmates who have third felony convictions and longer sentences.

Somebody needs to sit down and analyze these numbers and we should have the benefit of that analysis before we undertake this vote. We should be reviewing this at a series of hearings. We should be reviewing this over a period of time and not rushing headlong

into this vote tonight so we can simply announce that we have another portion of the budget reached. It is much too serious an issue for that.

It is my intention to vote for this bill and to hope -- to fervently hope that it will do all of the things that we want. I understand that there is a sunset provision and ten years hence some members of this house and the other house who are still around will be addressing it again.

We should not be putting something in place that has the potential for being a time bomb. We should be looking at it so that we can say, in all comfort, we have come up with a thoughtful, a well-reasoned solution, not one that represents the worst kind of political wrangling between two houses and a couple of leaders and the Governor meeting in closed doors with only a handful of other legislators having input.

So for all of those reasons, Mr. President, I would ask Senator Volker and

Majority Leader Bruno if they would consider laying this bill aside so that it might be given a more timely review and we could have a vote on it perhaps as early as next week, but certainly not in the middle of our desire to wrap up other budget negotiations tonight.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Smith, who defers to Senator Abate.

SENATOR ABATE: Yes, Mr. President. Would Senator Volker yield to a number of questions?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: I have more questions concerning this bill because I have just had an opportunity over the last 45 minutes to review it and by looking at the legislation, I cannot get the answers I need.

The first is it's my understanding that if we're going to receive federal money, we have to develop a sentencing

guidelines system that mandates that anyone who is a violent offender and is incarcerated must do 85 percent of their sentence, is that right?

SENATOR VOLKER: That's right.

SENATOR ABATE: And when would that -- compliance with that federal regulation kick in? When would we be at risk of losing federal dollars?

SENATOR VOLKER: When would it kick in?

SENATOR ABATE: Yes.

SENATOR VOLKER: Well, as I understand the federal compliance rules, we have to do that in order to -- as soon as possible in order to be eligible for the $20 million that we intend to use, by the way, for Willard, and that's where the money that we intend to spend on the -- on the Willard facility is, and so that what we have done in this bill is to raise the minimum -- the minimum sentences in -- in the VFOs, in the second and third violent felony offenders to comply with that 85 percent requirement. So the answer is that when this

bill passes and is signed into law, we will then, we believe, comply with those requirements.

SENATOR ABATE: It's my understanding -- the date of when we must be in compliance is a very important date because we're driving this legislation very quickly without public debate, without a lot of discussion, and I believe not a lot of planning. It's my understanding -- and maybe if there's someone else available to confirm this -- that the federal government hasn't even developed regulations around what is a violent offense yet, so we can't even be in compliance with their regulations until they develop their own guidelines. So it's my understanding we have at least another year to be in compliance with other -- with whatever the federal government devises, is that correct?

SENATOR VOLKER: Senator, I don't think that is correct, Senator. As far as I know, we have been -- the federal mandate - whether they develop -- whatever they develop,

we are complying with the 85 percent require ment. There may be some other requirements, but this is the central requirement to access the money.

Senator, let me point out to you that the discussion on this bill has been going on for a long, long time and it's been out in the public for a great deal -- in fact, this bill was actually agreed on over a week ago but, frankly, the -- it was basically agreed on entirely and then there was back and forth over the last week just on -- mainly on language.

I think some of the best people that deal in the criminal justice area, more involved in it is Paul Shechtman who is the head of DCJS now for the Governor, somebody who is an extremely bright fellow, Ken Connolly who is from my office and Ken Riddett, a group of people from the Assembly have been working on this for a very, very long time in consultation, by the way, with district attorneys, with various law enforcement people. District attorneys have given their approval for this and

law enforcement people have also.

I don't think this has been a rush to come up with this -- with this legislation. We have been dealing with this for a long period of time. I guess it's always easy to say we should have hearings on legislation but not so simple in a time like this to do that, and I think we also are in a situation where we have an ongoing prison problem and the feeling is, I think, that it is time to deal with it, especially in the case of Willard where the faster that we get the prison open and get people access to drug and alcohol treatment, I think the better off they'll be and the better off we'll be also.

SENATOR ABATE: Would Senator Volker yield to another question?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: You said that

this bill has been subject to enormous debate, and I don't disagree with you. There are a lot of very capable people involved in these negotiations, but clearly, none of us -- or most of us in this chamber -- and correct me if I'm wrong -- never received the legislation in advance to comment. Most of us weren't in that room, behind those closed doors. To my knowledge, has any committee within this chamber held hearings on the changes in these guidelines or any part of this legislation?

SENATOR VOLKER: Well, the answer as far as holding hearings on guidelines, we've held hearings on guidelines over the years many times. In fact, my committee has held guidelines hearings, I think two or three years ago, if I'm not mistaken. The issue of determinate and indeterminate sentencing and sentencing has been one that's been kicked around for a long, long time. No one has obviously held hearings on this bill, and I guess one of the problems with the budget process -- this is part of the budget process -

is you can't very well sit back and just decide to hold hearings, particularly, I think, in a situation like this where you have two houses with, in many ways, divergent philosophies and this was obviously a difficult bill to resolve and some people say it was a major factor in holding up the budget process, and I think, Senator, that the answer is it's something that we felt, I think the people in -- many people in this chamber felt was important to get done, and I think it's an important bill for the people of this state and I regret that we don't have the ability and the time to hold hearings, but I think it is something that, I think, will withstand the test of time.

SENATOR ABATE: Will the Senator yield?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: I have a number

of questions.

SENATOR VOLKER: Certainly.

SENATOR ABATE: Thank you, Senator.

You're absolutely right that these are complex issues and in 1985 there was an attempt through a sentence guideline commission and I was a staff member involved in that commission then, and I know how laborious a process that was. There were district attorneys involved and people from the Legislature, and after an entire year, because the matter was so complex, there was no agreement reached, and yet what circumstances have changed that ten years later we think we have all the knowledge within this chamber and the other chamber within a matter of weeks to dramatically change the sentence guidelines in this state? What has changed over ten years that has made this process an acceptable process?

SENATOR VOLKER: Let me just say to you, Senator, we don't -- I don't think there's anyone that would say that we have all

the knowledge or that we profess to be the experts on any of this stuff, but I will tell you this: I guess the answer to you is that a governor -- and a governor who I think has shown himself to be very, very knowledgeable in the area of criminal justice and willing to deal in some very difficult areas and two houses of the Legislature have gotten together and felt that we need it now in 1995 to move in the area of sentencing reform, and that's what we did and, you know, I think that you can always sit back, I suppose, and say we could wait another ten years to do sentencing reform, but I'm not sure the people of this state are ready to do that and certainly I think there's a number of people on both sides of this Capitol who felt that we couldn't wait that long and, very honestly, the people in the Governor's office felt that way also.

SENATOR ABATE: Senator Volker, I agree with you, we should not wait another year, maybe not even another six months, another ten years for sentencing reform, but you talk about

urgency, because I don't see any positive fiscal impact. No savings are going to come about because of this bill or at least I haven't seen a document that shows this, why are we passing this bill in the middle of a very contentious, difficult budget? Why don't we pass the budget, even take the next two weeks to hold hearings and everyone is better educated? What is the urgency, because I don't see the link between the budget and necessarily passing this programmatic, very difficult bill.

SENATOR VOLKER: I can assure you, Senator, there is a very big budgetary impact on this. In fact, some people across the hall claim there's this huge impact that they've been giving down the road, but I think the biggest thing is that if we genuinely are going to deal with the issue of diversion, then the faster we get Willard up and operating and the faster we can get inmates to -- into the alcohol and drug diversion program, obviously we'll be saving some money, and many people on your side of the aisle have been suggesting that we do

this sort of thing and have been saying that it's important for us to get into this sort of thing.

By the way, the date was just told as far as the federal money -- access to the federal money is October 1st. After that date, we will be able to access the $20 million, and with the sentencing changes in this bill, the estimates are that we could save up to $30 million.

SENATOR ABATE: Where are we going to -

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: Yes. Thank you.

You estimate that the fiscal impact would be a savings of $30 million per year?

SENATOR VOLKER: That's right.

SENATOR ABATE: And that is

taking into consideration the violent felons that are going to stay much longer and that the -- either the incarc... existing incarcerated population is going to be diverted to the street -

SENATOR VOLKER: Right.

SENATOR ABATE: -- or the incoming second felony offender that may be diverted?

SENATOR VOLKER: Right.

SENATOR ABATE: Can you give me an estimate of how many more -- I don't know if there's a bed capacity analysis done. I would like to see that and maybe could that be shared with the members of the conference. How many bed/day savings will there be as a result of this per year because, clearly, we cannot pass this bill without a clear bed/day savings so we really understand the impact of these judicial sentencing decisions.

SENATOR VOLKER: According to our best estimates, it will mean about 2,000 bed days for our inmates. Of course, taken into

consideration, this is -- this is June -- what, June 2nd, and we have to get this program up and moving and that, of course, is one of the reasons why this has to get going.

Keep in mind, this is not April 1st, this is June 2nd, and a lot of the things that we're talking about here need to move as quickly as possible because bed days for inmates are not cheap, so that getting them into this program will save us a considerable amount of money and that's where I think a good deal of the money comes in.

SENATOR ABATE: I guess I'd like to have a better understanding of the 2,000 bed days. Is that an assumption that the 750 days that Willard would be fully occupied 12 months of the year?

SENATOR VOLKER: Well, keep in mind that these people are not -- when you say "750", we will have some people accessing from the prison itself and, of course, people obviously coming in from outside. The way it works is when you talk about 750, that's 750 at

any one time.

SENATOR ABATE: That's right.

SENATOR VOLKER: In other words, the people keep rolling over.

SENATOR ABATE: It could be 30 days.

SENATOR VOLKER: In on 30- to 90-day periods, you're rolling over a great number of people. So that's where the numbers come from. The numbers presumably would be greater, by the way, in the future obviously when this site is up and running for a longer period of time.

SENATOR ABATE: But has some - would the Senator -

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: Has someone done any planning to say that a certain percentage will be doing 30 days at Willard, another

percentage 60, another percentage 90 and that there will be a 90 percent filled capacity of those 750 beds and then comparing it to the additional bed days that are needed to house the violent felons that are now going to have to do longer time?

Has there been a comparative analysis to come up with that 30 million?

SENATOR VOLKER: Yeah, but let's keep in mind something that some of the people in the Assembly didn't understand. Since we're increasing the minimum sentences here -- in other words, we're bobbing up the minimums, the impact of this bill on -- on people will not be felt for a number of years down the line. This bill should not generally -- obviously, you know, you have some other issues involved, but the increase in the felony VFO sentences, primarily the impact of that will be felt down the line some years because, if you increase the minimum, for instance, from four to eight years, that person is going to get four years anyway. Now he or she is going to get eight years. Some

people say, "Well, that may increase the pressure for police." That may be true. Whether he will get, some people claim, the lesser sentences or something, that's another thing, but it will not increase immediately the -- the amount of people -- the amount of the sentence. So that actually it will not increase for some years and we would hope by then, by the way, that all of the things that we're doing will decrease the number of inmates so that we'll have fewer inmates anyway.

So the answer to your question is we expect that this will see a positive impact on the prison system and that's where we'll see the savings.

SENATOR ABATE: When do you think -

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: You say the

prisons will feel an impact some time down the road. At what year?

SENATOR VOLKER: We can't say.

SENATOR ABATE: Third year, fourth year, fifth year?

SENATOR VOLKER: There's no way -- we could make some -- we could make some estimates, but remember what we're talking about. Since you're raising the minimums, it would just depend on how -- who is sentenced to what, whether it's four years down the line, in some cases it maybe eight years down the line or even ten or twelve. So you're staggering the number of people depending on -- and who is convicted and on what charges.

SENATOR ABATE: My concern is how did the individuals that negotiated this legislation come up with a ten-year sunset? Why isn't it five years? Because there's so many unanswered questions. You yourself would say, "I don't know how many D.A.s would sign off on people being diverted or agreeing upon a second felony offender to get immediate parole

release." There's so many intangibles to this bill, and it's further complicated by the lack of planning.

Why put off a sunset to ten years when it could be really disastrous? We could have a prison system beyond 150 percent capacity, 200 percent capacity. We don't have the money potentially to build more prisons. We could be in a crisis. Don't we need to evaluate this much before the ten-year sunset?

SENATOR VOLKER: Senator, we are the Legislature and we have a governor. The way you develop plans -- and I think there was a lot more planning into this than you say. Sunsets don't provide planning. Personally, I think the ten-year sunset was something that is really - is really something that's not really needed but the Assembly thought they had to have some sort of sunset. You don't set criminal justice on sunsets.

In fact, let me tell you something. The truth is that there was talk of some even earlier sunset. That creates, in my

mind, some real planning problems of bigger proportions and, in fact, I think could create some other kinds of criminal justice problems.

The truth is that, if we have problems, we'll deal with them. That's why we have two houses of the Legislature and a governor, and I don't think we really need the sunset provision, but I think the feeling of the parties was that there was some pressure, very honestly, by the Assembly to set up some sort of a sunset ten years down the line. Frankly, I don't expect to be here and you probably will be here and lot of maybe some other people here, but I doubt very seriously I'll be here, but hopefully by then the criminal justice system will have righted itself even more and we won't have to worry about it, but if there are problems, we'll deal with them, but I personally think that this is a rational plan and I think that it will work out much better than I think a lot of people think.

SENATOR ABATE: Thank you, Senator.

On the bill.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: I have taken -- I have written some Op Ed pieces recently applauding the Governor around his courage to talk about criminal justice reform, particularly around second felony, non-violent drug offenders and Rockefeller Drug Laws, so I see this legislation as a monumental moment. Many of us in the criminal justice have been talking about reform for a very long time, and to have this piece in a -- in a critical piece of legislation is absolutely heartening, and clearly the other side of the legislation which talks about giving violent offenders, particularly second felony offender, violent offenders more time is something that's rational, people can't fight against.

My problem is doing this bill in this way is so reprehensible to me -- I mean, maybe these words are a little bit strong - without all the data. I don't feel responsibly

that I could make an informed decision around this bill when there's no urgency. We're not talking about a system that's going to fail because staff is not going to be funded, that there has to be revenue or local assistance that's going out there, that there is tremendous savings immediately. We heard that the savings may not occur. We don't know exactly when the savings -- what I'm suggesting is, I think we would all be more comfortable if we could put this aside for a short period of time, get input from the professionals in the field, from parole -- I haven't heard from parole. I haven't heard from correction what the impact will be, what the judiciary thinks about this, what the D.A.s, what Legal Aid, what the not-for-profits, the alternative to incarceration people, what the treatment people feel about a 30- or 60- or 90- day quasi-treatment program. What will the aftercare program look like in parole?

There's so many unanswered questions and this will have such long-term, dramatic impact on our criminal justice system,

and I say "our criminal justice system". We're fooling ourselves. Any decision that's made on the front end in the sentencing end will impact obviously all the way through the system, and we need to be able to measure that impact.

I think we all owe it to ourselves to make an informed decision. I'm not saying that I am philosophically, totally against what we're doing here. I just don't know whether our goals that we are -- intend will be produced by this bill. We owe it to ourselves. We owe it to the state to put this aside a little bit longer, hold some hearings, get some of the data that I'm talking about, the bed capacity analysis, the fiscal impact. What are we going to do for the offenders when they get to the streets so we don't jeopardize public safety that much further?

I wish -- I never thought I would be standing on the floor voting against a criminal justice reform that honestly looked - and not -- a second felony offender reform, but I think I would be irresponsible to push this

legislation through with as little information as we have before us today; and with all due respect, Senator Volker, you were at the table. You have a lot more information than many of us have, but I think you need and others of us need to have a public debate, a public forum so all of these issues can be addressed.

I respect you. I know you have been involved in this process. My opposition to this has nothing to do with your integrity, your work around this issue. I just think this is premature to take on such a huge issue such as this.

ACTING PRESIDENT KUHL: Excuse me, Senator Abate.

Why do you rise, Senator Padavan?

SENATOR PADAVAN: I would like to be put on the list, if there is one.

ACTING PRESIDENT KUHL: There is a list running.

The Chair recognizes Senator Waldon.

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

Would the chairman of our Committee on Crimes and Correction yield to a question?

ACTING PRESIDENT KUHL: Senator Volker, do you -- excuse me, Senator Nozzolio.

SENATOR WALDON: Codes. Did I misquote your committee, Senator?

ACTING PRESIDENT KUHL: You gave him -

SENATOR WALDON: I apologize for that. The hour is late.

SENATOR VOLKER: It's okay.

ACTING PRESIDENT KUHL: Would you like Senator Volker to yield?

SENATOR WALDON: I haven't been taking coffee with caffeine.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to Senator Waldon? The Senator yields.

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

Thank you, Senator.

Senator, is there any information on the number of people who are in prison at this moment who would qualify for consideration to go to Willard under this program?

SENATOR VOLKER: Yeah. The estimates are -- I am just figuring on the ones who would actually do it versus the ones who would be eligible. The estimates are that about 3- to 4,000 people would be eligible. That doesn't mean that they're actually going to be diverted, but they would be eligible to be diverted -- to be diverted.

SENATOR WALDON: Mr. President, may I continue?

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR VOLKER: Yes.

SENATOR WALDON: Thank you, Mr. President.

Senator, is that for immediate diversion?

SENATOR VOLKER: No, not

necessarily, not immediate diversion but -- the pool would be 4,000 for those people that would be eligible. They're estimating the likelihood at about 1500 of that -- of that pool who would be -- would be diverted for alcohol and drug treatment.

SENATOR WALDON: Mr. President, may I continue?

SENATOR VOLKER: Sure.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: Senator Volker, is there any information in the universe of criminal justice regarding the anticipated number of people in this state who are arrested, indicted, tried, prosecuted and who would become eligible on a monthly basis for this program?

SENATOR VOLKER: The estimates are about 125 a month, would be -- would be

diverted. You're talking about people who are on the streets now?

SENATOR WALDON: Yes.

SENATOR VOLKER: About 125 a month.

SENATOR WALDON: Mr. President, may I continue?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: If I understand the information you have just given us, Senator Volker, there would be 1500 on an annual basis who would qualify for Willard from within the prison system and 125 per month from without the prison system. I understand that there are only 750 beds in Willard, is that correct?

SENATOR VOLKER: That's right, up to 750.

SENATOR WALDON: Okay. Up to 750 beds, and the question -- let me preface the

question with an assumption. Assuming that of the 1500 available for the first fiscal -- not fiscal, but the first operative year of this process, then the next year another number would become eligible and the next year another number -- technically -- not technically, but in theory, the 30-, 60-, 90-day phase within Willard, we could find Willard fully occupied with the first group of people who become eligible; is that a fair assumption?

SENATOR VOLKER: That's -- I don't fully occupy, but I think what you're saying is that -- remember, these people, the way it would work is they would go in and obviously go out, depending when they're finished with their treatment. So that I would think that in a short period of time you would probably have it fully occupied, and if you're going to ask me whether at some point you may need to expand it, that may very well be true.

SENATOR WALDON: Thank you for anticipating my question, Senator Volker, if the gentleman would continue to yield.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Assuming from your statement just now that there does come a time when Willard is max'ed out, the population in the prison has continued to grow for several reasons: One, people are still committing crime which qualifies them and also now we have an increased length of time serving within the prison system, and those who are on the street are continuing to commit crime and qualifying for this program, and we now have perhaps a mushrooming of the base of people who could qualify for the program but no place to put them. The question then is what do we do now, Senator Volker?

SENATOR VOLKER: Well, we would probably do the same thing we did here. By the way, the estimates are -- I was just looking at the estimates on the violent felony offender

side and the estimates are that this bill would have virtually no fiscal impact for the first several years. The first impact would really be felt after the third year.

The answer to that, I guess, is that, if that situation occurred, we would have to look for a further place to provide treatment at that point. I think that's something down the road. We think this would be sufficient for the time being, but when that -- when that time occurred, of course, we would look for further help.

SENATOR WALDON: May I continue, Mr. President?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: May I, Senator Volker, preface my next question with some information.

I thought I read today in one of

the papers, the Times Union or New York Times, I don't know which one, that the writer of the article anticipates that this program will cost us, beyond current and present expectation, $20 billion because it will dictate proliferation of prison cells in this state because this program is not really one of mandatory minimums but because of the construct of this bill, it is really mandatory maximums.

Do you have any thoughts on whether or not we will need that many prison cells, meaning equaling about $20 billion above what we're doing now in terms of construction of prison cells?

SENATOR VOLKER: There were some incredibly outrageous and irresponsible accusations made by some people over in the Assembly, and I would hope that the person that gave some of those figures who also, by the way, gave some of those same outrageous figures during the death penalty debate, it would be wise for him to do his job that he was supposed to do and stop interfering -- I think

"interfering" is a good word -- in legislative matters and do the job that his job suggested that he do.

He really doesn't have any better information than we do. We have better information than he does, and to give estimates of billions of dollars and outrageous numbers on prison population is pretty ridiculous.

The answer is there was just absolutely no basis for that and the reporter - one of the reporters called me and asked me and I said, "Where did you get those figures from?" He said, "Well, they just estimated it."

The answer is there's absolutely no basis for any numbers of that nature and, in fact, no one could come up with those figures, I don't think, even if you came up with a worst case scenario, could you come up with the kind of numbers that was estimated.

Of course, on the other hand, let me tell you something. We do not know obviously what the future is going to hold. This bill is not going to create any kind of havoc as has

been said, but we do not know what the future holds in this state. We would hope that this bill will help the prison situation and will actually help to cure our population of some of its ills.

There's obviously a lot of other things that have to be done in addition to this. I'm not a believer that we're going to solve the problems of society with this bill, but I do say to you that this is not going to create any kind of havoc in the prison system as has been suggested by a few people.

SENATOR WALDON: Would the distinguished chairman continue to yield?

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: I will make an effort, Mr. President, to be as quick as I can regarding what I am trying to find out, but I need to ask some more questions.

Senator Volker, suppose someone qualifies for this program and they arrive at Willard from outside or inside, it doesn't matter, and they are actually treated for the 90 days. They are sent to some -- outside of the prison setting, outside of the DOCS facility, perhaps OASAS is the local development corporation or whatever we want to call it, not for-profit corporation involved with the treatment modality, and they fail the dole test. What happens to that person when they have failed the dole test and what sentence will they receive compared to what they could receive under today's law?

SENATOR VOLKER: They would be - their parole would be revoked and they would get whatever sentence they were sentenced to originally.

Let me just point out to you, there seems to be an impression being given by some people in the Assembly and some other people -- I don't mean to say the Assembly - that somehow these are drug addicts, and so

forth. Many of these people don't have serious drug and alcohol problems, but some do. A number of them that have been in prison for a period of time presumably have already been dried out or whatever and hopefully don't need long-term -- don't really need long-term help. Some will, but the hope is that some, I think, will not. So the answer is that a number of these people, probably the 30 to 90 days will take care of their problems.

The others, that's something that has to be taken care of in the -- as part of the parole process, and if they violate that process, they'll be back in the prison system.

SENATOR WALDON: Mr. President, I have, I think, just two more questions.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator, I have read in a number of publications over the years that -- two things, that most of the people in our prison system are there as a direct result of having been using -- at the moment they

committed the crime involved which caused them to be sentenced, using alcohol or drugs, and the second part of these articles I have read said in sum and substance that once one becomes an alcoholic or once one becomes a drug addict, there is no quick fix to turning that person's life around. It requires a long-range approach and it is not unusual for a person to be in treatment for five or more years until they can be sanctioned by the particular treatment facility or treatment modality as having a chance at successfully facing life.

Have you seen anything similar to that, and if so -- and if not, do you have any comments about the statement I just made?

SENATOR VOLKER: Well, first of all, I think there are a number of people in our prison system, no question, who, as part of their criminal background, have alcohol and drug problems, possibly the percentage -- I guess the percentage would vary depending on the area and the situation, but there's no question there is a fairly substantial percentage of people who -

who have alcohol and drug problems.

Obviously, not as many as some people think because there's something, an assumption that we have this huge number of Rockefeller drug people in the prison system who don't exist much anymore. We have a lot more people who are there because of second felony offender than because of the Rockefeller Drug Laws.

Certainly, there are some people who would need long-term treatment, and that is something that we certainly realize, but there have been some -- I think some studies that have shown that a number of people can be dealt with on a -- on a reasonably short-term but intensive basis and with aftercare afterwards, and I think that's what we're looking at here. Some people, frankly, need very little treatment if their - if they're comparatively, I don't want to say minor offenders, because everybody that goes through our prison system is a fairly major offender one way or another, but comparatively minor offenders and we are hopeful that the

treatment that they will get at Willard will resolve their problems and they'll become good citizens again.

SENATOR WALDON: My last question, if I may, Mr. President.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President. Thank you very much, Senator Volker, for your indulgence to this moment.

I'm going to do as I have done on the previous questions or at least on most of them, I'm going to preface my question with a kind of statement. We have a long history in the state of professionals in our criminal justice system. Each component of the criminal justice system, for the most part, are doing a very fine job. We have police officers as you and I were in different parts of the state doing their job, the judges in the courts and court

officers doing their job, the district attorneys doing their job. We've had people in the correctional system both at the city or county or state level doing their job, and we have had for those who are not in the prison per se but under the jurisdiction of the criminal justice system having very decent, professional probation and/or parole officers involved with them ensuring that they are monitored and hopefully transitioned into being productive citizens.

I did not notice any money in this bill for probation or parole specifically. I did not notice anything in the bill which said we will shore up the parole system so that it can monitor these people along with whatever treatment modality they are in and transitioned out of, so our society can be less fearful of their return to the streets of the cities and state of New York.

Can you tell us, one, is there such money; two, what amount and what role parole and probation will play and then, three,

which is really the reason I'm asking the question, why was there not a greater opportunity for parole and probation to be not involved in but immersed in this process because the success, as I understand it at least, of one making it back on the street is determined by - regarding drug addicts, they have kicked the habit permanently. They now feel good about themselves and can be productive citizens and there's someone to ensure that what they say they will be, they will be representing the state of New York.

I apologize for the lengthiness of the question, but I think I needed to say all of that.

SENATOR VOLKER: Sure. Let me just start out with the last of your questions and answer it that way. The Parole Department and the Department of Correctional Services has been very much involved in setting up the program at Willard. The decision to do this or to set this program up was made in conjunction with them and the -- both departments have been

working to -- with the idea -- in fact, I have talked myself on several occasions with Commissioner Coombe about -- you know, about this -- this potential program and how it would operate, and so forth, and I know Senator Nozzolio has even communicated even more with the Correction Department and with parole on this issue.

The second question was on aftercare money. I'm sorry. It's 5.8 million, which is part of the federal -- is going to be part of the federal drug money which we will be -- I presume be passing I hope in the next week or so. That's something that still remains to be done, but there is 5.8 million in there that I think has been virtually agreed on by everyone and that will be part of this.

And finally there is money in the intensive supervision lines of the Parole Department which would also be used to assist in this program.

SENATOR WALDON: Thank you very much, Senator Volker.

I appreciate your indulgence and, Mr. President, if I may on the bill.

ACTING PRESIDENT KUHL: Senator Waldon on the bill.

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

I sincerely am looking for hope, not a panacea, but hope in regard to those who, unfortunately, are the predators in our society and who need to be dealt with in a prison system, need to be dealt with harshly by the criminal justice system.

I don't think that this bill is the answer. I think that this bill will become known one day down the road as the mandatory maximum bill.

The idea of sentencing reform is long overdue and it's great, because in this state, the Rockefeller Drug Law failed miserably and that's one of the reasons that our prisons were bursting at the seams for so many years with people that should have been treated from the first day and in the first instance in a

medicological, pharmacological setting, and if that's what we want to do, turn people around in terms of their drug addiction and alcohol addiction, then this approach won't work.

I'm not antagonistic towards those who tried to make something work and came up with this proposal. I believe that they worked well and were trying to do the best thing. I just think the pressure is on them to take a hard line regarding violent felony offenders who forced us to have to deal with what we're dealing with here.

Unfortunately, I think that we're going to find a proliferation of prison cells. I think we're going to find a lot of technical violators who will cause the cells to be bursting on the front end and back end, because there will not be sufficient treatment of those who have a problem.

Now, some of us in this room have gone into the prisons. I know I have. Some of us have worked with local development corporations which deal with the people who have

addictions. I have. Some of us may even have seen firsthand what happens to family structures when people are drug addicted or alcohol addicted. It is a terrible, terrible problem. It is not one easily treated.

There's no piece of candy that turns someone around when they have been an alcoholic and abusive for many, many years or drug addicted and self-abusive for many, many years. It's a long, hard struggle.

I don't think that this is the answer. I wish it were. I wish I could support it because I think the direction that Senator Volker is trying to take us in is a right direction, meaning putting those in prisons for long times who should be there. They are not the drug addicted and alcohol addicted. They are sick people and we should treat them as such.

So regrettably, Mr. President, even though I think that the credo, the movement, the motivation for Senator Volker was well founded and was positively directed, I

think that the result is not what we need at this moment in time, and I'll state -- and I will have to vote against this and I regret that.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Nozzolio on the bill.

SENATOR NOZZOLIO: Thank you, Mr. President, my colleagues.

The Governor, in formulating this bill, acting as we are as policymakers, has an extremely important objective of taking violent felons off the streets of the state.

Some of my colleagues on the other side of the aisle have discussed revolving doors in the criminal justice system. Absolute ly right, but that revolving door isn't neces sarily revolving with drug offenders at this time. It is revolving with those who have committed the most violent and heinous crimes that could be committed in this state. That revolving door has been used during the process of work release where work release was placing 24,000 inmates in this state out into the

streets every year before their sentences were up, many of whom had no work to be released to, many of whom went into the environment without the proper review, without the proper super vision, without the proper understanding of who those criminals were being let out into the street by prior administrations in a willy-nilly fashion, because there was no room at the inn. The prisons were packed. There was no room for violent felons.

Last year, the Corrections Committee of this Senate held a hearing on work release. Then Commissioner Coughlin indicated that there are 12,000 inmates a year who are out on work release that have committed violent crimes, and of those who have been out on work release last year alone, there were 4,000 who absconded, half of whom have committed violent crimes. In every city of this state, not just New York, but every city of this state -- in Rochester, Syracuse, Buffalo, there have been incidents of those who are out on work release and parole who have committed violent crimes

while out on work release.

That is the circumstance that the Governor was faced with, violent criminals out before their sentences were up, into society committing very criminal conduct in most cases, very disruptive conduct, very violent conduct. Our prisons were crowded and busting at the seams. The Governor took a very progressive, a very dramatic step this winter, in one of his first acts, establishing an executive order to stop work release for violent felons.

Now, we're trying to change other aspects of the criminal justice system and the criminal penalty system. Senator Volker is to be complimented for his tremendous activity, his tremendous guidance of this entire process. I for one thank him immensely.

The Governor is to be thanked for his approach to trying to do something about those who are non-violent but are taking, because of their sentence, because of their drug offense, because of their, in some cases, second felony DWIs where they have been sentenced to

places like Cayuga Correctional Facility, a medium correctional facility, special housing, some who have committed second felony DWI, yet that facility is geared to those who have committed more significant conduct, dangerous to society -- not that DWI is not dangerous, but the inmates in and of themselves and the criminals in and of themselves would not have exhibited as violent behavior as those who have committed rape, robbery and other larceny with armed weapons, those types of individuals who are incarcerated, are instead of being put out into the street the Governor is trying to keep them behind bars in order to enhance and increase their penalties, in order for New York to comply with federal crime bill money, in order to assist us in complying with the federal statutes that we nonetheless have to do more to keep violent criminals off the streets.

I dare say no one on the other side of the aisle, no one in the Assembly in the Majority wishes to build new prisons. The Governor had to do something to keep violent

criminals off the streets, and what he has come up with, in my opinion, is a very unique concept in allowing those non-violent drug offenders into a treatment mode as a condition of their sentence. They are to participate in drug rehabilitation -- drug rehabilitation in this proposal that is modeled after the same type of drug rehabilitation now given by OASAS across this state. As a matter of fact, OASAS is going to manage the drug treatment operations at the Willard campus.

Parole will be very much involved in this entire process and the carrot will be participating in drug treatment, getting into this new system and, in effect, getting out in a more rehabilitated way than any other time in our state's history.

We have a Governor not just giving lip service to rehabilitation. We're saying, the Governor is saying, this proposal is saying, and hopefully we will be saying soon that this is the way to go to stop the revolving door of drug offenders.

To those who have criticized the process, in terms of it being not less than open, I must say that this issue has been discussed at length. It was discussed by the Governor at length in a variety of open forums. It's been discussed before those in the budget committee when the Corrections Commissioner came before us. It was discussed when the head of the Department of Criminal Justice Services, the head of the Division of Criminal Justice Services came before the Crime and Corrections Committee, when the heads of probation, the heads of parole came before the Corrections Committee this issue was discussed.

Mr. President, what we have is an ideal alternative, one unique to New York State and I dare say unique to the nation, where the Department of Corrections is going to be cooperating with OASAS in providing the type of clinical rehabilitation necessary to reform those who have committed crimes because of drugs and alcohol, those non-violent criminals who but for drugs and alcohol would not have engaged in

criminal conduct; and what this does, as Senator Volker has explained very well, is free up cell space at medium and maximum security facilities in this state to use that cell space to keep the violent criminals off the streets, something that each and every one of us, I know, shares as an objective, and what I believe, Mr. President, is the best step that the Governor and this body can take in order for us to make our streets safe again.

I applaud those who have been involved in this effort. I compliment the Governor for his steadfast approach to this problem, and I urge its passage.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I can't be unmindful of the President when he informs me that the speakers list is not as long as the list of those who want to leave. So I'll make my comments in that context.

I promised my colleague, Senator Jones, that I would quote a great American philosopher, and I intend to do that. Passing a bill that reforms the sentencing system in New York State in one fell swoop is a little bit like that comment that his mother made to Forrest Gump, about life, Passing a bill is like a box of chocolates. You never quite know what you're going to get. You open the box of chocolates and on the cover it says sort of Pataki chocolates, says it's got -- advertises that it's going to be good tasting and it's going to be appetizing and it will solve some problems, and you open up the box and what do you see? You immediately see some kinds of chocolates that you've eaten before, some thing that look good, look appetizing that you've seen before -- determinate sentencing, taking violent felons and putting them in for longer periods of time. Sounds like a good idea. I've tasted that before; I think it will work.

I'd love to sample some of those chocolates, so I pick up some of those, and I'm

prepared to eat those, but there are some other things in there that I've never had before. You know, the big sort of fluffy ones that may have all kinds of creams in them. I'm not a cream chocolate eater; I'm not quite sure what they're going to taste like. So what do I do? I take a little bit of a taste and I try to figure out what's in them. Well, doesn't taste too bad, but, lo and behold, I eat a couple of those that don't taste too bad upon the first bite and I find out, however, when they get into my stomach, several hours later I realize I've got a stomach ache because although -- even though it didn't taste too bad when it got in my system, it got in my stomach, then I wound up being sick.

Well, at least from my point of view, some of the things that are -- that are in this bill may be just those kinds of chocolates. You may have to wait until you digest them a bit to find out that either the taste at the start was a good indication that they weren't going to be successful at the end.

The issue of the drug treatment that is in this program I'm concerned about. I think it may end up being one of those cream filled chocolates that isn't good for you. It may look good. It may have a nice appearance on the top of the chocolate, but it may not be good for our body politick in the long run. It may be difficult to digest.

We may end up in a system where 90 days of drug treatment, if you've talked to people in the drug treatment base, is a little tiny bit. I went with Father Young -- Senator Jones and I went with Father Young on the Altamont Program, tremendous program. Four, five years to get people out of drugs, serious drug problems, coming out of jails and it seems to me that today what we're asked to do is buy that box of chocolates.

I have no choice. I'm not in the Majority. I see parts of this box that I want to buy, that I want to take. I see other parts of it that are just as risky as that box of chocolates. I don't know what they're going to

taste like. I don't know if they're going to end up being good for me in the long run. They may be, may all turn out to work. It may turn out that all of the chocolates are good for me, I'm not sure of it.

I know enough that I'm going to vote yes. I'm going to take the chocolates that I like, but I have a fear and Senator Waldon has talked about the consequences, and Senator Abate has talked about the consequences, but I have this fear that like Forrest Gump, this state may be waiting for a long time to get on the right bus that will take us to where we really want to go, and all we've got is a box of chocolates and we never know quite which one we're going to get.

ACTING PRESIDENT KUHL: Chair recognizes Senator Padavan.

SENATOR PADAVAN: Very, very briefly, there are two parts, two issues, that I would like to address, one that has not been spoken of up to this point.

On page 20 and 21 of this bill

you'll see an entire section that deals with the deportation of illegal aliens in our prison system. In 1983, the Department of Correctional Services reported to our Senate Majority Task Force on Immigration that there were approximately 4,000 visitors in the state system who were identified as undocumented illegal aliens.

That was out of a total population of immigrants of over 8,000. In our local correctional facility such as Rikers Island in the city of New York, there are also significant numbers of illegal aliens. What this bill provides for is a very well structured mechanism whereby deportation procedures can be initiated for certain categories of offenders where deportation orders are generated through INS on an expedited basis.

The net result of all of this is that we will empty out a number of our cells by deporting these illegal aliens whom we are providing, at great expense, at great cost, accommodations which could be used obviously for

other inmates for other reasons, for other purposes.

So that's one very positive part of this bill. It's not hypothetical. It's being done in Florida. During 1994, they were able to deport approximately 1500 prisoners out of their jail system using a very similar if not only identical procedure. We had urged our governor, Governor Cuomo, to implement that process. He was considering it and trying to develop it. His criminal justice coordinator was in support of it, but the bottom line is they didn't do it.

We are now doing it in this bill, and I think it's a major step forward. It's going to save us a great deal of money. It's going to provide additional space for other types of prisoners, and I think it's a major step forward.

And the other thing I would like to touch on very briefly -- and a number of you have spoken to it. In 1986, the Senate committee then was Mental Hygiene and Addiction

Control, put out a report after a number of hearings dealing with drug abuse priorities in New York.

One section of the report dealt specifically with the treatment of alcohol and drug-addicted individuals in our state system and in the report, too extensive for me to start quoting here, but voluntary providers, professional effort professionals came before the committee people from Phoenix House and other well known organizations and said mandated drug treatment and alcohol treatment, wherever you can mandate it in prison, produces positive results. It reduces recidivism. It overcomes a number of hurdles which voluntary providers unfortunately are burdened with. Now, granted six months is better than 90 days, a year is better than six months, but the fact remains this mandated program cannot help but produce some positive results.

How many of those who go through it and then are followed back to their locali ties for follow-up, review and treatment, and so

on, who will not get in the recidivism pattern is an open question. No one's going to be able to answer that, but I would say to you and you mentioned Father Young, and I've been to the Altamont Program too, if you talk to him, he will tell you that the more people he can reach in prison, the better off we are. If he can pigeonhole them into a program and when they are released, the better off they are and the better off we are.

So I would say to you that while nothing is perfect either in this bill or in anything else we ever do, this too is a major step forward.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 74. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR MARKOWITZ: Explain my vote.

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR MARKOWITZ: Explain my vote.

ACTING PRESIDENT KUHL: Senator Markowitz to explain his vote.

SENATOR MARKOWITZ: Thank you, Mr. President.

I want to make it clear no matter how we vote on this bill, that every one of us, Republican and Democrat alike, are committed to reducing criminal activity in our state, municipalities, counties and cities and boroughs, number one, and number two, cracking down to the greatest degree possible on violent crime.

It's areas like ours from Brooklyn, South Queens, Bronx, Manhattan, that suffer the most, the result of violent crime and that's why we care the most to get the kind of legislation that will really make an impact on the lives of all of us in our society that want to live the best way we know how.

Now, you and I know the short cuts that fail and the job, jobs, jobs, family development, role counseling, family support programs, quality education, decent health care, we know you've heard it all before, there are no short-cuts to losing weight except by exercise and less consumption of food. There are no short-cuts to resolving this problem that our society continues to face. That's for sure.

I hope that we'll come back with a bill in the near future, Senator Volker, that will really move on resolving the issues to the greatest degree that the society can in terms of preventing crime, cracking down on those that abuse our system, but on the other hand, on the other hand, not resulting in a prison expansion that takes away even more money from society to help prevent the very crime we're trying to impact on this evening and, secondly, will not be dumping more of those that are drug afflicted into our communities.

I vote no.

ACTING PRESIDENT KUHL: Senator

Markowitz will be recorded in the negative.

Senator Leichter to explain his vote.

SENATOR LEICHTER: Yes, Mr. President. I think some good concepts have become terribly convoluted because of the secretive process that was -- that has characterized this bill, and nowhere have the people of the state of New York paid a greater price for the failure to have open deliberative legislative consideration than in this particular bill, because I think the potential that we had a few new incarcerated prisoners deal in a more rational way with people who are not violent, I think, has become so twisted, I think what we have here is a mish-mash.

We don't have the programs; we don't have the support, the financial support for the programs. We have not had the opportunity to really let the law enforcement community comment on this, have an input and Senator Volker said, Well, the D.A.s have approved this. I've seen absolutely nothing by

the D.A.s to approve it. I don't know what they could have approved because, when I got the bill two hours ago, held it, it was hot. It had just come off the press.

There has been no review of this bill by people who certainly should have had an input and who could have guided us. Three men in a room with a budget for weeks after weeks, failure to include the whole Legislature, refusal to let the public in on the process, results in taking a good idea and ending up with something that I don't believe is going to work.

Yes, like every -- like everyone else here, I want to deal with crime, but I don't believe this is the way to do it.

Mr. President, I vote in the negative.

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

Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1092 are

Senators Abate, Babbush, Connor, Leichter, Markowitz, Nanula, Paterson and Waldon, also Senator Montgomery, also Senator Smith. Ayes 47, nays 10.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: Mr. President, I'd like to request unanimous consent to be recorded in the negative on Calendar Number 1091.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Stachowski will be recorded in the negative on Calendar Number 1091.

Senator Nanula.

SENATOR NANULA: I, too, Mr. President, would like to request unanimous consent to be recorded in the negative on Calendar Number 1091.

ACTING PRESIDENT KUHL: Hearing no objection, without objection, Senator Nanula

will be recorded in the negative on Calendar Number 1091.

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

ACTING PRESIDENT KUHL: No housekeeping. It's been all taken care of, apparently Senator Skelos.

Senator Skelos.

SENATOR SKELOS: There being no further business, I move that we adjourn until Monday, June 5th, 1995 at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until Monday, June 5th, at 3:00 p.m.

(Whereupon at 10:55 p.m., the Senate adjourned.)