ALBANY, NEW YORK

June 7, 1995

10:00 a.m.

REGULAR SESSION

SENATOR JOHN A. DEFRANCISCO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT DEFRANCISCO: Senate will come to order. All will please rise and join with me in the Pledge of Allegiance to the Flag.

(Whereupon, the Senate and those present joined in the Pledge of Allegiance to the Flag.)

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

(Whereupon, there was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 6. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Monday, June 5th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President. On behalf of Senator Nozzolio, on page number 40, I offer the following amendments to Calendar Number 1170, Senate Print Number 5017, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT DEFRANCISCO: Amendments received and adopted.

ACTING PRESIDENT DEFRANCISCO: There is one substitution.

SENATOR SKELOS: Please make the substitution.

THE SECRETARY: On page 41, Senator Tully moves to discharge from the Committee on Energy, Assembly Bill Number 4065,

and substitute it for the identical Third Reading 1175.

ACTING PRESIDENT DEFRANCISCO: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: We can take up the calendar, noncontroversial.

ACTING PRESIDENT DEFRANCISCO: If we could please stand at ease for a moment.

(Whereupon, the Senate was at ease.)

ACTING PRESIDENT DEFRANCISCO: Senator Skelos.

SENATOR SKELOS: Mr. President. At this time, if we could take up the calendar, noncontroversial.

ACTING PRESIDENT DEFRANCISCO: Secretary will read.

THE SECRETARY: On page 14, Calendar Number 518, by Senator Volker, Senate Print 1479, an act to amend the Civil Practice Law and Rules, in relation to permitting the joinder of consumer credit transaction.

ACTING PRESIDENT DEFRANCISCO: Secretary will read the last section, please.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 31.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 563, by Senator LaValle, Senate Print 3735.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 588, by Senator Skelos, Senate Print 397, an act to amend the Real Property Law, in relation to the priority of the lien of a reverse mortgage.

ACTING PRESIDENT DEFRANCISCO: Secretary will read the last section, please.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 32.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 854, by Senator Marchi, Senate Print 2379, an act to amend the -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 873, by Senator Levy.

SENATOR SKELOS: Star that at the request of the sponsor.

ACTING PRESIDENT DEFRANCISCO: The bill is starred at the request of the sponsor.

THE SECRETARY: Calendar Number 876, by Senator Levy.

SENATOR SKELOS: Lay the bill

aside at the request of the sponsor.

ACTING PRESIDENT DEFRANCISCO: Is that for the day?

SENATOR SKELOS: Yes.

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

THE SECRETARY: Calendar Number 943, by Senator Goodman, Senate Print 5055B, an act to amend the Tax Law and the Administrative Code of the City of New York, in relation to revising the schedule for filing withholding tax returns.

ACTING PRESIDENT DEFRANCISCO: Secretary will read the last section, please.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number

994, by Senator Leibell, Senate Print 5019.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1040, by Senator Kuhl, Senate Print 3077, an act to amend the Environmental Conservation Law, in relation to permitting the discharge of a firearm.

ACTING PRESIDENT DEFRANCISCO: Secretary will read the last section, please.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1111, by Senator Saland, Senate Print 5103, an act to amend the Domestic Relations Law, in relation to special relief in matrimonial actions.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1148, by Senator Montgomery, Senate Print 594, an act authorizing the City of New York to reconvey its interest in certain real property acquired by in rem foreclosure.

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

Secretary will read the last section, please.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1149, by Senator Maltese, Senate Print 1085A, an act to amend the Administrative Code of the City

of New York, in relation to the number of positions designated as first and second grade detectives.

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

Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37, nays 1. Senator Leichter recorded in the negative.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1150, by Senator Present, Senate Print 1414, an act to amend the Vehicle and Traffic Law and the Parks, Recreation and Historic Preservation Law, in relation to the registration of snowmobiles.

ACTING PRESIDENT DEFRANCISCO: Secretary will read the last section, please.

THE SECRETARY: Section 4. This

act shall take effect immediately.

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1151, by Senator Spano, Senate Print 1701, an act to amend Chapter 78 of the Laws of 1989, amending the Arts and Cultural Affairs Law.

SENATOR SKELOS: Lay it aside at the request of the sponsor for the day.

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

THE SECRETARY: Calendar Number 1152, by Senator Johnson, Senate Print 2789, an act restoring Emil G. Pavlik, Jr. to Tier II membership with the New York State and local employees retirement system.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Mr. President. First, may we lay that bill aside?

ACTING PRESIDENT DEFRANCISCO: Please lay the bill aside.

SENATOR PATERSON: And, Mr. President, has Calendar Number 1040 involving the discharge of a firearm within 500 feet of a building, has that left the house yet?

ACTING PRESIDENT DEFRANCISCO: No, it has not.

SENATOR PATERSON: Mr. President, I move to reconsider the vote by which it passed and then lay the bill aside.

ACTING PRESIDENT DEFRANCISCO: The Secretary will call the roll on reconsideration.

Please read the title.

THE SECRETARY: Calendar 1040, by Senator Kuhl, Senate Print 3077, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT DEFRANCISCO: Please call the roll for reconsideration.

(The Secretary called the roll on

reconsideration.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT DEFRANCISCO: The bill is before the house.

Senator Paterson, do you want it laid aside?

SENATOR PATERSON: Yes, I do.

ACTING PRESIDENT DEFRANCISCO: Please lay the bill aside.

THE SECRETARY: Calendar Number 1154, by Senator Marchi, Senate Print 3125, an act to allow Michael Acito to receive credit in the New York State and local employees' retirement system.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1156, by Senator Sears, Senate Print 3725A, an act to amend the General Business Law, in relation to prize award schemes.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1157, by Senator Saland, Senate Print 3940, an act to amend the Executive Law, in relation to penalties for unauthorized disclosure of information.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT DEFRANCISCO:

The bill is passed.

THE SECRETARY: Calendar Number 1158, by Senator Spano, Senate Print 3976, an act to amend the Labor Law, in relation to dismissal payments.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1159, by Senator DeFrancisco, Senate Print 4230, an act to amend the Civil Practice Law and Rules, in relation to the confidentiality of certain privileged information.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1160, by Senator Marcellino, Senate Print 4245, an act authorizing the assessor of the county of Nassau to accept an application for exemption.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1161, by Senator Marcellino, Senate Print 4294, an act to amend the General Municipal Law, in relation to establishing the town of Huntington Industrial Development Agency.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1162, by Senator Tully, Senate Print 4387, an act authorizing the assessor of the county of Nassau to accept an application for exemption from real property taxes.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1163, by Senator Tully, Senate Print 4514, an act to amend Chapter 972 of the Laws of 1962, relating to the Shelter Rock Public Library.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1164, by Senator Nozzolio, Senate Print 4518, an act to amend the Executive Law, in relation to preliminary and final revocation hearings.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT DEFRANCISCO:

The bill is passed.

THE SECRETARY: Calendar Number 1165, by Senator Lack, Senate Print 4553, an act to amend the Court of Claims act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO:

Lay the bill aside.

THE SECRETARY: Calendar Number 1166, by Senator Tully, Senate Print 4908, an act to amend -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO:

Lay the bill aside.

THE SECRETARY: Calendar Number 1167, by Senator Velella.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO:

Lay the bill aside.

THE SECRETARY: Calendar Number 1168, by Senator Holland, Senate Print 4991, an act to amend the General Municipal Law, in relation to authorizing certain entities to make purchases.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1169, by Senator Bruno, Senate Print 5000.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1171, by Senator Tully, Senate Print 5043, an act authorizing the assessor of the county of

Nassau to accept an application for exemption from real property taxes.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1172, by Senator Goodman, Senate Print 5117, an act to amend the Election Law, in relation to accessible polling places.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 1173, by Senator Cook, Senate Print 5164.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1174, by Senator Leibell, Senate Print 5201, an act to amend the Public Authorities Law, in relation to loan insurance.

ACTING PRESIDENT DEFRANCISCO:

Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1175, by Member of the Assembly DiNapoli, substituted earlier today, Assembly Print 4065, an act to amend the Public Service Law, in relation to revenues earned by Water-Works Corporation.

ACTING PRESIDENT DEFRANCISCO: Please 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.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1177, by Senator Larkin, Senate Print 2807, an act to amend the Education Law, in relation to the reporting of school safety inspections.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Please call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President. At this time, if we could return to reports of standing committees, I believe there is a report from the Judiciary Committee.

ACTING PRESIDENT DEFRANCISCO:

Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nominations:

Margaret Garvey of Pearl River as Judge of Rockland County Family Court.

ACTING PRESIDENT DEFRANCISCO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Margaret Garvey of Pearl River as Judge of the Rockland Family Court, and would recognize for purposes of seconding, if you would, Mr. President, Senator Joseph Holland.

ACTING PRESIDENT DEFRANCISCO: Senator Holland.

SENATOR HOLLAND: Thank you, Senator Lack. Thank you, Mr. President.

It really is my pleasure this morning to second the nomination of Margaret Garvey.

Margaret has been active in

Rockland County for many, many years. Margaret is a very hard campaigner, very hard worker. She and her husband Greg Carney are here.

Margaret was the first elected Town Clerk in the county of Rockland. She will be the first female Family Court Judge in the county of Rockland. She is leading the way as a female in the judiciary in Rockland County.

As I said, she's a very hard worker. She knows town law. She knows county law. She has been teaching at local colleges and universities. She has been an advisor to the Town Youth Court. She has worked for everyone who has asked in the county of Rockland.

I congratulate her for being our new Family Court Judge in the county of Rockland. I know it is one of the most difficult jobs there is to do in the judiciary. I know that she will do an excellent job.

It is my pleasure to second the nomination of Margaret Garvey.

SENATOR LACK: Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Lack.

SENATOR LACK: Yes. Mr. President, Judge Garvey has been interviewed by my staff and has appeared before the Judiciary Committee. She has been moved by the committee. She has been nominated by the Governor.

I would at this time move the nomination and ask for confirmation by the Senate.

ACTING PRESIDENT DEFRANCISCO: The question is on the confirmation of Margaret Garvey as Judge of the Rockland County Family Court.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Margaret Garvey is hereby confirmed as Judge of the Rockland County Family Court.

(Applause.)

Senator Lack.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: Rose LaMendola of Amherst as Judge of Erie County Supreme Court.

ACTING PRESIDENT DEFRANCISCO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Judge LaMendola, who is currently on the County Court in Erie, has appeared before the committee, has been interviewed by my staff, has been nominated by the Governor. Her credentials have been found sound, and I would ask that you recognize Senator Volker for purposes of seconding the nomination.

ACTING PRESIDENT DEFRANCISCO: Senator Volker.

SENATOR VOLKER: Mr. President. I'm very proud today to rise to second the nomination of Rose LaMendola.

I have said it here on a number

of occasions. Obviously, many of the people we have confirmed from Erie County are people who, over the years, I have known; but probably there are few that I have known any better than Rose LaMendola, who is not only a personal friend and also her family but who I have campaigned with, and I was saying in the Judiciary Committee that I have never heard anyone say anything unkind about Rose, except a couple of defense attorneys who complained a little bit that Rose, who has a reputation for being a tough but fair judge, sent their clients to jail. Of course, they then quickly admitted their clients probably deserved to go to jail, anyways.

But, I think, as most of you probably know, the County Court judges in upstate New York are the judges who handle the criminal cases and primarily -- although they also handle civil cases but primarily criminal cases, and she has been one of the stalwarts on the court for many, many years and, in fact, is a senior judge.

As I said before, I have

campaigned with her and I have been with her on many social events. She is an integral part of the community in Western New York. I have absolutely no question that she will make an excellent Supreme Court judge, and I want to compliment the Governor not only for Rose but for the quality of the other people who also are to be confirmed here today because I think all of them are highly qualified, but I guess I would say that I firmly believe that Rose LaMendola probably is as good an appointment as the Governor will make during this session.

I congratulate you, Rose, and I wish you the very best of luck.

ACTING PRESIDENT DEFRANCISCO: Senator Rath.

SENATOR RATH: Thank you, Mr. President.

I would like to add my congratulations to Judge LaMendola. I have known Rose for -- well, as long as I have been involved in Erie County politics, which is equally as long as Rose has been involved. Our

paths have crossed hundreds and hundreds of times.

I would echo what we heard Senator Volker say and, of course, the Judiciary Committee's recommendation.

But let me take this one step farther. Rose's involvement in the community is as long and as broad and as wide as anyone that we have talked about here this year. But Rose didn't stop her involvement in the community when she went to the judiciary. Every organization and group that she can participate in, she does participate in.

She has her humanity, her wisdom, and her long experience.

So, Rose, good luck. You will not have forgotten the community that sent you there. You will never forget all the people that have been involved with you, and we are delighted in Western New York to have you added to the Supreme Court bench.

Congratulations, Rose.

ACTING PRESIDENT DEFRANCISCO:

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

Although I'm not personally acquainted with Judge LaMendola, I have followed the judiciary in Western New York. I am very familiar with her career and her service on the bench. I talked to some of the City Court judges in Niagara County just last night, and they have nothing but the highest regard for Judge LaMendola, and I proudly rise in seconding her nomination, Mr. President.

ACTING PRESIDENT DEFRANCISCO: The question is on -

Senator Dollinger. I'm sorry.

SENATOR DOLLINGER: Mr. President, I don't know Judge LaMendola, and I met her this morning with Senator Volker, and I really went to just tell her I think it was a marvelous thing that in 1975, which was a difficult year for the Republican Party, a woman had run for the County Court in Erie County and had successfully won the seat. I thought that

was a tremendous political thing to do; and, lo and behold, she proceeded to tell me that one of the reasons why she was successful in that race was because she had also gotten the Democratic nomination; and she, in succeeding years, when she had run for the office again, had been cross-endorsed or had obtained the Democratic nomination.

One of the things we oftentimes talk about in this chamber is bipartisan justice. Judge LaMendola, who has a long career in Erie County described by others who know her better, but we will get bipartisan justice in this nominee, and she said -- I think she said in the Judiciary Committee this would be a way to cap a career. I look at this as a way to continue what has already been a very bright and skillful judicial career.

Judge LaMendola, I wish you the best, and I think you embody the best in our bipartisan justice system.

ACTING PRESIDENT DEFRANCISCO: The question is on the confirmation of Rose

LaMendola as Judge of the Erie County Supreme Court.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Rose LaMendola is hereby confirmed as Judge of the Erie County Supreme Court.

Congratulations.

(Applause.)

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: John McGuirk of Cornwall-on-Hudson as Judge of the Orange County Family Court.

ACTING PRESIDENT DEFRANCISCO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I proudly rise to move the

nomination of John McGuirk of Cornwall-on-Hudson as Judge of the Orange County Family Court.

Judge McGuirk has also been examined by staff of the committee. He has appeared before the committee and has been found more than satisfactory in all respects, and I would yield to Senator Larkin, if you would, Mr. President, with respect to seconding this nomination.

ACTING PRESIDENT DEFRANCISCO: Senator Larkin.

SENATOR LARKIN: Mr. President, it's my privilege to rise and second the nomination of John McGuirk for Family Court Judge in Orange County. In a way, this will be a homecoming for Judge McGuirk because he cut his teeth on the bar in Orange County as law secretary for the late Judge Paul Murphy, and anyone who's ever known Paul Murphy in the judicial system knows that he was a taskmaster and he made you earn your stripes.

Judge McGuirk has been known in our county, in his 18 years as a town judge, as

an individual experienced, compassionate, understanding, and with total knowledge of the law. He's been involved in every aspect of our community.

He's the father of five children, very proud to have his daughter Mary here with him today, who I have known since childhood.

John McGuirk has always been there in the community. People seek him out in his private practice because of his willingness to understand and talk to people.

John, not being a lawyer, I stand here in front of you saying that we have made a choice, the screening committee, our committee at home, to put someone on the bench that truly understands because Family Court, as we know today and as some of the people were talking about in the screening, it's a tough committee. It's a committee with a lot of problems. That court isn't something that comes and goes. It carries on, family troubles; and with society as it is today, we need a judge on that court who is truly totally committed. In John McGuirk, we

have that individual.

I move the nomination.

ACTING PRESIDENT DEFRANCISCO: Senator Holland.

SENATOR HOLLAND: I rise to second the nomination of Judge McGuirk. I haven't known Judge McGuirk very long, but I knew him by reputation, and I know he has sat as a town justice of Cornwall for 18 years, as Senator Larkin says.

So I just wanted to wish you good luck. I know the people of Orange County respect you and you will do a great job on the Family Court.

It's my privilege to second the nomination.

ACTING PRESIDENT DEFRANCISCO: The question is on the confirmation of John McGuirk as Judge of the Family Court in Orange County.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

John McGuirk is hereby confirmed as Judge of the Orange County Family Court.

Congratulations.

(Applause.)

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: Joseph N. Giamboi of the Bronx as Justice of the Supreme Court, Bronx County.

ACTING PRESIDENT DEFRANCISCO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise once again to move the nomination of Joseph N. Giamboi of the Bronx as Justice of the Supreme Court of Bronx County.

He also has been examined by counsels and staff to the Senate Judiciary Committee, has appeared before the Judiciary Committee which has unanimously voted moving his

nomination to the floor, and I would, please, Mr. President, yield to Senator Velella to second such nomination.

ACTING PRESIDENT DEFRANCISCO: Senator Velella.

SENATOR VELELLA: Thank you, Mr. President.

I would like to welcome everyone to Bronx Day in the Senate today. We are going to be confirming, with the concurrence of the body, two Supreme Court judges who are actual residents of Bronx County and the two that we have confirmed previously who were educated in Bronx County. So, certainly, today is Bronx Day; and, hopefully tomorrow we will be doing an additional judge who couldn't make it up here today for the confirmation and the hearing, who will also be coming before us for a Supreme Court nomination in Bronx County.

I'm particularly pleased to rise and support the nomination of Joseph Giamboi, who has been admitted to the bar since 1955. He has tried cases in almost all of the major

courts in the state. He has appeared before the Appellate Division and the Court of Appeals. He has tried federal cases in California and throughout the country.

He is truly a shining star amongst the practicing bar in Bronx County. He has worked very closely with this Legislature over the years, having served on committees with a number of Senators. He has worked for me and my staff, and we will be missing him as he assumes his duties with the judiciary.

Certainly, I can say that Joe Giamboi -- the highest compliment I can pay to him is that he is a lawyer's lawyer. He is someone that I have entrusted with the duties and obligations of representing me in court, and a number of other attorneys in Bronx County have relied on his expertise.

I believe he will be a valuable asset to the Court, and I proudly second the nomination of Joseph N. Giamboi for Justice of the Supreme Court.

I might add that in the gallery

with him are his two sons, Joseph and Robert, and his nephew Robert, who is also here today.

Thank you.

ACTING PRESIDENT DEFRANCISCO: Senator Mendez.

SENATOR MENDEZ: Mr. President. I rise to also second the nomination of Kenneth Thompson from the Bronx as Justice -

ACTING PRESIDENT DEFRANCISCO: Excuse me, Senator.

SENATOR MENDEZ: Joe Giamboi. Yes, but I -- excuse -

ACTING PRESIDENT DEFRANCISCO: Yes?

SENATOR MENDEZ: Mr. President, I rise to second the nomination of Judge Joseph Giamboi. Soon we will be taking up the nomination of Kenneth Thompson.

But, most of all, what I really want to express is my admiration to Governor Pataki for, in this instance, choosing five very highly qualified individuals to serve on the bench and the mixture of the people that he has

selected. He has selected two women, an African-American, an Italo-American, and I know that he will eventually also choose a Puerto Rican from the Bronx.

So, Mr. President, we Puerto Ricans from the Bronx are very fortunate to have, for the first time, an Assemblyman who has become the County Leader. I am referring to Assemblyman Ramirez, here with us, and he believes in diversity. So we are most grateful for the choices that Governor Pataki has presented to us.

Thank you.

ACTING PRESIDENT DEFRANCISCO: The question is on the confirmation of Joseph N. Giamboi as Justice of the Supreme Court, Bronx County.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Joseph N. Giamboi is hereby

confirmed as Justice of the Supreme Court, Bronx County.

Congratulations.

(Applause.)

Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: Kenneth L. Thompson of the Bronx as Justice of the Supreme Court, Bronx County.

ACTING PRESIDENT DEFRANCISCO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Kenneth L. Thompson of the Bronx as Justice of the Supreme Court of Bronx County.

Judge Thompson has also been examined by committee staff and counsel, has appeared before the committee, and has been unanimously recommended to the floor of the Senate for confirmation, and, once again, since it's Bronx Day here in the Senate, I yield to

Senator Velella.

ACTING PRESIDENT DEFRANCISCO: Senator Velella.

SENATOR VELELLA: Thank you, Senator Lack.

Let me say that what Senator Mendez said on the prior nomination certainly holds true for this nomination and the nomination that we will be, hopefully, seeing tomorrow. It reflects the Governor's outreaching to the community. It reflects his desire not only to appoint qualified people but do it in a bipartisan manner and to do it to reflect the communities which are to be represented in Bronx County.

We're fortunate in having three people that will be coming before us that basically represent the major populations of Bronx County, an African-American, a Hispanic American and an Italian-American, which basically is the composition of the Bronx.

Let me say that the Governor is to be complimented -- and I'm glad that Senator

Mendez pointed that out -- to reflect the bipartisan and the multi-ethnic complexities of the Bronx.

In picking Judge Thompson, he has chosen someone who is a sitting jurist. He is highly respected in the court system. His background has been consistently within the court system. He worked as an opinion clerk, a law secretary, a hearing officer in Bronx County and has served as a designated Acting Supreme Court Justice. He's been doing the job. He will now, hopefully, with your concurrence, have the title.

He has an excellent reputation amongst the members of the bar. He is certainly fair and certainly a tough judge, but you couldn't ask for a better one in Bronx County.

He is joined here today by his wife, a medical doctor, Brenda Thompson, who will be speaking to everyone in the chamber about managed care immediately after the confirmation.

(Laughter.)

It is, indeed, an honor to move the nomination of Kenneth Thompson for Justice of the Supreme Court.

ACTING PRESIDENT DEFRANCISCO: Senator Espada.

SENATOR ESPADA: Mr. President. As has been noted, a judiciary that is truly representative is a judiciary that can truly dispense justice and live up to and perhaps enhance the highest standards of our justice system.

Kenneth L. Thompson certainly will do that. He has the requisite temperament, qualifications, and experience to carry forth that challenge.

It is also very hopeful here, from this Bronx Senator, that we can recruit his beautiful wife, Brenda, to the medical field in the Bronx, as well.

I must salute the Governor. I salute Senator Velella and salute our County Leader, Assemblyman Ramirez, for their exercise in good judgment and their work in this effort

as well.

Thank you very much.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. And as Senator Espada just articulated, that the Governor and, certainly, Senator Velella and Assemblyman Ramirez, all those who have come together and lent their names to support this really terrific candidate, should congratulate themselves today. They have selected a person of distinction, a person who everywhere he has served he has flourished, and it is always good to know that the individual who accedes to great success based on a great ability and also a plethora of achievements is a decent human being, someone who has a great deal of personal principle and applies it not only to his profession but to his everyday life. That's what people are looking for in judges. That's what people are seeking in our judicial system, and it is a reflection of the community at the same time as a distinction among the -- by the

individual who has arisen to this level.

And so, I'm very happy to see Judge Thompson here, and his wife. I'm very happy to be a part of seconding this nomination.

I just wonder, Senator Velella, since it's Bronx Day, I guess we won't have any Bronx cheers.

(Laughter.)

But I really think that this is an excellent job that you and the committee have done.

ACTING PRESIDENT DEFRANCISCO: The question is on the confirmation of Kenneth L. Thompson as Justice of the Supreme Court, Bronx County.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Kenneth L. Thompson is hereby confirmed as Justice of the Supreme Court, Bronx County.

Congratulations.

(Applause.)

Senator Skelos.

SENATOR SKELOS: Mr. President. At this time, if we could return to messages from the Assembly.

ACTING PRESIDENT DEFRANCISCO: Secretary will read.

THE SECRETARY: The Assembly returned Senate Bill Number 1553A, Assembly Reprint 30004 entitled, "An act making appropriations for the support of government and to amend Chapter 50 of the Laws of 1995," enacting the State Operations Budget, Aid to Localities.

ACTING PRESIDENT DEFRANCISCO: Senator Skelos.

SENATOR SKELOS: 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 DEFRANCISCO: The Secretary will call the roll on

reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT DEFRANCISCO: The bill is before the house.

Senator Skelos.

SENATOR SKELOS: I believe the bill is restored to the place of Third Reading Calendar, and, Mr. President, I now offer the following amendments.

ACTING PRESIDENT DEFRANCISCO: The amendments are received and adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time, if we could take up the controversial calendar.

ACTING PRESIDENT DEFRANCISCO: The Secretary will read.

THE SECRETARY: On page 14, Calendar Number 563, by Senator LaValle, Senate Print 3735, an act to amend the General Municipal Law, in relation to creating the town

of Southampton Industrial Development Agency.

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

Explanation.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: May we lay this aside for just a moment? Senator Leichter is out of the chamber. He would like to ask a few questions of Senator LaValle.

SENATOR SKELOS: Certainly, Mr. President, if Senator LaValle has no objection at this time, but I would urge the members as we're trying to work our way through the various Rules Committee reports and complete this budget that, as the bills are called up, if they could be in the chamber so we could proceed in an orderly fashion.

ACTING PRESIDENT DEFRANCISCO: The bill will be laid aside temporarily.

SENATOR PATERSON: I think the Acting Majority Leader's point is well-taken.

Those who would like to ask questions on bills, the members who are moving the bills are here. We would appreciate it if they would come to the chamber and ask their questions.

ACTING PRESIDENT DEFRANCISCO: Secretary will read.

THE SECRETARY: Calendar Number 854, by Senator Marchi, Senate Print 2379, an act to amend the Public Authorities Law, in relation to directing the Triborough Bridge and Tunnel Authority to establish a system of one directional toll collection.

SENATOR PATERSON: Explanation.

SENATOR MARCHI: Lay that bill aside temporarily.

ACTING PRESIDENT DEFRANCISCO: Lay that bill aside temporarily.

THE SECRETARY: Calendar Number 994, by Senator Leibell, Senate Print 5019, an act to amend the Real Property Actions and Proceedings Law, in relation to landlord and tenant proceedings.

ACTING PRESIDENT DEFRANCISCO:

Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1111, by Senator Saland, Senate Print 5103, an act to amend the Domestic Relations Law, in relation to special relief in matrimonial actions.

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

SENATOR PATERSON: Mr. President, this is the only bill that I will be making this request. May we lay this bill aside for the day? Senator Solomon is particularly interested in this bill. He would like very much to discuss it, and he will not be here today.

SENATOR SALAND: Mr. President, I will lay the bill aside with the following understanding, Senator Paterson. I believe Senator Solomon spoke with my counsel. I believe my counsel may have addressed the questions that he raised regarding this bill. I will try to get confirmation of that and will advise the Acting Minority Leader to that effect if we have; and if we can accomplish that, I

would like to be able to return to this bill if we return to this calendar during the course of the day.

ACTING PRESIDENT DEFRANCISCO: All right. The bill will be laid aside temporarily.

THE SECRETARY: Calendar Number 1040, by Senator Kuhl, Senate Print 3077, an act to amend the Environmental Conservation Law, in relation to permitting the discharge of a firearm.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DEFRANCISCO: An explanation has been requested. Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1152, by Senator Johnson, Senate Print 2789, an act restoring Emil G. Pavlik Jr. to Tier II membership in the New York State and local employees retirement system.

SENATOR SMITH: Explanation.

ACTING PRESIDENT DEFRANCISCO: Explanation requested.

Senator Johnson.

SENATOR JOHNSON: Mr. President. It's a little local bill asked for by the village of Amityville, who consent to have this bill introduced and to provide their mayor to continue as a Tier II member.

As you know, there is a five-year limitation. If you are out of the pension five years, you can't go back into it. He was out five years and, I believe, seven months. The village is agreeable to this. They are going to put in their share of the money. The mayor is going to pay his share. It is quite a noncontroversial measure in my mind, and the bill should be passed.

ACTING PRESIDENT DEFRANCISCO: Senator Stachowski.

SENATOR STACHOWSKI: If Senator Johnson would yield for a question?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson, will you yield?

Senator yields.

SENATOR STACHOWSKI: Senator

Johnson, I would imagine it is noncontroversial, but we did do that big bill that was supposed to handle all of these so that we wouldn't have to have this process where we're dealing with individual retirement pieces one at a time again. That was supposed to be in the past, and all of them were supposed to go through this new process.

Can you tell us why this particular person did not qualify under the bill that we passed that was supposed to handle all of the bills of this nature?

SENATOR JOHNSON: Well, I think, Senator, you and I know that chapter didn't work out quite as we planned, and that process is getting bogged down in various aspects. This is one here which we didn't feel requires a hearing process at all since it's agreeable, and part of that chapter was to set up a process to evaluate and decide on claims which may be contested. There is no contesting by the municipality here; therefore, it's appropriate to just proceed with this bill.

SENATOR STACHOWSKI: And the locality -- excuse me, Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Stachowski.

SENATOR STACHOWSKI: Again through you, I'm sorry. Senator, if you would yield again?

The locality has no trouble putting up the money to cover this particular person's piece, is that how this one is going to work?

SENATOR JOHNSON: The village has requested this bill be passed at this time.

SENATOR STACHOWSKI: Thank you.

ACTING PRESIDENT DEFRANCISCO: Read the last section. Oh, excuse me.

There is a home rule message at the desk.

Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 1154, by Senator Marchi, Senate Print 3125, an act to allow Michael Acito to receive credit in the New York State and local employees retirement system.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DEFRANCISCO: An explanation has been requested.

Senator Marchi.

SENATOR MARCHI: Mr. President. In 1988, the Court of Appeals decision of Doctors Council versus New York City Employees Retirement system held that part-time city employees were eligible for membership in the retirement system. Chapter 749 of the Laws of 1992 set forth the mechanism for employees with present or part-time service to enter the retirement system and/or receive credit for

part-time service, but Chapter 749 did not, however, correct the inequity that exists for one -- one part-time employee who would have entered the system at a higher tier if he had been allowed entry as a part-timer. This legislation rectifies this inequity. He is the only one that's involved in this circumstance.

SENATOR PATERSON: Explanation -

ACTING PRESIDENT DEFRANCISCO: An explanation has been given.

SENATOR PATERSON: That was a very good explanation.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number

1160, by Senator Marcellino, Senate Print 4245, an act authorizing the assessor of the county of Nassau to accept an application for the exemption of specified real property owned by the Chabad Lubavitch of Plainview, Incorporated.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT DEFRANCISCO: An explanation has been requested.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President. This bill would authorize the assessor of the county of Nassau to accept an application for exemption for real property taxes pursuant to Section 420A of the Real Property Tax Law for certain property owned by the Chabad Lubavitch of Plainview.

Apparently this property was purchased by the Chabad, which is a legitimate not-for-profit organization residing in Plainview and well-known for their community activities and their community service, subsequent to the date when this particular

piece of property would have counted. It has been subsequently, in 1995, granted property tax exemption.

The county feels that they need something from the state before they can go back retroactively and give them the ability to file.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Stachowski.

SENATOR STACHOWSKI: If Senator Marcellino would yield for a couple of questions?

ACTING PRESIDENT DEFRANCISCO: Senator Marcellino, will you yield?

SENATOR MARCELLINO: Yes.

SENATOR STACHOWSKI: Is it a common practice in Nassau County that not-for-profits get retroactive tax credit - relief? Because, you know, normally if you hadn't filed in time -- or you filed -- whenever you filed, that's when you get the tax relief; and if you hadn't done it immediately, well,

that's just the way it goes.

So is this a normal practice or is this an exceptional piece?

ACTING PRESIDENT DEFRANCISCO: Senator Marcellino.

SENATOR MARCELLINO: I don't know if it's normal practice. I do know it's been done in the past.

SENATOR STACHOWSKI: One more question.

SENATOR MARCELLINO: Certainly.

SENATOR STACHOWSKI: A couple of years ago, we had to do what's referred to as somewhat -- as a deficit spending bill for Nassau County, and we did one for Suffolk County, too.

Can you tell me if we're going to continue to do these retroactive tax relief pieces and if other not-for-profits see this and want to start going back historically into some period that maybe they didn't get covered for, can we look forward to maybe doing another deficit spending piece for Nassau County?

ACTING PRESIDENT DEFRANCISCO: Senator Marcellino.

SENATOR MARCELLINO: I truly do not think this one will do that, nor do I think you will see a rush of other not-for-profits entering into this field, Senator.

This organization with this particular piece, I think, is a worthy organization. They are well known in my community and in my district and, I believe, well deserve to have the opportunity to apply. The county will have to make its decision after that.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1161, by Senator Marcellino, Senate Print 4294, an act to amend the General Municipal Law, in relation to establishing the town of Huntington Industrial Development Agency.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT DEFRANCISCO: Senator Marcellino.

SENATOR MARCELLINO: This is my lucky day, Senator.

Mr. President, this bill seeks to amend the General Municipal Law by adding a new section 907 (d), to establish the town of Huntington, of Suffolk, Industrial Development Agency in the county of Suffolk. It has been introduced at the request of the Huntington Town Board and represents an effort by the town to provide for themselves effective economic planning.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Marcellino will yield for a couple of

questions?

ACTING PRESIDENT DEFRANCISCO: Senator Marcellino, will you yield?

SENATOR MARCELLINO: To Senator Paterson? Any time.

SENATOR PATERSON: Oh, thank you, thank you. The first one of them being, at whose request has this bill been introduced, Senator? We're just curious.

SENATOR MARCELLINO: At whose request?

SENATOR PATERSON: Yes.

SENATOR MARCELLINO: Town of Huntington, Senator.

SENATOR PATERSON: Did the town of Huntington -- if the Senator will continue to yield?

SENATOR MARCELLINO: Absolutely.

SENATOR PATERSON: -- previously operate an IDA?

SENATOR MARCELLINO: I don't believe so, Senator.

SENATOR PATERSON: All right.

Thank you very much, Senator.

ACTING PRESIDENT DEFRANCISCO: There's a home rule -

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT DEFRANCISCO: I'm sorry. Senator Stachowski.

SENATOR STACHOWSKI: Will the Senator continue to yield?

SENATOR MARCELLINO: Sure.

SENATOR STACHOWSKI: I don't know what the situation is in your area but in my area what happens when all these various towns get their own individual IDAs, we then find ourselves in a situation where companies will then -- after their tax exempt status in one particular industrial park, for example, expires, they will then say, "I'm going to leave the locality." You know, they say, "I'm sorry all these jobs are going to go," and then a different IDA will scramble and put together a package to keep them in the area, to move them over maybe one town or two towns. They'll get

another eight to ten years of tax-free status, and then the same process continues, and thus - thus being that they're continually getting large packages of aid from government agencies and paying no taxes in return, and I'm not quite sure if that's a trade-off for the number of jobs.

Is that the case out your way? And maybe we're just doing another IDA so that Huntington is armed to compete with the other towns in the area; or is this just a situation that happens to occur in Erie County and all the towns around in that area of Nassau County don't have IDAs so that's not a problem?

ACTING PRESIDENT DEFRANCISCO: Senator Marcellino.

SENATOR MARCELLINO: Well, the towns that I represent, Senator, operate on very high ethical and moral values, would never, never engage in -- I'm being facetious. No, I don't foresee that as a situation, Senator, but I do recognize that could happen and certainly should not happen.

SENATOR STACHOWSKI: One last question.

ACTING PRESIDENT DEFRANCISCO: Senator Marcellino.

SENATOR STACHOWSKI: For a few years here, what was going on is that, if a town had an IDA, well, that was all right, but we're trying to limit the number of new IDAs just for that reason, so that we wouldn't have all these individual IDAs in the same general area competing against each other to put together better packages and maybe draw businesses from each other rather than from outside; and so they were trying to do like countywide, and if you were -- and, obviously, in the case of a town, if you already had it, they left it.

Do you think that this will be the start of many more IDAs to follow not only in the state but in your area in particular, or is this like an individual, isolated piece that Huntington will have, and you don't foresee a whole lot of other towns, particularly maybe in your own district, coming up with new IDA

applications?

SENATOR MARCELLINO: Senator - Senator, a lot of the towns within my district already have their own IDAs, and I do see some of the problems that you might be pointing out to me, and I would be willing to sit down with you and your staff. I offer this in all sincerity, perhaps work out some kind of legislation that might stop just that kind of problem from occurring.

SENATOR STACHOWSKI: Thank you.

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

Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number

1162, by Senator Tully, Senate Print 4387, an act authorizing the assessor of the county of Nassau to accept an application for exemption from real property taxes.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

This bill would authorize and direct the county of Nassau to accept an application for real property tax exemption on property owned by Temple Beth Shalom.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Tully.

If Senator Tully would yield for a question?

ACTING PRESIDENT DEFRANCISCO: Will you yield, Senator Tully?

SENATOR TULLY: I do, Mr. President.

SENATOR PATERSON: I am assuming, and I just want to know whether or not I'm right, Senator, that the Temple Beth Shalom must have submitted their application past the deadline, and it was by a short period of time so it was regarded as ministerial, and we're just putting it into legislation to act on it in a legal fiction as it were before. Am I not correct?

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: That is correct, Mr. President.

SENATOR PATERSON: Then, Senator, I don't really have a big problem doing that, and I'm sure none of the members would, but my question to you is, do you think that this might open the door for what would, in a sense, be just a noncompliance with the deadlines that are often set for these types of procedures?

ACTING PRESIDENT DEFRANCISCO: Senator Tully?

SENATOR TULLY: No, I do not, Mr.

President.

SENATOR PATERSON: Mr. President, if Senator Tully would continue to yield?

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

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

SENATOR PATERSON: Senator, was there a particular reason why the application was late that compelled us to pass this legislation? I mean I just want to make sure that the temple is not in a set of one, and there were other late applications and we're not addressing them, as well.

SENATOR TULLY: Yes, Mr. President. This is the Rabbi's residence, and it was an oversight.

SENATOR PATERSON: All right, Mr. President. I have made oversights on my residence, and I think we can move the bill at this time.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1163, by Senator Tully, Senate Print 4514, an act to amend Chapter 972 of the Laws of 1962, relating to the Shelter Rock Public Library.

SENATOR STACHOWSKI: Explanation.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: Yes, Mr. President. This is a bill to amend Chapter 972 of the Laws of 1962, the Shelter Rock Public Library Act, which would enable the members of the Shelter Rock Public Library Board to make interim appointments in the event a vacancy occurs due to death or resignation. Under the

current law, the Governor has the power to make these appointments.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1165, by Senator Lack, Senate Print 4553, an act to amend the Court of Claims Act, in relation to the abolition of the requirement to file notices of intention.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1166, by Senator Tully, Senate Print 4908, an act to authorize and direct the county of Nassau, town of North Hempstead, village of Westbury and Westbury Central School District, to refund certain taxes.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

This is a bill to reimburse the Greater New York Corporation of Seventh Day Adventists the portion of real property taxes erroneously billed and paid to the taxing authorities of the county of Nassau, town of North Hempstead, village of Westbury, and the Westbury Central School District.

ACTING PRESIDENT DEFRANCISCO:

Senator Paterson.

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

ACTING PRESIDENT DEFRANCISCO: Senator Tully, will you yield?

SENATOR TULLY: Yes, Mr. President.

SENATOR PATERSON: I am assuming in this case that it's an overpayment.

SENATOR TULLY: That's correct, Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: And so I guess we're paying them back.

Thank you, Mr. President.

SENATOR STACHOWSKI: If Senator Tully would yield for one more question?

ACTING PRESIDENT DEFRANCISCO: Senator Tully, will you yield?

SENATOR TULLY: Yes, Mr. President.

SENATOR STACHOWSKI: Is this the case if any tax-exempt group would pay taxes to the school district? Why is it that they can't just refund the money on their own? Why do we have to pass the legislation?

SENATOR TULLY: That's the requirement in the law, Mr. President.

SENATOR STACHOWSKI: Couldn't we -- excuse me, one more question?

ACTING PRESIDENT DEFRANCISCO: Senator Tully, will you continue to yield?

SENATOR TULLY: Yes, Mr. President.

SENATOR STACHOWSKI: Senator, don't you think it would be advisable that we look into maybe drafting legislation that would handle this so that school districts would be able on their own to just refund money that was accidentally paid or by mistake paid by these groups that are tax-exempt so that we wouldn't have to come back? Say that this is isolated this year, but other years we would keep coming back with situations like this where we're going

to have to pass a bill just to get a refund for a legitimate group that deserves the refund.

SENATOR TULLY: Yes, Mr. President.

My colleague from Erie County is not only an excellent ball player but he's also a very astute individual when it comes to understanding law and proposals. I think that's a very cogent suggestion and one that should be looked into.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1167, by Senator Velella, Senate Print 4969, an act to amend the Insurance Law, in relation to

eliminating certain criteria for multi-tiering program.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1169, by Senator Bruno, Senate Print 5000, an act to amend the Public Authorities Law, in relation to the Saratoga County Water Authority.

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

Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1171, by Senator Tully, Senate Print 5043, an act authorizing the assessor of the county of Nassau to accept an application for exemption

from real property taxes.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: Thank you, Mr. President. This is a bill to authorize and direct the county of Nassau to accept an application for real property tax exemption from the tax-exempt organization, the Congregational Church of Manhasset.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Mr. President. If I might ask Senator Tully a question?

ACTING PRESIDENT DEFRANCISCO: Senator Tully, will you yield?

SENATOR TULLY: Yes, Mr. President.

SENATOR PATERSON: Senator Tully, I assume that this is another late application that again is being regarded as ministerial, and this is the reason that we are now regarding

this as if it happened before.

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: That is an accurate assumption, Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Tully would continue to yield?

ACTING PRESIDENT DEFRANCISCO: Will you continue to yield, Senator Tully?

SENATOR TULLY: Yes, Mr. President.

SENATOR PATERSON: Senator Tully, again, I just want to ask you -- before, you said you didn't think that it was significantly late or you didn't think it would affect anyone else. What do you think the total effect is of using the legislative process to correct these circumstances rather than having some local agency do it?

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: Mr. President, the thrust of that question is the same as the question that was asked previously by Senator Stachowski. I think the concept of probably avoiding these individual applications and having one collective method of handling it in the Legislature would be a very, very fine thing. If, in the alternative, there was a method of doing it on a local basis and the state law was changed to allow that, I think that also would be beneficial, because I do sincerely believe that there are many more significant things that we in the Legislature have to do that we can accomplish, like the budget. We wouldn't be so many days late if there were less situations of this sort, and I think if the intention of Senator Paterson is to suggest some type of legislation that would preclude these applications in the future, I think he and Senator Stachowski should be commended, and I hope the cooperative spirit on both sides of this house would effectuate something in that nature.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Well, thank you, Senator Tully, for that fine explanation, and, on the bill, Senator Stachowski and I are collaborating on that legislation right now, that we will be bringing it to committee very shortly, and we'd like to thank the Senator who represents the villages of Westbury and Manhasset and the town of North Hempstead and all of the epicenters of the nature of these bills. They are well represented.

ACTING PRESIDENT DEFRANCISCO: Please read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar number

1172, by Senator Goodman, Senate Print 5117, an act to amend the Election Law, in relation to accessible polling places.

SENATOR SKELOS: Lay it aside temporarily.

Mr. President.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside temporarily.

Senator Skelos.

SENATOR SKELOS: Could you call up Senator LaValle's bill, Calendar Number 563.

ACTING PRESIDENT DEFRANCISCO: Secretary will read.

THE SECRETARY: Calendar Number 563, by Senator LaValle, Senate Print 3735, an act to amend the General Municipal Law, in relation to creating the town of Southampton Industrial Development Agency.

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

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT DEFRANCISCO: An explanation has been requested.

Senator LaValle.

SENATOR LAVALLE: Yes, Mr. President. This legislation simply allows the town of Southampton to establish a Southampton Industrial Development Agency, and the former supervisor of the town of Southampton, Fred Thiele, is now a member of the Assembly; and, certainly, as the supervisor, it was almost like a dream to come to Albany and be able to file as his first bill the creation of an Industrial Development Agency for the town that he was the supervisor of; and, certainly, Southampton Town has learned that by being proactive, as they have by attracting not only once but twice, at Shinnecock Hills, the U.S. Open, that they could use the tools that so many towns have done to attract industry to their town.

SENATOR PATERSON: Thank you, Mr. President. If Senator LaValle would yield for a question?

SENATOR LAVALLE: Yes, sir.

SENATOR PATERSON: Senator LaValle, you said that the town of Southampton

was being proactive in this. I guess this is the second time, because there had previously been an Industrial Development Agency; is that not correct?

SENATOR LAVALLE: Yes.

SENATOR PATERSON: What was the reason for the extinction of the first attempt to establish an IDA?

SENATOR LAVALLE: Senator, many times a town, for whatever reason, lets the agency lapse only to find that it must come back to the Legislature to recreate and seek beyond the period of time that we create the Industrial Development Agency to go get a second crack at the apple. Many of the towns simply do not realize that their time has run out. It's almost that simple.

SENATOR PATERSON: So, Senator, if the IDA is functioning, it wouldn't go out of existence, and what you're saying is that the town not having a need at that point let it lapse.

Would there be a more effective

way to establish some congruency where the agency continues to be existing in name so that when it wants to be regenerated we don't have to come back to the Legislature and do another bill?

SENATOR LAVALLE: I don't know, Senator. All I know is that the bill before us is a local bill for a town that is seeking the recreation of its Industrial Development Agency and, as I've said, there are a variety of reasons why a town may feel it needs the Industrial Development Agency. It might not work out and in a period of time it lapses, and then they come back to us for additional authorization.

ACTING PRESIDENT DEFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you, Senator LaValle.

Mr. President, on the bill. We have no problem with the local town, the local government setting its policy. In fact, we have a lot of local bills from this conference that

we're hoping we will move today. We're just trying to point out, as Senator Tully did, that at some point toward the end of the session and particularly in this unfortunate circumstance where we are in the midst of a budget process, that there might be a better way, that this, in some respects, obfuscates the process.

But if that is what actually occurred and the town allowed the Industrial Development Agency to lapse, then we certainly would like to help the town of Southampton. As Senator LaValle pointed out, the U.S. Open has actually been brought to that area twice at Shinnecock, and we certainly wish them well.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Stachowski.

SENATOR STACHOWSKI: If Senator LaValle would yield to a question or two?

ACTING PRESIDENT DEFRANCISCO: Senator LaValle, will you yield?

SENATOR LAVALLE: Sure.

SENATOR STACHOWSKI: Senator, doesn't the county that this town finds itself located in, don't they have an IDA?

SENATOR LAVALLE: Yes, that's correct.

SENATOR STACHOWSKI: And if Senator would continue to yield. Wouldn't that IDA be responsible for doing projects in that particular town at the town's request?

SENATOR LAVALLE: It could.

SENATOR STACHOWSKI: So could we assume, then, that the reason the town is asking for the reestablishment of its IDA is because maybe they feel they are not getting fair treatment in the projects they're trying to attract by that county's IDA currently?

SENATOR LAVALLE: No, Senator. What happens, many times, is that the counties use their IDA for larger projects. I don't know what the threshold amount is for projects that the Suffolk County IDA would consider, and so many of the towns choose to have their own IDAs because they can move more quickly and they

don't have to meet a threshold level; and the project may be a $100,000, $200,000 project, where Suffolk County may have a higher threshold of 500,000, 600,000, a million dollars, so it is important for the towns to have their own Industrial Development Agencies.

And, quite honestly, one of the things I know so many of us do when we campaign and talk about mechanisms that New York State has established to create industry and jobs is the various tools and mechanisms, whether it's the JDA, whether it's a county IDA or the local town IDA, so we allow for a whole potpourri of options that the locality can use in dealing with businesses.

SENATOR STACHOWSKI: Mr. President, if he would continue to yield. One last question.

Can we assume then that the town is going to use their IDA for smaller projects and still continue to use the county IDA for maybe somewhat larger projects?

SENATOR LAVALLE: I would guess

that that's true, Senator Stachowski, and, as I had indicated, Assemblyman Thiele, who was the Supervisor of the town of Southampton, actually brought this bill to me to sponsor, and I would think that that is exactly the case that will allow them to have smaller projects and still use the county for the larger projects that come to the town.

SENATOR STACHOWSKI: Thank you.

On the bill.

ACTING PRESIDENT DEFRANCISCO: Senator Stachowski, on the bill.

SENATOR STACHOWSKI: I'd like to thank Senator LaValle for his patience with the questions and his fine answers, and it makes perfect sense to me.

I was really asking the questions to try to figure out why this particular local bill and many of the others that we've done today and a couple days before are so much more, maybe, let's say, relevant and more important to get out than any of the bills that were put in by the people on this side of the aisle, because

I noticed last night -- we had a rather extensive Rules meeting, and we had one Democratic bill and numerous Republican local bills, and we're getting near the end of session and I know that -- at least, to my knowledge, there is a Rules Committee scheduled for this afternoon or in a short time with, again, one Democratic bill and numerous Republican local bills.

And I'm just trying to establish if there, in fact, is a rationale, a reason why these bills are more important or why the Democratic bills aren't being moved, and we're trying to be as cooperative as possible in asking a few questions and, so far, we haven't had a problem with this, but I would add, if in the very near future we don't see some movement with some Democratic bills, seeing as we are running out of time, that the process probably could slow down even more, that there would be more questions, that there might be some difficulty with the bills. They would probably require slow roll calls, and we don't want to

see the process bog down like that.

We know that everybody is anxious to have the calendar move as fast as possible, and that we would be getting out bills as fast as possible and that we would be able to close down and get out all the bills necessary before the end of session.

To my knowledge, the Majority Leader is planning on following the calendar as far as the end of session goes, and we wouldn't want to be the reason for that goal not being met by the house, or that people that have various interests in various bills not have their bill being dealt with because of our anxiousness to reach that departure date on that particular calendar as scheduled by the Majority Leader.

ACTING PRESIDENT DEFRANCISCO: Read the last section.

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

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President. Senator Saland has requested that Calendar 1111 be laid aside for the day at the request of the Minority, and that the bill will be debated tomorrow.

ACTING PRESIDENT DEFRANCISCO: Calendar 1111 will be laid aside for the day.

Senator Skelos.

SENATOR SKELOS: Yes. At this time, if we can return to motions and resolutions, I believe there is a resolution, 1497, which we adopted yesterday. If we could have the resolution read in its entirety and then recognize Senator Tully.

ACTING PRESIDENT DEFRANCISCO: Secretary will read.

THE SECRETARY: By Senator Tully, Legislative Resolution honoring the 1995

Regional Nurses of Distinction upon the occasion of the New York State Legislature's Nurse of Distinction Day, June 7, 1995.

Whereas, The nurses of New York have by dedicating their lives to the health and dignity of their fellow New Yorkers contributed significantly to the well-being of the citizens of our state; and

Whereas, The New York State Legislature developed the Nurse of Distinction Award Program to pay tribute to New York State's registered professional nurses for their steadfast commitment and support of the health and betterment of all New Yorkers; and

Whereas, The outstanding achievements of thousands of our state's registered professional nurses have been acknowledged through the 1995 Nurse of Distinction Award Program and 364 distinctive nurses were nominated for the Award; and

Whereas, Eight Regional Nurses of Distinction were selected by nursing peers from throughout the state for their professional

excellence and unequivocal dedication in support of the health and betterment of their fellow New Yorkers; now, therefore, be it

Resolved, That this Legislative Body pause to express its deep respect and appreciation to all of New York State's distinguished nurses and to recognize the unique contributions made by the eight 1995 Regional Nurses of Distinction: Audrey Norris-Clancy, Avis Rent A Car, Garden City; Karen Haghenbeck, Montefiore Medical Center, Bronx; Kathleen L. Capitulo, Long Island Jewish Medical Center, New Hyde Park; Nancy Lichak, Good Samaritan Hospital, Suffern; Elaine Massaro, Albany Memorial Hospital, Albany; M. Suzanne Lavin, Mohawk Valley Psychiatric Center, Utica; Elaine D. Caso, Arnot Ogden Medical Center, Elmira; and Sharon S. Dittmar, University of Buffalo School of Nursing, Buffalo; and be it further

Resolved, That this Legislative Body pause in its deliberations to encourage statewide recognition of those valued nursing professionals serving our communities; and be it

further

Resolved, That copies of this resolution, suitably engrossed, be transmitted to the eight 1995 New York State Legislature's Regional Nurses of Distinction with our pride and gratitude.

ACTING PRESIDENT DEFRANCISCO: Senator Tully.

SENATOR TULLY: Thank you, Mr. President. Initially, I would ask that this resolution be open for sponsorship to all of my colleagues unless otherwise indicated.

ACTING PRESIDENT DICARLO: Without objection.

SENATOR TULLY: I'm pleased to have this opportunity to introduce to you eight special New Yorkers, eight nurses representing the New York Legislature's Nurse of Distinction Award Program.

The Nurse of Distinction Award Program was developed by the Legislature in 1988 to honor the thousands of registered professional nurses in New York State and to

recognize the critical and important work that they do.

I'm pleased to serve as legislative coordinator of the Nurse of Distinction and pleased also that 364 health entities chose to join with the Legislature this year to honor the members of their staffs by nominating nurses for this recognition.

Nurses in our state are making remarkable contributions and achieving extraordinary results. Over the seven years of the Nurse of Distinction Award Program, we have honored more than 2,500 registered nurses representing a variety of nursing functions and a vast array of health-related facilities.

As we have come to know these nurses of distinction, it has become apparent that New York State is blessed with a vigorously motivated, highly creative source of compassionate nursing professionals.

Health care centers in our world are world-renowned -- in our state, are world renowned for their expertise, and our nurses

have more than lived up to the challenge to provide the patient services, the technical specialties and the educational network in support of them.

Concurrently, millions of school children, clinical outpatients, community and state facility clients, among others, are the beneficiaries of energized, educated and talented New York State nurses.

On the Senate calendar today is the resolution that was just read acknowledging the 364 nurses from throughout our state who are being honored as this year's Nurses of Distinction.

Eight have been chosen as Regional Nurses of Distinction, and I would now like to introduce them to you in recognition of their own considerable accomplishments and as representatives of our outstanding New York State Professional Nurses:

From Long Island, an occupational health nurse and manager of the Employees Health Unit, Avis Rent-A-Car, Garden City, Audrey

Norris-Clancy.

(Applause.)

Thank you, Audrey.

From Greater New York Region 1, which includes Richmond, New York, and Bronx Counties, a critical care nurse with the Educational Services Division of Montefiore Medical Center in the Bronx, Karen Haghenbeck.

(Applause.)

From the NorMet Region, cardiology case manager in the Coronary Care Unit at the Good Samaritan Hospital Regional Medical Center in Suffern, Nancy Lichak.

(Applause.)

From the Northeastern Region, manager of the Diabetes Treatment Center and Telemetry Unit at Albany Memorial Hospital in Albany, Elaine Massaro.

(Applause.)

From the Central Region, a community mental health nurse who serves as the facilitator of the mobile geriatric team at Mohawk Valley Psychiatric Center in Utica,

Suzanne Lavin.

(Applause.)

From the Finger Lakes Region, an instructor in medical-surgical nursing at Arnot Ogden Medical Center School of Nursing in Elmira, Elaine Caso.

(Applause.)

From the Western Region, Associate Professor of Rehabilitation Nursing at the University of Buffalo School of Nursing, in Buffalo, Sharon Dittmar.

(Applause.)

Our New York State Nurse of Distinction is annually chosen from among the eight Regional Nurses of Distinction. I would like to introduce to you now our eighth Regional Nurse of Distinction who is also our 1995 New York State Nurse of Distinction, the Assistant Nursing Administrator in the Division of Obstetrics and Gynecology at the Long Island Jewish Medical Center in New Hyde Park, Kathleen Capitulo.

(Applause.)

Congratulations to each of you and our deepest thanks for the excellent work you're doing to enhance the quality of life for our state's residents, and I know that Elaine will be delighted to photograph each and every one of my colleagues with their appropriate representative at their leisure if they should so desire.

Thank you again.

(Applause.)

ACTING PRESIDENT DICARLO: This resolution has been previously adopted, and on behalf of the Senate we welcome you and congratulations.

Senator Skelos.

SENATOR SKELOS: Mr. President. There will be an immediate meeting of the Finance Committee in Room 332 of the Capitol followed by a meeting of the Rules Committee in the same room.

ACTING PRESIDENT DICARLO: There will be an immediate meeting of the Finance Committee in Room 332 followed immediately

thereafter by a meeting of the Rules Committee.

Senator Tully, why do you rise?

SENATOR TULLY: Yes, Mr. President. With respect to those photographs with the nurses of distinction, I understand they will be going to Room 124 in the Capitol, for any members that might have the time to go down and congratulate them and who wish to have a photograph taken.

Thank you, Mr. President.

ACTING PRESIDENT DICARLO: Thank you, Senator Tully.

Senator Skelos, we have a few motions to take care of.

SENATOR SKELOS: May we return to motions and resolutions.

ACTING PRESIDENT DICARLO: Senator Johnson.

SENATOR JOHNSON: Thank you, Mr. President. I move to amend Senate Bill 4469A by striking out the amendments made on May 15 and restoring it to its original print number, 4469.

ACTING PRESIDENT DICARLO:

Amendments received and adopted.

SENATOR JOHNSON: And another one, Mr. President.

ACTING PRESIDENT DICARLO: Senator Johnson.

SENATOR JOHNSON: On behalf of Senator Nozzolio, I wish to call up his bill, Print Number 3202, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT DICARLO: Secretary will read.

THE SECRETARY: Calendar 558, by Senator Nozzolio, Senate Print 3202, an act to amend the Town Law, in relation to providing for the election of a third town justice.

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

ACTING PRESIDENT DICARLO: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT DEFRANCISCO: The bill is before the house.

Senator Johnson.

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

ACTING PRESIDENT DICARLO: Amendments received and adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe the objection of the Minority has been removed on Calendar Number 1172, by Senator Goodman.

(There was a pause in the proceedings.)

SENATOR SKELOS: Mr. President. If we could lay that bill aside temporarily and call up Senator Kuhl's bill, Calendar Number 1040.

ACTING PRESIDENT DICARLO: Secretary will read.

THE SECRETARY: Calendar Number 1040, by Senator Kuhl, Senate Print 3077, an act to amend the Environmental Conservation Law, in

relation to permitting the discharge of a firearm.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DICARLO: Explanation has been asked for.

Senator Kuhl.

SENATOR KUHL: Mr. President, this is a rather simple bill in its approach. There currently is a prohibition about discharging firearms within a certain distance of school facilities. This bill would provide an exemption when, in fact, a rabid animal, particularly a fox or a raccoon, happens to be within that area, we would allow under this provision a person to discharge a firearm to kill that animal.

ACTING PRESIDENT DICARLO: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Kuhl would be so kind as to yield.

ACTING PRESIDENT DICARLO: Senator Kuhl, do you yield?

SENATOR KUHL: Absolutely.

ACTING PRESIDENT DICARLO:

Senator yields.

SENATOR PATERSON: Senator Kuhl, it is correct, isn't it, that if a person is bitten by a rabid animal that we do have a cure?

SENATOR KUHL: On some occasions, that's correct, Senator Paterson. If you know that an animal is rabid and, in fact, you undertake a procedure which deals with several shots over an elongated period of time -- and it's a rather expensive operation I'm told, somewhere in excess of $1,000 per person -- yes, there is a cure -- I should say "a prevention" that's available in anticipation of the onset of the disease of rabies, yes.

SENATOR PATERSON: Thank you, Mr. President. I'm not trying to be disingenuous or misleading in my question. What I'm really just trying to point out is the value of the risk of a bite from a rabid animal as opposed to the possibility of an accident with a firearm very close to a school building.

So if Senator Kuhl would be willing to yield again?

ACTING PRESIDENT DICARLO: Senator Kuhl, do you continue to yield?

SENATOR KUHL: I would be happy to yield.

ACTING PRESIDENT DICARLO: Senator yields.

SENATOR PATERSON: So, Senator, what we're saying is at the time we put this - this law on the books, there was a concern, as we have in a number of pieces of legislation, about activities occurring around schools.

We have increased the penalties for certain offenses particularly involving the sale of drugs and that kind of thing, and the reason that we do that, just generally, is that any kind of societal activity, we feel, takes on an added precedence when it occurs near a school.

So, in other words, even if the number of accidents from the discharge of firearms would be a low number, there is a

presumption that we don't even want the risk, we don't even want the thought, we don't even want the perception that there is a possibility of an accident or a weapon being fired in one area and it goes through a fence and injures someone near a school.

And so what I'm asking is, with that value already applied as law, why would you want to change it in favor of a value that is certainly important but one that has a greater remedy than the possibility of an accident?

SENATOR KUHL: The answer to your question, Senator, is very simple. Out in my district about two years ago, we had a situation occur where an individual who, in his backyard, which happened to be within 500 feet of a property defined as a school district, had a rabid animal approaching his children. He had no way of defending his children other than to immediately grab a shotgun and kill the animal.

He did so and then was arrested for discharging a gun to defend his children from potentially the onset of a fatal disease.

Now, it seems to me that an individual ought to have the right to defend his children, his family members, his friends, who might be on his premises when an animal who is exhibiting rabid tendencies, wandering in circles, being friendly when they are normally not friendly -- certainly, a skunk who raises its tail we would all run from, but that's not the tendency that is exhibited in this particular case. So this bill was put forth essentially to remedy a situation which this individual found himself in, and that was defending the life of his child and actually being prosecuted for doing so.

Now, to me, there's something inately wrong with the law when we prosecute people for defending their children, and all this bill does is essentially provide an exemption for those people who find themselves in that position to be able to effect good reason, good rationale and to defend the people that they love the most.

SENATOR PATERSON: Mr.

President. I'm really -- after hearing that story, I'm really appalled that the local prosecutor under Section 343 of the Criminal Procedure Law would not have thrown that case out, even though under the law as it exists right now the arrest may have been valid.

What Senator Kuhl is saying is absolutely true, and the particular distinction to the example that Senator Kuhl gives and the situation that we're trying to avoid by raising questions on this particular bill is the fact that, if I'm correct, Senator Kuhl, the individual was defending their children from a rabid animal on their own property; and so if I might suggest, I would agree that I see a difference when it is the person's own property.

All I'm saying is that this piece of legislation, as I see it, Senator Kuhl, is a little overreaching in the sense that within 500 yards of a school building there can be a lot of public area, and it is really the decision or the judgment that's made by individuals, even

with respect to rabid animals, in public areas that I would be a little more concerned about. In the example that you are citing, you are correct. There probably should be some redress under the law for that particular situation.

ACTING PRESIDENT DICARLO: Senator Kuhl.

SENATOR KUHL: Just if I might address that particular concern.

Senator Paterson, you are absolutely correct and that is why, if you notice the language in the bill, there was an addition that essentially puts some conditions as to discharge of the firearm in the bill, and the language reads, "***and no dwelling, house, farm building, farm structure actually occupied or used, school building or playground or occupied factory or a church is situated in the line of discharge."

That's a limiting provision that we didn't have to include in the bill, but we did specifically because we didn't want people to start to play games with this statute, this

exemption. What we're really intending to do was to essentially eliminate the situation or the potential situation for prosecution that, in fact, occurred, and that's why we presented this bill.

It's a real life situation, a real life situation. I underline the word life. It's a real life situation. It was wrongfully prosecuted, no question about that. But the prosecutor when presented with the situation, okay, that there was a discharge within 500 feet of a school premises, prosecuted and what this does is simply take that out and give an exemption in this particular life-threatening situation.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT DICARLO: Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President. On the bill.

I want to commend Senator Kuhl for his initiative and also to recognize my

colleague, Senator Paterson, in his understanding of the problem. In our area of the state, there are considerable concerns and growing concerns, justifiably, over rabid animals, be they raccoons, skunks or foxes, and unfortunately we have a crisis in this state in some areas of the state -- my area, Senator Maziarz' area -- as we are adjacent to borders with Canada in a growing rabid animal population and, consequently, there are circumstances where there is a high degree of danger to children and others that warrant immediate action. They do not and are not conducive to allowing for permits to be filed, a process to go through, but they require a warrant because of the nature of the danger of a rabid animal and an immediate response and capability with reasonable judgment, and I think that's what the Senator has framed within the legislation.

It's an appropriate response, and I would ask and encourage my colleagues' support of this bill.

ACTING PRESIDENT DICARLO:

Senator Waldon.

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

Would Senator Kuhl yield to a question?

ACTING PRESIDENT DICARLO: Senator Kuhl, do you yield to a question?

SENATOR KUHL: (There was no response.)

ACTING PRESIDENT DICARLO: Senator yields.

SENATOR KUHL: I do yield. I was disappointed he didn't ask for the learned Senator from Steuben County to yield, but yes.

ACTING PRESIDENT DICARLO: Maybe the next time.

Senator Waldon.

SENATOR WALDON: Just one second.

Mr. President, would you ask the learned gentleman from Steuben, Chemung, Schuyler, Yates, Ontario and Tompkins County to yield to a question?

SENATOR KUHL: I'll be happy to

yield.

ACTING PRESIDENT DICARLO: I wasn't going to repeat that, but the Senator yields.

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

Senator, I have two areas that I need to explore with you. One is I noticed, and I read this very quickly, very cursorily, there was not a mention of dogs in the bill. Are they included in those rabid animals which could be shot on site if the dangers depicted in your bill were evidenced to the owner or the lessee of the home?

SENATOR KUHL: Senator, right now, if you were to look at, statistically, what is happening in New York State, we have been somewhat aware of rabies as a disease approaching New York State for several years. There has been, primarily, a couple of species of animals that have carried that disease, primarily raccoons, skunks and foxes.

Dogs are not known to be carriers

of the disease; however, they can be affected much like cattle can be affected or any kind of a domesticated animal, but the disease primarily rests in those three types of species, skunks, foxes, raccoons.

What we have seen over the years is that this disease has gradually migrated, if you will, from the southern states up through and into New York. Senator Wright's concern is very, very, very, valid in that rabies as a disease is approaching his district. It is in all of the southern counties across the state starting out in Chautauqua County in the western part of the state all the way down into New York, the Bronx; it's in New York City all the way across the southern part of the state, and it is migrating north.

We have from a budgetary standpoint in the last three or four years attempted to create some pilot programs to try to isolate this disease and work out a prevention program, but, as of yet, we have not come up with a solution. So the solution really

is just the disease working itself through, the affected animals dying out, hopefully, out in the wilderness, and their carcasses rotting and the disease dying right there.

But what we find is that in the rural counties we're having more and more of an infestation and that is approaching the populated areas and, as a result of that, they are actually becoming life threatening to human individuals. We find ourselves in a situation where it is not uncommon for people to find carcasses of dead raccoons, dead skunks and dead foxes along the road, and people are scared to death to pick them up because once you pick that animal up, if it has recently died, if there's saliva and you have that on your hands then you can transmit that disease to somebody else, to some other animal.

So it is very important in the line of this bill to be able to terminate what is obviously an infected animal, its life, to save people, dogs, whatever it may be. We oftentimes are put in a position where our

domesticated animals, our dogs and our cats, will embark upon a fight with a skunk, a raccoon, or a fox, and you can't touch that animal because the minute you do, if you have an open wound, then you have now subjected yourself to potential infection and, if you know anything about the disease of rabies, if it goes undetected and untreated, it is fatal. You will die, and it is an awful death.

SENATOR WALDON: Mr. President. Oh, we have a new Mr. President.

ACTING PRESIDENT WRIGHT: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President. I don't think I made my question clear. I am actually in support of the bill. I was wondering why, if a rabid dog came into someone's yard, that the bill did not cover - if it is the same danger spelled out in regard to raccoons, foxes, and skunks, it did not cover that the owner or lessee could, as well, shoot that dog. I was really trying to help you to broaden the scope.

SENATOR KUHL: It's very simple, Senator Waldon. Dogs and cats really aren't the transmitters of the disease, okay? They are the victims of the disease, but they don't carry it from one place to another as do raccoons, skunks and foxes. They are really the host of the disease and they carry it from one place to another.

If a dog becomes infected, it's almost -- I don't know what the hours or the days are, but their life is rather shortlived.

SENATOR WALDON: If I may continue, Mr. President. I'll bring this to a close real quick.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Waldon.

SENATOR WALDON: The point I was hoping that you and I could make, Senator Kuhl, is that if a rabid dog were approaching someone's children, that that person would have the same responsibility and the same fear as if it were a fox, et cetera, and I wanted to know could he or she kill that dog with equal

dispatch and to be free of liability under this bill that you are proposing? It does not specifically say so. Maybe it's addressed somewhere else and you know about it and, therefore, you did not include it. That's fine with me. I just wanted to know could we take care of that animal with this piece of legislation?

SENATOR KUHL: In response to your question, Senator Waldon, I believe that the provisions of the Agriculture and Markets Law allow for the termination of the life of a domestic animal if there is a threat to a person's life, already. That is not the case with regard to a skunk or a fox or a raccoon.

SENATOR WALDON: Okay. Thank you very much. One last question, Mr. President.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Waldon.

SENATOR WALDON: Senator Kuhl - and this is just for my personal edification and perhaps the edification of some of those of our colleagues. There's nothing under the laws of

the state of New York -- or let me ask this. Is there anything under the state's laws, as you know them, which would preclude a law enforcement officer, if he happened or she happened to be present, rendering the service necessitated by the circumstance of the raccoon, the fox, the skunk, the dog, anyone who might be in a rabid condition, taking that animal's life without fear of personal liability, acting in a reasonable way?

SENATOR KUHL: I guess I'm rather limited in knowledge, Senator Waldon, about that particular area, but I don't believe that there is an exclusion that would prohibit a law enforcement officer from doing that. The problem is the situation occurs so quickly, in most cases, that if there is a life-threatening situation that you don't have time to dial up 911, call a law enforcement agent, and get them there to do that.

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

ACTING PRESIDENT WRIGHT: Read

the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President. Could you call up Senator Velella's bill, Calendar Number 1167.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: Calendar Number 1167, by Senator Velella, Senate Print 4969, an act to amend the Insurance Law, in relation to eliminating certain criteria for multi-tiering program regarding risks.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT WRIGHT: Senator Paterson has requested an explanation.

The Chair recognizes Senator Velella.

SENATOR VELELLA: This is a cleanup bill in which we had provided in past legislation for a multi-tiered system for auto rating to give companies an opportunity to depopulate the assigned risk pool and to create different tiers of insurance commensurate with the risk. We allowed them to do that up to 3 percent of their total book of business.

However, in doing that, when we allowed them to do the 3 percent of their total book of business, the problem arose that, inadvertently, we had not made an exclusion that would violate the 2 percent rule that says that they can cancel 2 percent of their book of business without any reason.

So in order to clear up that technical deficiency, the Department has asked, before they promulgate rules to set the tiers up, that we clear that discrepancy up so that nobody be technically in violation of the law.

I just might add that the reason

we have done this multi-tier program is that in the state of New Hampshire they have had this program and, based on the effect of this program, they have reduced their assigned risk pool from 33 percent of their total population to 12 percent of the total population. I am very hopeful that this will do the same thing in the state of New York which would affect really your constituents and mine who are very often placed in assigned risk when they shouldn't be.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Velella would yield for a question?

ACTING PRESIDENT WRIGHT: Senator Velella, do you yield?

SENATOR VELELLA: Yes.

SENATOR PATERSON: And, Senator, I apologize in advance. There were a number of consultations over here and you may have actually answered my question already.

But the 2 percent rule that, in a sense, protects the consumers in a particular

area from assigned risk, so to speak, how - what is the protection that we have, whereby the insurance company with the multi-tiered policy may actually move individuals into the multi tiers in a sense to get them out? That would be the effect of going around the 2 percent. That wouldn't even count.

SENATOR VELELLA: That, Senator -- the 2 percent rule applies to cancellations; any company can cancel without any reason and move someone out. The 3 percent rule is the cap on the most they can move someone in a higher priced tier. They can't move anybody more than 3 percent of their total book of business up to a higher level tier. When they do that, if the person drops the coverage because they've been moved to a higher level tier, it violates the 2 percent rule because, in effect, they have canceled the person.

That's the discrepancy that we are trying to clear up.

SENATOR PATERSON: In other words, in actually putting in the multi tiers,

you have maintained the same percentages and, in a sense, the same protections that would have existed if they were going into the assigned risk category?

SENATOR VELELLA: We put a cap on it, and what we've said is, if it starts to work out the way we anticipate it will work out and it works out as well as it did in New Hampshire, that, in effect, we might then come back here and say we want to see if we can raise this number, and it seems to be working good. If not, you know, we will have to take a look at it and repeal it. But it's worked well in other states. We have no reason to believe that it won't work well here. This bill is before us. That issue was decided by the Legislature before.

The issue now is this technical problem between the 3 percent and the 2 percent, which cause a conflict and violate the law, and the Department has asked us to clear that up before they promulgate the regulations.

SENATOR PATERSON: Well, that

is -- that's very constructive, Senator. I think you can understand what the fear that we would have had if you had not built that protection into the legislation.

So, Mr. President, it really is Bronx Day around here. This is a very good bill.

ACTING PRESIDENT WRIGHT: Thank you, Senator Paterson.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as Chapter 9 of the Laws of 1995.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT WRIGHT: The bill is passed.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Just stand at ease, Mr. President, for a moment.

ACTING PRESIDENT WRIGHT: Senate

is at ease.

(Whereupon, at 11:58 a.m., the Senate was at ease.)

(The Senate reconvened at 12:20 p.m.)

ACTING PRESIDENT WRIGHT: There's a housekeeping issue, Senator.

SENATOR KUHL: Mr. President, why don't we return to motions and resolutions and do some housekeeping.

ACTING PRESIDENT WRIGHT: Thank you, Senator Kuhl.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I would like to remove the sponsor's star from my bill, Senate 3623-A, Calendar Number 441.

ACTING PRESIDENT WRIGHT: The star will be removed.

SENATOR SALAND: On behalf of Senator Lack, would you please remove the sponsor's star from Calendar Number 115.

ACTING PRESIDENT WRIGHT: The star will be removed.

SENATOR SALAND: On behalf of Senator Bruno, Mr. President, would you please call up Print Number 3219-A recalled from the Assembly which is now at the desk.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: Calendar Number 1078, by Senator Bruno, Senate Print 3219-A, an act to amend Chapter 714 of the Laws of 1986.

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

ACTING PRESIDENT WRIGHT: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 54.

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

ACTING PRESIDENT WRIGHT: The bill is before the house. The amendments are

received as presented.

SENATOR SALAND: Mr. President, on behalf of Senator Hoblock, on page 17, I offer the following amendments to Calendar 657, Senate Print Number 3109 and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT WRIGHT: The amendments are received.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Skelos.

SENATOR SKELOS: If we could return to reports of standing committees, I believe there's a report at the -- of the Rules Committee. I ask that it be read.

ACTING PRESIDENT WRIGHT: The Secretary will read.

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

Senate Print 5336, by the Committee on Rules, an act to amend the State Finance Law.

ACTING PRESIDENT WRIGHT: The Chair recognize... I'm sorry.

THE SECRETARY: Senate Print 69, by Senator Larkin, an act to amend the Insurance Law and Tax Law, in relation to supplemental health insurance account;

612, by Senator Stafford, an act to amend the Environmental Conservation Law, in relation to the citing of industrial hazardous waste facilities;

1929, by Senator Present, an act to amend the State Administrative Procedure Act, in relation to adjudicatory proceedings;

2013, by Senator Santiago, an act authorizing the city of New York to reconvey its interest in certain real property;

2459-A, by Senator Skelos, an act to amend the Executive Law, in relation to directing the Division of Criminal Justice Services;

2693, by Senator Padavan, an act to amend the Public Service Law, in relation to conjunctional billing by utility corporations

and municipalities;

3534, by Senator Kuhl, an act to amend the Vehicle and Traffic Law, in relation to authorizing the operation of farm motor vehicles;

4592-A, by Senator Larkin, an act to amend the Real Property Tax Law, in relation to the refund of certain amounts of real property taxes on condominiums;

4686, by Senator DeFrancisco, an act to amend the Criminal Procedure Law, in relation to the time limitations for speedy trial;

5173-A, by Senator Hoblock, an act to amend the Criminal Procedure Law and the Penal Law, in relation to definition of juvenile offender;

5275, by Senator Marchi, an act to amend the Environmental Conservation Law, in relation to establishing the "Lou Figurelli Memorial Fish and wildlife Sanctuary";

All bills record ordered directly for third reading.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, I move we accept the report of the Rules Committee.

ACTING PRESIDENT WRIGHT: All those in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: There will be an immediate Conference of the Majority in Room 332 of the Capitol. I believe the Minority has requested a conference.

SENATOR PATERSON: Yes, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: There will be

an immediate conference of the Minority in Room 315 at the Capitol.

ACTING PRESIDENT WRIGHT: Thank you.

The Senate will stand at ease.

SENATOR SKELOS: The Senate will stand at ease, Mr. President, until 1:15 sharp.

ACTING PRESIDENT WRIGHT: The Senate will stand at ease until 1:15 sharp while the respective conferences meet.

(Whereupon, the Senate stood at ease from 12:30 p.m. until 1:30 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Skelos.

SENATOR SKELOS: Would you please call up Senator Marchi's bill, Calendar Number 854, Senate 2379.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: Calendar Number 854, by Senator Marchi, Senate Print 2379, an act to amend the Public Authorities Law, in

relation to directing the Triborough Bridge and Tunnel Authority.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT WRIGHT: Senator Paterson requests an explanation.

Senator Marchi.

SENATOR MARCHI: Mr. President, the problem on Staten Island and the question of one-way utilization or one-way toll collection is related to the fact that this is the only physical contact that we have with the state of New York, the Verrazano Bridge, and in 1986, Congress established that tolls be collected in a one-way fashion from traffic proceeding westward at the Island.

The reason for it was that there was serious, serious difficulties experienced by the residents of Staten Island who were going to work, who were making -- who were employed in New York and drove in or were -- had other, either professional obligations, any number of reasons for reaching the city of New York in the morning on time, and the traffic -- the traffic

is very heavy, and the extraordinary delays that were involved sometimes, even with the best of effort and an early departure from home, still resulted in people arriving at work or whatever the circumstances brought them into the City late.

Coming back, they can absorb lateness because they can eat later or they just -- it's not their bread and butter. It's not daily living, and Congress mandated this, but the last mandate ran out, so there is no mandate and the people in Staten Island -- I say this is an issue without political division on Staten Island.

There isn't a single public official who -- representative who doesn't share this feeling because it is the -- this is a unanimous sentiment of people that suffer grievously, if they're compelled to be subordinated to a system that frequently ends up with their being late, jeopardizing their livelihood, and it's not just a question of convenience. It's -- the convenience can come

later, but when people go home, they are prepared to accept convenience, if they're still working and still earning a livelihood.

So this would establish, by law, a -- a one-way traffic just making it very - facilitating access for the people of Staten Island to get to the rest of the city in the morning.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. Senator Marchi, would you yield to a number of questions?

SENATOR MARCHI: Yes.

ACTING PRESIDENT WRIGHT: Senator Marchi, will you yield? The Senator yields.

SENATOR ABATE: Senator Marchi, you have obviously represented extremely well your district and certainly in terms of Staten Island, there was some benefit to the one-way toll.

The -- my understanding when the bill was passed in 1986, it was partially passed

to avoid some financial penalties from the federal government because, in order to be in compliance with some of the issues at hand, there was a prerequisite to have a one-way toll to avoid the reduction in highway monies to New York City, is that correct?

SENATOR MARCHI: There -- there may have been other considerations prompting the adoption of the legislation. At that time it was negotiated by Congressman Molinari, the borough -- now the Borough President, and then later by his daughter when she went to Congress, and that objective was totally on the question of access for Staten Islanders so that they could get there -- they could get to their place of work and obligation at -- at a reasonable - in a reasonable time. Now, there may have been other considerations involved and I'll accept that. I'm sure -

SENATOR ABATE: But certainly at the time it made sense for New York State not to lose federal highway dollars to pass a law that required the one-way toll. It's my

understanding those federal restrictions have been lifted, and so if we fail to act today, we fail not to make it permanent, we don't lose any federal dollars.

SENATOR MARCHI: If it cost us money on Staten Island, people don't want to get to work on time. So that -- I appreciate the - these considerations have value, they're not certainly without value, but you've got an awful lot of people there that are seriously inconvenienced. It's just a situation that they cannot abide.

SENATOR ABATE: But I think at this point the last environmental impact study that was done was in 1988, I believe. Has there been a study done subsequent to that?

SENATOR MARCHI: Traffic is only getting worse. As a matter of fact, not at the -- the Narrows divide, but there's a question of opening -- of constructing another bridge to New Jersey because of the enormous traffic pattern that has developed and it's constantly increasing. So the problem would be a very

severe one for people of Staten Island to get over there.

SENATOR ABATE: The issue is I also represent a constituency which is very much involved in this issue, and whereas the one-way toll may have benefited the residents of Staten Island, it's perceived as a tremendous detriment to the lower Manhattan area, as well as areas in Brooklyn.

I can only speak to the negative impact it has had on lower Manhattan. It's one of the critical issues that community members have talked about in terms of increased traffic, pollution, particularly carbon monoxide, pedestrian and vehicular congestion, and my concern is we're now relying on a 1988 study, and it seems to me before we make this one-way toll permanent, wouldn't it be advisable to have a second study -- we're talking about almost ten years later -- to look at traffic patterns, to look at other kinds of options? I'm not ignoring the issues that you raise vis-a-vis Staten Island commuters, but I am very concerned

about that impact, because what has happened is there's more traffic coming from Manhattan to Staten Island because of the one-way toll, and it's hurt businesses. It's hurt the entire downtown area.

So I would suggest, if you would consider, is not moving this into a permanent status but consider whether a current study needs to look at the current conditions.

SENATOR MARCHI: Mr. President, I -- I wish I could accede to your request, but we are at risk at the present moment. There is no mandate -- the mandate has expired. I don't know how this mayor feels, but the previous mayor was anxious to have it changed, and he was very much for a restoration of the two-way system.

You have to understand, Senator, that -- I remember I used to have lunch with Bob Moses about once every other month back in those days, and on the Island, of course, there wasn't great enthusiasm for the bridge to begin with. However, it was very obvious that the enormous

traffic that was generated from Long Island all plowing through Manhattan over those facilities desperately needed a -- a shorter access so that this heavy -- the central city would be relieved of the heavy burden of traffic that it was being -- that they were afflicted with and it was growing incrementally. So that's why the Verrazano Bridge was built. It wasn't built to facilitate Island access, but it was built to shunt so much of that traffic going down below the 40th parallel and going south to send it directly rather than have it plow through the City.

Well, we've done that. I mean, we're not -- nobody is jumping up and down with joy that the bridge is there but, nevertheless, it is there, and it is accomplishing the purpose intended by Mr. Moses at that time and millions of cars run through there all the time.

SENATOR ABATE: I'm sorry.

SENATOR MARCHI: All we ask - all we ask is that we permit it at least to make util... our utilization be protected. If we

were deprived of this, it would be a very serious setback to a community of 400,000 people who have no other options. This is the only physical connection that we have with the state of New York. People living in Long Island or any place else have other options. There are bridges. There are tunnels. There are a variety of weapons of choice that they may elect to utilize, but we have nothing else. That's it. That is the only physical connection. The only other way you can do it is to go through Jersey and then go up the Jersey coast and then come back into the city of New York, which is the -- which is the way that we did it at one time.

SENATOR ABATE: Would Senator Marchi yield to another question?

ACTING PRESIDENT WRIGHT: Senator Marchi, will you continue to yield?

SENATOR MARCHI: Yes, Senator.

ACTING PRESIDENT WRIGHT: The Senator yields.

SENATOR ABATE: Senator, but

what's before this Legislature is not a bill that is promoting a two-way toll. What you're seeking to do is make the one-way toll permanent, and it seems to me that the one-way toll given the state officials that have now spoken on the issues and the local officials, there's no movement of foot to threaten the status of that one-way toll, and my concern is once you make it permanent -- there may be new bridges, there may be new highways. It seems to me we need to do a feasibility study, do another EIS to determine if, in fact, there are other options that are compatible with the one-way toll and also would reduce the negative impact on lower Manhattan.

I'm not suggesting at this point that we go back to a two-way toll. I'm saying to make it permanent, then eliminates the opportunity to look at other options that may be responsive to all of our needs.

What we have here is a one-way toll that benefits one community, a very critical community. It's a commuter community

that works in the other parts of New York City, but it also impacts on the business and residential community of lower Manhattan, and what I'm suggesting before we make it permanent, why not take another opportunity, another chance to see if there's another way to do it and also meet the needs of both communities.

SENATOR MARCHI: Well, you know, I know you're -- you're -- you're in good faith, I accept that, but I'll quote from an article from the -- on the Times of a year and a half ago. "At City Hall yesterday, Mayor David Dinkins", who's an old friend of mine of many years standing, "called for an end to the one-way tolls. He and the Borough Presidents of Manhattan and Brooklyn, Ruth Messinger and Howard Golden, said they wanted jurisdiction on the question restored to the City."

It goes on to say, "The system we have only benefits the Island. It's just plain politics", and then he goes on to say that - that the present time system is not supportable.

We want it -- we want to see it

chiseled in stone at this point. If there are other remedial approaches that would protect the concerns that the people of Staten Island have and at the same time accomplish other objectives, I certainly would offer no serious objection, but that punch has been telegraphed and it's, you know, the same problem that we have with -- with the solid waste disposal. We take over 1,000 tons an hour. Over half of all the solid waste in the state of New York is deposited in Staten Island. There's nothing being done to -- looking to closure, even though that there is a theoretical, critical mass that will be reached by the year 2008, but it -- it's part of the syndrome that people -- concern the people of Staten Island very much, and this one is a -- constitutes a very definite threat given the punches that have been telegraphed by city officials, not by you, Senator, and I know that you want to be fair about this but, believe me, we're not satisfied with the mandate that has just recently expired and we want to see it protected by law.

SENATOR ABATE: Would Senator -

SENATOR MARCHI: And laws can be changed. These are not constitutional changes we're speaking about.

ACTING PRESIDENT WRIGHT: Senator Abate.

SENATOR ABATE: Yes. Would Senator Marchi continue to yield?

ACTING PRESIDENT WRIGHT: Senator Marchi, would you continue to yield? Senator Marchi continues to yield.

SENATOR ABATE: Yes. You just raised a very important issue. We're now dealing with a situation in New York City where there are -- a number of boroughs are impacted differently by this one-way toll. Brooklyn and Manhattan feel differently than Staten Island and clearly the City officials as a whole have to look at what's in the best interests of the City.

Do you believe the state Legislature is over-reaching by getting involved -- which is really a very local issue. It's an

economic issue. It's a quality of life issue. It deals with transportation and other issues. Do you think it's appropriate for the state Legislature to get involved in what really is a local issue?

SENATOR MARCHI: If we don't receive relief and protection in the state Legislature, we will not have any -- we've just had too many experiences where our -- even though Staten Island, if the Assembly take their foot off the bill and allow it to be acted upon, would result in the creation of a new city, the second largest in the state. It's still only a very, very small miniscule part of the city of New York and politically, it just doesn't have the clout to -- to -- I mean, we've seen it in so many different circumstances. It just doesn't have the clout to -- to have an audience on this subject and resolved in ways that are fair to the people that I represent and -- but the Legislature has that power, and if we enact this legislation, it will protect my people.

SENATOR ABATE: Thank you,

Senator.

On the bill -- on the bill.

ACTING PRESIDENT WRIGHT: Senator Abate.

SENATOR ABATE: As I initially stated, I compliment you, Senator, in representing your district well and the interest of your district, but I too have an obligation to represent the members of my community who feel that they're very much harmed by a one-way toll, and I would like to see -- and I think the fairest way -- and again, I do not underestimate the real impact a two-way toll has had in the past -- in the past, I say, on Staten Island, and I would think that there might be out there an option that could satisfy the needs of both communities, but we won't know that if we don't do a new study, look at an economic feasibility study in terms of other kinds of transportation so that Staten Island could have different ways of commuting into the borough as well as looking at the two-way tolls. Maybe it's at different hours to give some relief for commuters and it's

a one-way toll on certain hours and two-way tolls at others.

I don't know what the relief would be, but it seems to me that the last EIS study was in 1988. Things have changed since then, and I don't think it's judicious for us in the state Legislature to get involved in a local issue where there has not been a recent impact on three vital communities. Those vital communities are Manhattan, Brooklyn and Staten Island.

So what I would urge my colleagues -- again, I'm very sensitive to the needs of the workers in Staten Island but we as a body must also be sensitive to the needs of lower Manhattan and lower Brooklyn.

So I would ask that we vote no on this legislation so that we can do a more recent study and maybe come up with an option that satisfies all three boroughs.

Thank you very much.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President.

I rise in support of this legislation. I am in the position of representing two of the counties that are impacted by Senator Marchi's bill, both Staten Island and Brooklyn. The Verrazano-Narrows Bridge, both ends of it connect my district, the Staten Island portion and the Brooklyn portion.

I support it for my constituency in Staten Island for all the reasons that have already been stated by Senator Marchi and it's the right thing to do.

I also support it representing the area in Brooklyn which is connected by the bridge, the Bay Ridge, Dyker Heights and Bensonhurst communities, and I support it for my constituencies in those communities in Brooklyn also.

My two districts, my communities, are very similar and most of my families in Brooklyn have relatives, be they parents or grandchildren, in Staten Island and my

constituents in Staten Island also have many relatives in Bay Ridge, Dyker Heights and Bensonhurst, and we are constantly going back and forth over this bridge, sometimes on a daily basis to visit relatives, to get to work, to do what has to be done, and from my constituents in the Brooklyn end of the district, this has not been a hardship with the one-way toll and from my constituents in Staten Island, it would be a hardship if this bill did not pass and we went back to a two-way toll. So I commend Senator Marchi, and I urge this bill's passage.

ACTING PRESIDENT WRIGHT: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I appreciate Senator DiCarlo's position as representing two of the counties affected. It was only a few years ago between 1983 and the end of 1992 when I represented portions of the three counties most affected by this, Staten Island, Brooklyn and Manhattan, and when the experiment started, although its

origins are, frankly, in my view, governmentally questionable, the experiment started when then Congressman Molinari brought the United States Congress in its waiting deliberations about national matters down to debating and voting on whether or not the Verrazano Bridge, wholly contained within the city of New York, would have one-way tolls or not, and I'm sure similar instances like that occurred around the country and I'm sure it had a lot to do with the public's high regard for the United States Congress.

Be that as it may, I supported the experiment initially in representing the legitimate concerns of Staten Islanders for air quality, for traffic build-up, because an enormous portion of the traffic is passing through Staten Island from New Jersey. Traffic patterns established that. In fact, I think traffic patterns establish that more Staten Islanders cross into New Jersey than into Brooklyn on a given workday, but that through traffic and the truck traffic was considerable

and there was a legitimate concern in Staten Island for air quality.

But as the experiment unfolded year after year -- and it was an experiment - it became apparent that because of some of the economics of a one-way toll collection, that motorists, particularly truckers, but many motorists could save money if they entered downtown Brooklyn, the piers there or entered Manhattan via the Verrazano Bridge and then exited those two boroughs by going through lower Manhattan to the Holland Tunnel or even further up, Lincoln Tunnel. They could actually save money partly because of the one-way toll collection patterns that the Port Authority has on getting in and out of New York City.

The result -- and the studies on air quality are interesting because what they basically indicate is, except for some slight differences, the difference between one-way toll collection and two-way toll collection in terms of air quality are not really an issue anymore. The differences are somewhat negligible. So

there's no -- there's no undue benefit nor, frankly, is there any undue negative from the one-way toll collection.

But if you've been in downtown Brooklyn, the morning rush hour, or you've been in lower Manhattan at virtually any time of the day, particularly the evening rush hour, but any time of the day because obviously commercial traffic flows all day, you would see incredible congestion on the streets of lower Manhattan around Canal Street, always a difficult traffic situation there in times past. Now it's impossible.

And if you heard from residents of downtown Brooklyn -- because the community I represent there, quite frankly, are for the most part residential, you would see in historic Brooklyn Heights with a whole neighborhood of nationally landmarked -- first historic neighborhood in America -- of landmark pre-Civil War brownstones, the streets clogged in the morning with traffic. If you walked your children to school as I do when I'm not up here,

you would see the traffic, when the lights change and you can move, has no regard for the fact that -- these drivers have no regard for the fact that they're in a residential neighborhood. They speed up when they can excessively, because these streets that lead to the Brooklyn Bridge have become just as if they were service roads to the BQE because the traffic volume is such that there's a great degree of diversion.

If you're familiar with the next 12 years in downtown Brooklyn and Sunset Park, you know that there's a 12-year plan to close most of the Gowanus Expressway and -- for much needed repairs, but to an extent the traffic will be impossible -- even more traffic will be diverted onto local streets.

When you get downtown to the BQE, there's a plan to close a bridge, divert all of the traffic on the streets. There's another need to repair -- which will be another dozen year project -- the cantilever around Brooklyn Heights that the BQE rides on, so that with this

increased volume which, with all those roadways open and flowing in the morning, has caused this enormous spillover. There will also be these other traffic diversions that only exacerbate the problem to an extent that, frankly, frightens residents. It will make life impossible there that I believe ultimately will affect that ambient air quality in those neighborhoods if we were to measure them a couple years down the road.

It threatens the -- because of vibrations, because of everything the traffic brings, threaten these historic neighborhoods in terms of the foundations of very old houses, are very valuable houses, historically and economically and puts -- it's a major problem for downtown Brooklyn and in lower Manhattan, it's just impossible.

Once upon a time, Mr. President, I remember representing these three counties and finding out that in one re-election cycle because I had once co-sponsored this bill, I had once supported it, I thought it was an

experiment worth trying for the people of Staten Island. I remember paying a political price for that. I remember Democrats in lower Manhattan refusing to support me in a re-election bid because how could I be for this one-way toll, but I thought the fair thing to do at that time -- at that time was try this experiment, and I think the fair thing to do now is face reality, face the facts. Face the fact to make things a little bit better for Staten Island, we really -- is not good policy to make things totally impossible for the residents of downtown Brooklyn and lower Manhattan.

Therefore, I think we shouldn't be making this permanent. We ought to be ending this experiment, perhaps going back to the drawing boards and trying to be more creative about how to solve traffic problems for Staten Island as well as for the rest of the City. This, though -- clearly, the experiment has failed. It is not the answer.

I intend to once again vote no.

ACTING PRESIDENT WRIGHT: The

Chair recognizes Senator Marchi.

SENATOR MARCHI: Mr. President, one of the -- one of the biggest laments -- I believe both Senator Abate and Senator Connor made reference to it, the extraordinary amount of commercial traffic that utilized the system to save some money.

This was discussed very thoroughly with -- with traffic engineers and people who have managed bridges, and the bill does provide that such system shall require the collection of round trip toll on westbound vehicles except that the authority may establish a system of two-directional toll collections for any commercial vehicle other than an omnibus with a gross vehicle weight in excess of 18,000 pounds.

So that the heavy users and the ones that are generating perhaps might be paying a fairer share of the cost are these commercial vehicles, especially those of a certain weight, and that has been provided for in this bill. We could put in place under the terms of this bill

a two-way collection for these commercial vehicles.

So I really -- to -- you are a valued collaborator, Senator, while you were there, and I know you both have -- you both like Staten Island and hold it in your -- in esteem, but this is very, very serious to the people I represent, and if we don't get -- if we don't get protection here, we're not going to get it.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 854 are Senators Abate, Connor, Espada, Kruger, Leichter, Markowitz, Onorato, Paterson and Santiago. Also, Senator Stachowski. Ayes 46, nays 10.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Smith.

THE SECRETARY: Also, Senator Smith.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Spano.

SENATOR SPANO: Can we please go to the Senate Supplemental Calendar Number 1, non-controversial?

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: Calendar Number 1178, by Senator Larkin, Senate Print 69, an act to amend the Insurance Law and the Tax Law, in relation to supplemental health insurance accounts.

ACTING PRESIDENT WRIGHT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay the bill aside.

THE SECRETARY: Calendar Number

1179, by Senator Stafford -

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Mr. President, may I have unanimous consent to be recorded in the negative on the three following bills: Calendar 563, 994 and 1161.

ACTING PRESIDENT WRIGHT: Without objection, the Senator is recorded in the negative on 563, 994 and 1161.

SENATOR LEICHTER: Thank you.

SENATOR PATERSON: Mr. President.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Spano.

SENATOR SPANO: I believe 994 has not been passed yet.

ACTING PRESIDENT WRIGHT: Senator Spano, you're correct, 994 has not passed yet.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President,

would you please recognize Senator Montgomery.

ACTING PRESIDENT WRIGHT: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Thank you, Mr. President.

I would like unanimous consent to be in the negative on Calendar Number 854.

ACTING PRESIDENT WRIGHT: Unanimous consent to record Senator Montgomery in the negative on Calendar 854.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: Calendar 1179, by Senator Stafford, Senate Print 612, an act to amend the Environmental Conservation -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT WRIGHT: The bill will be laid aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 1180, by Senator Present, Senate Print 1929, an act to amend the State Administrative Procedure

Act, in relation to adjudicatory proceedings.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 180th day.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Senator Santiago moves to discharge from the Committee on Rules, Assembly Bill Number 2812 and substitute it for the identical Calendar Number 1181.

Calendar Number 1181, by Member of the Assembly Griffith, Assembly Print Number 2812, an act authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT WRIGHT: The substitution is ordered. There's a home rule message at the desk. Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1182, by Senator Skelos, Senate Print 2459-A, an act to amend the Executive Law, in relation to directing the Division of Criminal Justice Services.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT WRIGHT: Lay it aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 1183, by Senator Padavan, Senate Print 2693, an act to amend the Public Service Law, in relation to conjunctional billing by utility corporations and municipalities.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: The bill is passed. Oops.

THE SECRETARY: Those recorded in the negative on Calendar Number 1183 are Senators Seward. Ayes 55, nays 1.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1184, by Senator Kuhl, Senate Print 3534, an act to amend the Vehicle and Traffic Law, in relation to authorizing the operation of farm motor vehicles.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1185, by Senator Larkin, Senate Print 4592-A, an act to amend the Real Property Tax Law, in relation to the refund of certain amounts of real property taxes.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1186, by Senator DeFrancisco, Senate Print 4686, an act to amend the Criminal Procedure Law, in relation to the time limitations for speedy

trial.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1187, by Senator Hoblock, Senate Print 5173-A, an act to amend the Criminal Procedure Law and the Penal Law.

ACTING PRESIDENT WRIGHT: The bill is high. Lay it aside.

THE SECRETARY: Calendar Number 1188, by Senator Marchi, Senate Print 5275, an act to amend the Environmental Conservation Law, in relation to establishing the "Lou Figurelli Memorial Fish and Wildlife Sanctuary. "

ACTING PRESIDENT WRIGHT: The

bill is high. Lay it aside.

Senator Spano, that completes the non-controversial calendar.

SENATOR SPANO: Can we proceed to the controversial calendar?

ACTING PRESIDENT WRIGHT: Proceed with the controversial calendar.

THE SECRETARY: Calendar Number 1178, by Senator Larkin, Senate Print 69, an act to amend the Insurance Law and the Tax Law.

SENATOR PATERSON: Explanation, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson has requested an explanation.

Senator Larkin.

SENATOR LARKIN: Mr. President, this legislation would give employers the option of establishing individual trusts on behalf of their employees that may be used to help to pay for primary health care.

These trusts must be used in conjunction with conventional catastrophic insurance coverage. The use of the supplemental

accounts have been proven to reduce annual health care costs by as much as 30 percent and as of today that we speak, there are -- eight states have adopted it. Pennsylvania's House did it two weeks ago and we're informed that the Pennsylvania Senate will do it within the next ten days. We have been told that there are major corporations across the country who have put into effect the 35 to 40 percent savings to the corporation and to the employees.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: Mr. President, I'll just ask a brief question and then I'll let you recognize Senator Leichter. Senator, if you would yield.

ACTING PRESIDENT WRIGHT: Senator Larkin, will you yield for a question?

SENATOR LARKIN: Yes, I will yield.

ACTING PRESIDENT WRIGHT: The Senator yields.

Senator Paterson.

SENATOR PATERSON: I would imagine that these programs sound very attract ive to the young and the healthy individuals who don't want to go into a managed care program because in those programs their choice of doctor is limited, but how do these -- how do these types of insurance help an individual who is unaware at the time that they obtain the insurance that they are not going to be as successful in protecting them should they incur some catastrophic illness or some long, protracted illness?

SENATOR LARKIN: Senator Paterson, in reading the bill and in the memo that we sent out, when you look at the individual account for 2,000 and 4,000 a family, that percentage goes back in and covers them all in the catastrophic because it isn't just an individual account, it also protects them under catastrophic insurance.

SENATOR PATERSON: Mr. President, if Senator Larkin would continue to yield.

ACTING PRESIDENT WRIGHT: Senator

Larkin, will you continue to yield?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Larkin yields to Senator Paterson.

SENATOR PATERSON: Correct me if I'm wrong, Senator, but I thought that catas trophic illness would require a large deductible and something that demonstrates that the individual insured is actually protected in that particular way, and I just don't understand how this plan can provide the same protection because if it did, then it would seem to me that other plans at which -- incur large sums of payments for it, you know? In other words, that's why the catastrophic plan has high deductibles; this does not. So I just surmise that the whole is equal to the sum of its parts, that there isn't a part in this coverage that is going to add up to give that long-term care.

SENATOR LARKIN: Well, Senator Paterson, in the bill, we've quite clearly delineated that, that in that 2,000, that will

be what they will use as their markup for their catastrophic.

SENATOR PATERSON: I'll tell you what, Senator.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: Mr. President, if you would recognize Senator Leichter, let me take a look at what Senator Larkin is saying. He may well be right.

ACTING PRESIDENT WRIGHT: The Chair recognizes Senator Leichter.

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

ACTING PRESIDENT WRIGHT: Senator Larkin, will you yield to a question from Senator Leichter?

SENATOR LARKIN: Yes.

ACTING PRESIDENT WRIGHT: The Senator yields.

SENATOR LEICHTER: What is the cost to the treasury of the state of New York for this program as you've estimated?

SENATOR LARKIN: We figure that there will be none. There has been none in any of the other states that have adopted it so far either.

SENATOR LEICHTER: Senator, let me see if I can understand that. You give a tax deduction, do you not, to the extent that there is not a deduction under the Internal Revenue Code for that $2,000 that the employer puts into the account for the employee's health insurance.

SENATOR LARKIN: Well, first of all, you know that an employer gets 100 percent deductible for buying the health insurance for his own employees, right?

SENATOR LEICHTER: In some instances, yes. I'm not sure in all instances, but you provide in here -- in there -- and obviously -

SENATOR LARKIN: There is a penalty now. If they take that deduction out before like the 31st day of December, they pay a ten percent penalty and that penalty money goes back into the catastrophic fund.

SENATOR LEICHTER: Let me draw your -- if you would be good enough to continue.

ACTING PRESIDENT WRIGHT: Senator Leichter -- Senator Larkin, do you continue to yield to Senator Leichter?

SENATOR LARKIN: Yes, Mr. President.

SENATOR LEICHTER: Let me draw your attention to the provision that starts on line 53 on page 2. "The account holder's em ployer may subtract the amount of contribution made by the employer to an individual supple mental insurance account established on the employer's behalf to the extent that the contributions are not deductible under the Internal Revenue Code."

Now, obviously you put it in for some purpose, and the purpose is to provide an inducement, an incentive to set up these programs and to the extent that there are already not deductions under the Internal Revenue Code, you want to provide those deductions. You provide those deductions. That

means that the employer will be paying less state tax. What's the bottom line for the state of New York?

SENATOR LARKIN: Well, we don't figure that there will be any loss as far as we're concerned. We've looked at it. We've looked at it to all the other employers -- right now we have employers in the state of New York through their subsidiaries and other locations are doing it and they're not losing any money. So if they're not losing it in some other location, why would we be losing it?

SENATOR LEICHTER: Senator, let me ask you the ques...

ACTING PRESIDENT WRIGHT: Senator Larkin, will you continue to yield -

SENATOR LARKIN: Yes.

ACTING PRESIDENT WRIGHT: -- to Senator Leichter?

Senator Leichter.

SENATOR LEICHTER: Mr. President -- Senator Larkin, if there's no possibility of any tax loss, why did you put that provision in

there?

SENATOR LARKIN: Well, there's some goings on in Congress right now that we want to make sure that we're in line to protect ourself for now and in the future, because if you're looking at this right now, Senator Leichter, most of the people who will enter into this here insurance business, now most of them are covering their employees under an HMO and already have that deductibility as is.

SENATOR LEICHTER: Senator, I don't claim to be an expert on tax law. I think the reason that there may already be deduct ibility is because an employer can deduct or - from an employee's salary and income that he pays to the employee, so that's deductible. I assume this is part of the deductibility. Are you making this also tax-free for the employee?

SENATOR LARKIN: Well, I go back to the same thing. There already is a deductibility for health insurance and this is just a new form of it.

SENATOR LEICHTER: Senator, I

don't believe that there is presently a tax deduction for an employee. In other words, if I take part of my state salary, assuming it's ever paid, but -- maybe you like me have insurance under -- have the Empire Plan, and so on. We don't get a deduction for that.

SENATOR LARKIN: The employer - you might have misunderstood me, Senator.

SENATOR LEICHTER: Yes, Senator, I -- we've covered the employer. I'm asking now about the employee; whether your bill -- you bill provides any deductibility for the employee.

Senator Stachowski calls to my attention that the memorandum -- although I see that's the memorandum, it's not the sponsor's memorandum -- talks of the employee -

SENATOR LARKIN: The only deductibility they get is if they take that out and use it for health care, period. If they were to take any of this money out, it would all be taxable.

SENATOR LEICHTER: So if they

leave it in this account to cover for their catastrophic health needs, and so on, the employee gets a deduction?

SENATOR LARKIN: No. If the employee takes this out, the ones that are in there, in that account and uses it for anything but health, he must pay a tax on it.

SENATOR LEICHTER: Excuse me, Senator.

SENATOR LARKIN: Plus the penalty.

SENATOR LEICHTER: Senator, right now, the employee, as I understand it, has to pay for any income that he receives. This is income, right?

SENATOR LARKIN: But in our proposal as in the other states, the money that he may take out is to cover medical costs. So, therefore, it addresses that issue.

SENATOR LEICHTER: Senator, it must be me, but I must say I find your explanation very difficult to understand. Let me just ask you this simple question.

SENATOR LARKIN: Thank you, Senator.

ACTING PRESIDENT WRIGHT: Senator Larkin, do you continue to yield?

SENATOR LARKIN: Yes, sir.

SENATOR LEICHTER: The amount that the employer puts into this account on behalf of an employee, is that amount in the year that it's put in and where the employee does not withdraw it or make any other use of it, is that deductible to the employee from the employee's income tax?

SENATOR LARKIN: It's not counted as income because it stays in that fund.

SENATOR LEICHTER: Okay.

SENATOR LARKIN: He doesn't take it out. He doesn't have access to it.

SENATOR LEICHTER: Okay. Well, Senator, in that event, there certainly has to be a loss to the state of New York, because presently if an employee receives a sum of $2,000 and puts it into a -- and puts it into some health insurance, the employee has to pay

tax on that.

SENATOR LARKIN: Well, I -- I don't know any better way to say it except the fact that this money would be going for health benefits. This is money that would be normally expended on their own health. It isn't going to be a loss because it's something that you don't have out there.

ACTING PRESIDENT WRIGHT: Senator Onorato, why do you rise?

SENATOR ONORATO: If I may, the way I kind of equate this with a supplemental annuity. When the employee makes this contrib ution -- the employer makes the contribution, it's in lieu of additional health insurance. If the employee so chooses to use it for health benefits, it is not taxable, but if the employee chooses -- the employee chooses to withdraw it, it's as if he took money out of the bank as income and he would be required to pay a tax on it, but so long as he doesn't use it one way or the other, it remains in the fund and it is not taxable.

SENATOR LARKIN: You are right.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: To ask Senator Larkin to continue to yield.

I appreciate Senator Onorato's explanation and that's how I understood it, but then without question, Senator, there has to be a tax consequence for the state of New York, because the -- that amount that the employer is going to put away for his employee is going to be considered by the employer in some respect or other as income that he's paying the employee, and that amount, if it were paid to the employee and the employee bought health insurance, the employee would have to pay taxes on it.

So now you're going to have a situation where employees will not be buying health insurance because it's going to be done by their employer and they will not be taking this income. They will not be paying tax to the state of New York. There clearly is a tax

consequence. That's all I'm trying to establish.

SENATOR LARKIN: Senator, I think that, one more time, we have a situation here where we're trying to assist employees and employers to provide funding for health care. If this wasn't done this way, the employees would be paying it directly out of their pocket in some other fashion. That money that they get in the beginning is taxable. This employer is putting in 2,000. He can only put in 2,000 for himself for the first, the second, a maximum of up to $6,000. We don't see any loss of revenue from what we have now.

SENATOR LEICHTER: Mr. -

ACTING PRESIDENT WRIGHT: Senator Leichter.

SENATOR LEICHTER: Mr. President, there's no sense Senator Larkin and I dancing around this any longer.

Senator, I understand what you're trying to do and maybe there's a public benefit for it, but I think to say that there's no tax

loss to the state of New York is just totally wrong. There clearly and absolutely is a tax loss because the employer, by setting up this particular plan, will be avoiding paying taxes. The employee under this particular proposal will not have to pay taxes on the $2,000 that goes into this plan, and that's going to be income.

In other words, somebody who makes 60,000, the employer is going to say to the employee, "You know what; I'm going to pay you 58,000, but I'm going to put $2,000 that's going to buy you this health insurance and as to that $2,000, you're not going to be paying taxes. So you're only going to be paying taxes on $58,000 dollars" and there is a tax loss to the state of New York.

Now, maybe the state ought to subsidize it or shouldn't subsidize it, but at least we ought to understand what we're doing; we ought to understand the cost, and without having some analysis of what the cost is and whether the state of New York wants to subsidize health care in this way, I would be against it.

Yesterday, Senator Larkin, you and other members here were smacking your lips as you were cutting Medicare and health care for a lot of people. Now you turn around today and you're subsidizing health care essentially for people who are better off, people probably who are healthier and I don't understand the rationale, and to say, "Oh, well, this isn't going to cost the state of New York anything", it's just absolutely, totally false.

ACTING PRESIDENT WRIGHT: Senator Larkin.

SENATOR LARKIN: Mr. President, one more time. I think there's two things we ought to understand here, that this money is not considered income because it is a health benefit. When you start to realize that, you put money aside.

Mr. Leichter said, well, the 60,000 would take it down to 58-. I think we're trying to make apples into an orchard field. No money put aside by an employer for health insurance is considered income, period.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Larkin would yield for just a couple more questions.

ACTING PRESIDENT WRIGHT: Senator Larkin, will you yield?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT WRIGHT: The Senator yields.

SENATOR PATERSON: Mis... Senator Larkin, would employers be setting up a supplemental account for those employees who lose the traditional or managed health care plans?

SENATOR LARKIN: No, they would not, Senator.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: Senator Larkin, what would the protection be for those employees who lose their traditional health care

plan?

SENATOR LARKIN: Well, there are cases where they could provide it but there's no requirement that they would have to.

SENATOR PATERSON: Okay. The - if the Senator would continue to yield.

ACTING PRESIDENT WRIGHT: Senator Larkin, do you continue to yield?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT WRIGHT: The Senator continues to yield.

SENATOR PATERSON: In passing this bill, Senator, aren't we sending a mixed message along with the other legislation that we are drafting in terms of managed care? In other words, we've got managed care on one hand and we have this on the other. Are we not confusing the residents of the state as to what is the best way to cover themselves under our current health standards?

SENATOR LARKIN: Well, I don't - Senator Paterson, I don't believe that. We're

offering an alternative. When we start to realize that eight other states have adopted this, a ninth state is in the process of doing it, it quite clearly points out that this is an option that employers and employees collectively can do.

When you start to read that Forbes just said that their work rate, their lost time rate for illness had decreased and their total cost was less by 40 percent over the past two years, so it tells you that it has to be working. If it wasn't, I don't think you would have eight states doing it, the ninth one is -- just a month ago, the National Manufacturers Association testified in Congress to address this issue and the issue that affects some states on the tax break.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR LARKIN: United Auto - Mine Workers, by the way, are one of the big participants in this.

SENATOR PATERSON: Thank you,

Senator Larkin.

If Senator Larkin would continue to yield.

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT WRIGHT: Senator Larkin continues to yield.

Senator Paterson.

SENATOR PATERSON: Earlier I asked you a question about catastrophic health care and I think I probably confused you because your bill, as you pointed out in your answer, does -- it does address catastrophic health care, but what I'm really getting at is not that situation where a person would be put in an intensive care unit in a hospital, and it's clear that your bill covers this kind of situation. What about a person that has a protracted, long-term illness, let's say a person, unfortunately, is afflicted with the HIV virus or a person has some kind of neurological disease and they require extensive and

continuing medications. So what they're now doing is they're going to have to be laying out large sums of money on a continuing basis for that medication, and what I'm contending, Senator, is it's going to eat up that $2,000 that you're talking about, and individuals who can't afford it who never dreamed that this could possibly happen to them because when they originally took the plan they didn't have a problem, they're covered in the long term, they may be all right in the short term because they're healthy, but in this situation where you have a long-term illness, they're not going to have the money and they're going to wind up in a sense as a bad debt and charity insurance.

SENATOR LARKIN: Senator Paterson, I'll give you a memo so you can share it with Senator Leichter, but in all of the states that we've looked at, when you use up that $2,000, your costs roll over contrary to what -- somebody down on State Street sent a memo to it. When you run that $2,000 over, you automatically convert over into the catastrophic

where it picks it all up.

This is not something that was dreamed up here. We've looked at it. We've looked at the other states. Some of the points that Senator Leichter brought up, we tightened them up, Senator Leichter.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: I just looked at that section as I promised I would and that's how we got the matter of the catastrophic illness cleared up, but I assure you, I did not see that. I don't see how that long-term illness kicks in. Can you explain to me where in the bill that actually does that?

SENATOR LARKIN: Well, Senator, I don't know how to make it any clearer, but -

SENATOR PATERSON: I'm sorry.

SENATOR LARKIN: -- all I'm going to say to you is that I have seen it in operation in the other states. I have gone and visited Golden Rule. I have talked to Forbes. I talked to the United Mine Workers and they are

clearly -

SENATOR PATERSON: So, Senator, it does pay for prescription drugs.

ACTING PRESIDENT WRIGHT: Senator Larkin, do you continue to yield?

SENATOR PATERSON: See that's what I'm saying, Senator. You may have seen it in the other states. I'm just asking you to show it to me in the bill. I don't see where it pays for prescription -

SENATOR LARKIN: Senator, we think it is in the bill and I think it's very clear. We tell you that when you eat up that $2,000, you'll go into catastrophic and you will be paid for it.

Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT WRIGHT: Senator Paterson on the bill.

SENATOR PATERSON: I think that

-- I just would recommend that I'm open to anyone right now to get up and show me where it says in this bill that it will cover prescrip tion drugs. I maintain that it's not there. If there's anybody here or in the sound of my voice who can show me where it exists in this bill, I would really like them to -- to come forward and let me know that, because it's just a concern that we have about individuals and a long-term, protracted illness that, if satisfied, I think a number of us would -- would want to vote for the bill.

However, another issue that has been raised by some of the insurance companies is the fact that what we're really doing is setting up a class system of insurance. We are inviting those who are likely to be more healthy over a period of time to opt out into this special plan, and we are actually, in terms of the community rating pool, lowering the caliber of good risks in that pool and making it more difficult on our insurance companies inevitably raising the deductible and causing a problem for

those who would be unable to afford the actual deductibles.

The whole basis and idea of insurance is that it is a collectivist sort of doctrine that we're all in it and those of us who have need are benefited by those of us who pay a small amount of our salaries and contribute to the pool and it all works out.

If we are now going to, in a sense, create a new actuary and opt out into a whole different program, to, in a sense, create a break for those who don't think they're going to have a medical problem and then to, as a state, in many respects, subsidize it, what we're really doing is setting up what is really a publicly funded insurance system for individuals to benefit from, which is what I thought that many individuals in this chamber who I hear every day rail against; and so what we need is at least a uniform standard that we can all abide by, not to ridicule and cajole individuals who, unfortunately, are impoverished or have a need for seeking assistance from the

state, all the while at the same time we are putting this into effect in other legislation that would inure to the benefit of those who don't even have such a great need which, I think, is really a greater malady because at least in the former case, we're doing it because we understand that certain individuals need help.

And so for the really bifurcated elements of the issue of there not, in my opinion, being any kind of real care for protracted, long-term illness and the fact that we're setting up what is really a duplicate system that benefits some and penalizes others before any of the actuaries going into effect, I can't support this bill. I understand the concept and it's actually merited, but the way it's applied is something that I don't think would be helpful to the residents as a -- in total around the state.

ACTING PRESIDENT WRIGHT: Read the last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Leichter.

SENATOR LEICHTER: Mr. President, just to explain my vote.

I want to say I think this really shows the hypocrisy of the Republican Party, because yesterday you cut health care for poor people. You said this state does not have the money. We can't afford to provide the same degree of health care for poor people as we have in the past; then the next day you come in with a bill that provides a health care subsidy for people who can afford it, people who are employed, people who get a benefit out of taking a $2,000 deduction.

Senator Larkin's argument, with all due respect, really was way off the mark from his own bill because there clearly is a tax consequence. There's a tax loss to the state of New York, and I just hope people out there are looking, are listening. I don't expect to find that many here in the LCA, but if you wanted a clearer example of where the Republican Party

stands, which is benefits for the wealthy, benefits for the affluent, benefits for the non-urban, just take a look at their action yesterday cutting Medicaid and their action in this bill which provides public support, public subsidy for people to go out and buy insurance, people who have the means to buy insurance, people who at least get the benefit of a $2,000 deduction. I'm certainly not going to be part of this charade.

I vote in the negative.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT WRIGHT: We haven't read the last section yet, Senator. They're explaining their vote. Can we read the last section, please.

THE SECRETARY: Section 5. This act shall take effect December 31st.

ACTING PRESIDENT WRIGHT: Excuse me.

Senator Abate.

SENATOR ABATE: Yes. Would Senator Larkin yield to a question? I'm just

trying to -

ACTING PRESIDENT WRIGHT: Senator Larkin, will you yield to a question?

SENATOR LARKIN: Yes, Senator.

ACTING PRESIDENT WRIGHT: The Senator yields to Senator Abate.

SENATOR ABATE: I have the philosophy that if we can -- even if it means some tax breaks, we can involve employers and create incentives so that they expand health coverage to employees, that might be a situation where it's merited.

My concern is here. Is there - how does this impact on the employer's obligation to provide non-catastrophic insurance coverage to their employees?

SENATOR LARKIN: Right now, there really isn't an obligation. There -- under this plan, there is a commitment by the employer to his employees. I mean, you have a lot of employees throughout -- employers throughout the state that don't have any health insurance for their employees. We're trying to create

something here that is done in other states that has attracted employers to get involved and provide coverage.

SENATOR ABATE: Have you found, though, in those other states where this has been passed that those employers are less likely to involve themselves in a managed care health program if they set aside this specialized account? See, my concern is that this will drive employers to offer less health coverage than would be available today if they're so inclined.

SENATOR LARKIN: The information that we've received from those that are writing it and those that are involved in it hasn't - has proven to be of greater coverage. The United Mine Workers in West Virginia when they signed on to it, said it provided the best care their employees ever had.

SENATOR ABATE: Because they were not offering any care prior to this?

SENATOR LARKIN: No, they had the care, but this gave them a better care, better

coverage. It allowed them to move from the primary into the eventualities that was cited by by Senator Leichter into the catastrophic without a loss of every bit of their life's earnings.

ACTING PRESIDENT WRIGHT: Senator Abate.

SENATOR ABATE: Yes. Would the Senator yield -- continue to yield?

ACTING PRESIDENT WRIGHT: Continue to yield, Senator Larkin? The Senator continues to yield.

SENATOR ABATE: This $2,000 that would be set aside in an account for an employee, could that be used for primary care, as well as catastrophic care?

SENATOR LARKIN: Yes, it can.

SENATOR ABATE: Any purpose?

SENATOR LARKIN: Yes, it can.

SENATOR ABATE: Now, once that $2,000 is used up and I become ill and I need medication; I need more intensive doctor's coverage; I need home care, whatever, not as far

as hospitalization and the $2,000 is used up, what do I do as an ill employee?

SENATOR LARKIN: Maybe I ought to take a moment and read line -

SENATOR ABATE: That's what I need answered, because that's my major -

SENATOR LARKIN: Approved -- here it says that the approved catastrophic plan shall mean a health insurance plan approved by the Superintendent to provide coverage of health care costs incurred due to grievous injury, chronic illness or other major medical expenses which may be reasonably expected to incur costs above those covered by the supplemental insurance account. In other words, when your 2,000 is kicked out, you're automatically covered as I just read there.

Thank you.

SENATOR ABATE: What is -- one more question.

ACTING PRESIDENT WRIGHT: Senator Abate.

SENATOR ABATE: Can you yield?

What is not covered -- when one goes beyond the $2,000, what is not covered by this additional account or this additional coverage?

SENATOR LARKIN: Routine medical.

SENATOR ABATE: Routine medical, diagnostic. Anything else?

SENATOR LARKIN: Nope.

SENATOR ABATE: And preventive. All right.

Thank you.

ACTING PRESIDENT WRIGHT: Read the last section.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Dollinger, why do you rise?

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

ACTING PRESIDENT WRIGHT: Senator Larkin, will you yield to Senator Dollinger? Senator Larkin will.

Senator Dollinger.

SENATOR DOLLINGER: Senator what's the effect -- I believe Senator Paterson may have touched on this. I was listening to it on the speaker. What is the effect of this bill on the community rating system that we put in place in 1992?

SENATOR LARKIN: Senator Dollinger, it isn't because remember that this proposal is an option. We're not forcing this on anybody. We're not saying you must do this. We're creating something that would be of benefit to the employees and the employers.

SENATOR DOLLINGER: Through you again, Mr. President, if Senator Larkin -

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: Won't this bill take good risks, young, healthy people who work for employers that can afford these types of accounts and won't it take them out of the general pool of users of broad-based health insurance, such as we provided in the open enrollment and the community rating plan?

SENATOR LARKIN: Senator Dollinger, if you remember if you were here in 1992 when we did the community rating -

SENATOR DOLLINGER: I was not.

SENATOR LARKIN: -- open enrollment, well, at that time we created something and we had a lot of young, healthy people leave. Who are we to say that young, healthy people won't leave? This is not created for young, healthy people. How about the United Mine Workers? How about Forbes? How about Campbell's Soup? That's a good mixed bag. When you say won't it take them out? How do you know? They've left now. The people -- you can get case studies now of young, healthy people leaving, because they didn't feel that the policy covered what they needed or that it was cost-effective.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Larkin will continue to yield.

ACTING PRESIDENT WRIGHT: Senator Larkin, will you continue to yield?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT WRIGHT: The Senator yields.

SENATOR DOLLINGER: The whole purpose of community rating was to put everybody in the health insurance pool and spread the risk as far as we could so that perhaps the young and the healthy might pay a little bit more but the elderly and the infirm might pay a little bit less, so we would end up with a system in which the total health risk of the community was balanced across the broad base which, quite frankly, is just the system I come from in the home of community rating and managed care in Rochester where we have major employers who have bought into the Blue Cross and Blue Shield plans and we have achieved a system where we have the lowest health insurance cost in the nation, bar none, and my question is the fear that community rating was designed to prevent was the "cherry picking" of good risks by commercial insurers who could take the profitable users of this

system who would be willing to pay premiums but have low health care needs and leave only those who have high health care needs and can't afford it in the community-rated system. Isn't that what this bill begins to do is make an exception to that?

SENATOR LARKIN: You know, I think, Senator Dollinger, we're going back and digressing a little, about three years ago when we talked about open enrollment/community rating.

Two things you want to think about. That pool we like to enlarge and we will enlarge by this for the catastrophic, for that young and healthy that are into this, they're going to be taken care of too. I think that we ought to stop thinking about community rating and open enrollment and the memo that was sent around. This is an opportunity that we are providing in this state. When we can look at eight other states that have done it, the ninth is going to go to it, we're starting to see that it's working. It's providing the care. It's

providing the catastrophic coverage, I think that we ought to open it up. Let's put it out there and see. We know.

You know, if you have been paying attention to some of the materials, that the open enrollment/community rating hasn't been the success it's wanted to be. Young, healthy people left it. Here's an opportunity for an employer to participate with his employee, to take care of that primary and the catastrophic.

Thank you. Read the last section.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: I did not pay, I guess, close attention to this bill prior to hearing the debate and I'm now concerned that the community rating plan which, at least in my communities seems to have worked so well, could be subject to the same kind of "cherry picking" problem that drove to us community rating in

1992, and I still think that's a good idea.

I understand from Senator Larkin that there have been problems with the open enrollment system and it took the transition from the hodgepodge of health care providers to an open enrollment to a community rating system that has experienced some difficulties.

It has resulted in an increase in premiums in some of the younger and healthier people, but its overall effect in a long-term phase will be to take the whole health care risk and pass it through everyone and stabilize the premiums much as they have been stabilized in Rochester, New York, where, as I said, we have a completely community-rated system. Our health insurance costs a third less than it is anywhere in this state, and I think about 50 percent less than any place in the nation.

So, as a believer in the community-rated system, when you see a bill like this which has a benefit perhaps for a portion of the population that has available funds and low risk, then it's a tempting thing because you

could pull yourself out of the community rating system and say, "I can pay even less than the community pool", but the effect of that is that the more people that desert the community pool, the greater the chance that the overall health risk among needy populations will drive those premiums for people on fixed incomes and elderly to too high an acceptable rate.

So I'm concerned that this would be seen as a step to move away from a community rated system. I know others in the state don't have my experience with it. It seems to have worked very well. I'm concerned that this is a step away from that. As difficult as the transition to community rating is, it's worth while to get there. Rochester is proof of it.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect December 31st.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: Senator Johnson to explain his vote.

SENATOR JOHNSON: Mr. President, I regret that I wasn't here through the entire debate, but some of the discussion I heard on this bill was quite unbelievable, especially from the other side of the aisle who tried to essentially in some respects twist this bill out of context and then say they didn't understand it or they didn't want to understand it.

I mean, we talk about HMOs and how this would affect them. HMOs are a new competitive factor which has happened to bring lower cost health care.

On the other hand, this community rating, this bail-out of Blue Cross just guaranteed everybody higher rates and, of course, those who stayed in the community rating did so because their rates went down and those rates who doubled got out and they have no protection at all. So obviously there's another need for another competitive factor out here to keep these rates under control and this is the

type of bill which can do it.

This isn't a bill which says to you -- instead of having a plan which says, you go to the doctor, spend all the money you want, says the first $3,000 out there is yours. Spend it if you like or don't spend it if you don't want to. There's some benefit to you for having that money out there as a member of an employee trust.

If there's a company which decides to change from another health plan to this type of health plan, the result would probably be a saving in premiums. It's been demonstrated there's a 40 percent savings of premium with companies that have gone to this type of a plan and the employees are very satisfied by it.

This has an additional innovation of letting an individual be in the same position as somebody who works for large corporations where you get your medical coverage free, included. There's no tax implication. By the same token, an individual could be in the same

position as an employee to buy his own insurance tax free just as the employer does for other people.

It makes sense to me to provide this opportunity to people and broadening the insurance market and putting an innovation which is going to keep costs down.

It's a very good bill and it's unrecognized on the other side to be that, but I hope most people understand that this is the way we should go to open up the market.

ACTING PRESIDENT WRIGHT: Results.

THE SECRETARY: Those recorded in the negative on Calendar 1178 are Senators Abate, Connor, Dollinger, Espada, Gonzalez, Leichter, Montgomery, Paterson, Santiago and Smith. Ayes 46, nays 10.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Skelos, if you might give us a minute, we're -- have some equipment changes with the stenographers.

Thank you.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Skelos.

SENATOR SKELOS: Please let us go to Calendar Number 1172, Senate 5117.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: 1172, by Senator Goodman, Senate Print 5117, an act to amend the Election Law, in relation to accessible polling places.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT WRIGHT: Explanation is called for. Senator Goodman.

SENATOR GOODMAN: Mr. President, this is a local bill, sponsored in the Assembly by Assemblyman Sanders, which would authorize the Board of Elections to take action which I can best illustrate with a specific example.

In my Senate District the polling place has been moved out of an election district

because there is no place accessible to the handicapped within the district. The new polling place is across a very busy main cross town street with a light that gives seniors in sufficient time to cross the street. As a result, many seniors have stopped voting.

The core point here is that, where there is a requirement to do everything possible to assist the disabled in voting, we wish to continue to protect the disabled and, in an instance such as this, the way to do it is to have them vote in a contiguous district which is much closer and convenient to them than the one that has to be moved out of the district.

It is strictly in the interest of the public in two respects. It helps the disabled, and it helps those seniors in this case who would otherwise have a very inconvenient and inaccessible voting place that they have to go to because it's the only one within the district, albeit very remote, that is accessible to the handicapped.

ACTING PRESIDENT WRIGHT: Senator

Stachowski.

SENATOR STACHOWSKI: Would Senator Goodman yield for a question?

SENATOR GOODMAN: Yes, I will, Senator.

ACTING PRESIDENT WRIGHT: Senator will yield.

SENATOR STACHOWSKI: Senator, is that a situation that is prevalent in the city of New York? Are there a lot of election districts that are having this problem or rather a limited problem?

SENATOR GOODMAN: I only know of this one instance. I know of no other specific case that it is such a problem, but it's quite conceivable that it could be.

SENATOR STACHOWSKI: Thank you.

SENATOR GOODMAN: Thank you, Senator.

ACTING PRESIDENT WRIGHT: Senator Onorato is recognized.

SENATOR ONORATO: Senator Goodman -

ACTING PRESIDENT WRIGHT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will.

SENATOR ONORATO: Will you yield? I'm not exactly sure what this will do, but I'm hopeful that it will do something. I have a situation in my district where some of the schools are not handicapped accessible and they close them down for voting and I have different situations where we have disenfranchised a great many of the voters because they had to go to distances much greater in much smaller facilities that could not accommodate them.

Now, will this alleviate this problem? Will I be able to reopen that school?

SENATOR GOODMAN: It will, however, assuming that there is within the - within the contiguous district a handicapped accessible voting place. It's designed exactly to solve the problem you're talking about.

SENATOR ONORATO: In other words, if I had a school nearby -

SENATOR GOODMAN: That would be

accessible.

SENATOR ONORATO: -- that is accessible, would that make it accessible for the handicapped?

SENATOR GOODMAN: It gives the Board of Elections the discretion to do it and it would only be done obviously for the handicaps and those who have otherwise long distances to go.

ACTING PRESIDENT WRIGHT: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Would the sponsor answer just a few questions?

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT WRIGHT: Senator Goodman yields.

SENATOR MONTGOMERY: Senator Goodman, I have an instance from my own polling place where the entire election district was sort of displaced, if you will, displaced and sent a long distance because the school where we usually have voted was not handicapped accessible.

Does the bill then give the Board of Elections the option setting up an alterna tive polling site for -- specifically for the handicapped other than the handicapped?

SENATOR GOODMAN: Provided it's in a contiguous, that is, adjoining district.

SENATOR MONTGOMERY: And then the rest of the polling place does not move?

SENATOR GOODMAN: It helps the handicaps and helps the other people who would otherwise have to go long distances because of the provisions.

SENATOR MONTGOMERY: And the polling place does not have to be closed down, does it?

SENATOR GOODMAN: That's correct.

SENATOR MONTGOMERY: All right. On the bill, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: This is a good bill, and I know the Senator on our side

from western New York probably does not understand, but this is a very big problem in the city of New York. I experienced it personally and I've tried to intervene on a number of cases where the polling site has been changed, to the tremendous inconvenience of large numbers of constituents.

So I support the legislation. Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar 1172 are Senators Libous and Smith. Ayes 54, nays 2.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President,

at this time, would you call up Calendar Number 1153, Senate 5336.

ACTING PRESIDENT WRIGHT: O.K. We're going to read a substitution.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Rules Assembly Bill Number 8063 and substitute it for the identical Calendar Number 1153.

SENATOR SKELOS: Move substitution.

ACTING PRESIDENT WRIGHT: Senator Skelos. Substitution is so ordered.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT WRIGHT: There is a message of necessity at the desk.

SENATOR SKELOS: Move we accept.

ACTING PRESIDENT WRIGHT: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

SENATOR SKELOS: Last section.

ACTING PRESIDENT WRIGHT: Read the last section.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1153, by the Assembly Committee on Rules, Assembly Print 8063, an act to amend the State Finance Law.

ACTING PRESIDENT WRIGHT: Read the last section.

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

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT WRIGHT: Excuse me.

SENATOR SKELOS: If I could make one correction, I believe we had the message - moved the message before the title was read, so at this time, Mr. President, is there a message at the desk?

ACTING PRESIDENT WRIGHT: Yes,

there is.

SENATOR SKELOS: Move we accept.

ACTING PRESIDENT WRIGHT: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

SENATOR SKELOS: An explanation has been requested.

ACTING PRESIDENT WRIGHT: Senator Stafford for an explanation.

SENATOR STAFFORD: We're moving right along, Mr. President, here in this budget process, and you know, I got thinking as I just walked in here, I think this has been mentioned a couple times, but I think this was said sarcastically and I'm not being sarcastic at all. We're doing the Article VII bills of the budget at 2:55 and the sun is out.

I don't want to discourage anyone but, on the other hand, I think that's a

real plus that we're here doing it in a very sensible hour and, when you came here the other hours, you know and appreciate a sensible hour.

This piece of legislation will provide for us the Article VII bills that the Governor has sent to us to implement the budget for 1995 and '96.

Now, I could go down and include every single section, but I don't think you would necessarily want me to do that, I'll be glad to. People say no, all right? And another no. But I will be pleased to, on a serious note, answer questions when I have -- after I've completed my short explanation.

But much of what I will mention here is just an example of what we are passing and, as I say, there may be some specific areas that you wanted to ask about.

I think importantly it was decided that the assets and liabilities of the Office of Rural Affairs be included in the Secretary of State's office. I'm going to have

Senator Nozzolio speak in just a moment, and I'm sure he will explain, you know, how we came to that decision. He does not have to. It was a very -- it was a sensible decision. On the other hand, he has some very strong feelings concerning that issue, as many of us did.

Also, Mr. President, Love Canal that affects people on all sides of the aisle here is in consideration again, and monies will be provided and the payments will be made, some of the payments will be made to the city of Niagara Falls.

Also we have, which is important, it was determined necessary and we authorized the issuance of up to 14 million in certificates of participation to provide funds for the replacing of petroleum storage tanks by OGS at the various state agencies. I know sometimes we've been a bit concerned -

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

SENATOR PATERSON: Mr. President, I want to apologize to Senator Stafford. I just

thought it was important that Senator Stafford is trying to explain this piece of legislation and there are some members here that don't have the legislation on their desk.

SENATOR STAFFORD: I was told - let's make sure that -

ACTING PRESIDENT WRIGHT: Senator, I'm informed that it's at the back of the black binder on each member's desk.

SENATOR STAFFORD: The legislation is on the back of the desk, part of the desks. This is something maybe I can be helpful as everyone is getting this. When people say, Do you have every single bill on your desk in Albany, you do, right -- right in front, so that's always interesting for people to know.

I don't think enough -- one situation, I could go on and on, but I'll sort of conclude. Here's an example of a clean-up, for instance, the St. Lawrence-Ontario Commission is, in effect, transferred to the Tug Hill Commission, and I think that makes a great

deal of sense.

A great deal of work went into this. I compliment all who have made it possible, and I will be certainly more pleased to -

ACTING PRESIDENT WRIGHT: Excuse me, Senator Stafford. If I might, the bill that's under debate is Bill Number 5336, if that will help some of the members find their copies.

SENATOR STAFFORD: Right.

ACTING PRESIDENT WRIGHT: Thank you for your indulgence, Senator Stafford. You may proceed with your explanation.

SENATOR STAFFORD: You do not have to apologize, Mr. President. I was in the process of sitting down.

ACTING PRESIDENT WRIGHT: Thank you, Senator Stafford.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, the problem is that over here on some of the

bills, the calendar number was marked 1189 and not 1153, which was the calendar number that you have and that's what caused the confusion.

ACTING PRESIDENT WRIGHT: Thank you, Mr. -- Senator Paterson. I appreciate your assistance in resolving it.

Please read the last section.

THE SECRETARY: Section 362. This act shall take effect immediately.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT WRIGHT: Senator Saland to explain his vote.

SENATOR SALAND: Mr. President, during the course of these budget negotiations, there was considerable concern about not only the block grants but the block grants for children's services, but also the language that would effectuate that block grant and there was great concern expressed in many quarters about

the lack of flexibility in the language inasmuch as counties were going to be -- find themselves in a situation in which there were less dollars available to them by reason of the block grants and, in fact, flexibility became an imperative for them.

There were a series of negotiations that include -- which involved not only both houses and the Governor's office but also NYSAC, the New York State Association of Counties, and NYSAC has provided a letter or a memo which -- in which they express their concerns about the initial proposal and how they are satisfied that the maintenance of effort requirements that are in this bill are satisfactory to them and to their membership inasmuch as they believe that there's language in this bill regarding the waiver of the child preventive maintenance of effort language that is flexible enough provided that the -- that the Commissioner's regulations, in fact, embody that flexibility and if I sound somewhat equivocal that's because the nature of that endorsement

seems somewhat equivocal; and let me just suggest to you, Mr. President, that the language -- and I call particular attention to pages 141 and 142, which deal with the subject of the waiver, talk in terms of, and here I quote: "The Commissioner may waive or reduce the maintenance of effort requirement for preventive services upon a showing by the local social services district that a substantial change in circumstance results in the maintenance of effort requirement causing a substantial risk of harm to the health and safety of children in the district. The Commissioner shall establish in regulation the standard for showing a substantial risk of harm including the effect the waiver and the reduction of maintenance of effort would have in the delivery of preventive services."

Now, NYSAC is satisfied and has stated it in a memo, and I'll read from that memo: "NYSAC supports the revised language on the clear understanding that it includes all the circumstances covered by the original language

and more so Commissioner will be able to grant waivers to enable counties to readjust their resources as needed so that the needs of child protective, adoption and foster care are met while still providing an appropriate level of preventive services. NYSAC trusts that this broad and flexible intent will be reflected in the Commissioner's regulations."

I merely caution that notwith standing the memo, that NYSAC has provided the memo as referred to as accompanies this bill, the language that is in this particular portion that I just read does not necessarily imply that flexibility, and it's the accompanying memo that provides that flexibility and it certainly remains to be seen whether a court would give the same interpretation were this to be challenged to provide the necessary flexibility that NYSAC seems to feel is here, but if they're comfortable, Mr. President, I certainly am not about to deny them their request that this be enacted, and I certainly will vote in support of this measure.

ACTING PRESIDENT WRIGHT: Senator Saland -- Senator LaValle is recognized.

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

I would like to begin my remarks by congratulating the -- the Higher Education staff for having worked very, very diligently in making major restorations to the higher education account and in this piece to the student financial aid that so many of our students are dependent on, that maintains New York State as a state that continues its commitment to provide access and choice for its students to attend a post-secondary institution of their choice.

Not only were major restorations made for the tuition assistance program, but also for the aid to part-time students and a continuation of awards for graduate students and even a new program that really reworks the supplemental tuition assistance program to ensure that those students who need remediation prior to attending a post-secondary institution

will have all that they need to get a good running start on their education.

And so what we achieved here was done with a lot of hard work on the part of staff and good firm direction on the part of the members of the Higher Education Committee.

So I think we've achieved something here that is very, very positive in maintaining student financial aid and the wherewithal to provide access to our students.

ACTING PRESIDENT WRIGHT: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1153 are Senators Abate, Dollinger, Espada, Hoffmann, Kruger, Leichter, Markowitz, Oppenheimer, Paterson, Santiago, Smith, and Stachowski. Ayes 44, nays 12.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a privileged resolution at the

desk by Senator Abate. I ask that the title be read and the resolution adopted.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: By Senator Abate: Legislative Resolution paying tribute to Marie Enzerillo, in recognition of her purposeful life and distinguished contribution on behalf of Community Board Number 3 in the borough of Manhattan upon the occasion of a surprise luncheon to be held on June 11th, 1995.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is passed.

Senator Skelos, we have some housekeeping if we may.

SENATOR SKELOS: Mr. President, would you recognize Senator Paterson.

ACTING PRESIDENT WRIGHT: Senator

Paterson.

SENATOR PATERSON: Mr. President, I hope I'm recorded as voting in the affirmative on the last bill.

ACTING PRESIDENT WRIGHT: Senator Paterson, you were recorded in the negative. We will change it, if that is your request.

SENATOR PATERSON: I didn't raise my hand unless I was stretching it.

Would you please recognize Senator Jones.

ACTING PRESIDENT WRIGHT: Senator Paterson, are you requesting that you be recorded in the affirmative? So directed.

Senator Jones.

SENATOR JONES: Mr. President, I'd like unanimous consent to be recorded in the negative on Senate 5336.

ACTING PRESIDENT WRIGHT: Without objection, Senator Jones will be recorded.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time could we take up Senator Stafford's

bill, Calendar Number 1179, Senate 612.

ACTING PRESIDENT WRIGHT: Senator Skelos, may we proceed with our housekeeping first? I apologize.

SENATOR SKELOS: I withdraw that request.

ACTING PRESIDENT WRIGHT: Thank you, Senator Skelos.

Senator Rath.

SENATOR RATH: Mr. President, on page 28, I offer the following amendments to my bill, Calendar Number 895, Senate Print Number 2011, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT WRIGHT: Amendments received.

SENATOR RATH: Thank you.

Mr. President, on behalf of Senator DiCarlo, on page 45, I offer the following amendments to Calendar Number 447, Senate Print Number 2419, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT WRIGHT:

Amendments are received and will retain its place on Third Reading Calendar.

Thank you.

Senator Skelos. Now, if we may proceed.

SENATOR SKELOS: Mr. President, would you call up Senator Stafford's bill, Calendar Number 1179, Senate 612.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: Calendar Number 1179, by Senator Stafford, Senate Print 612, an act to amend the Environmental Conservation Law, in relation to the siting of industrial hazardous waste facilities.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT WRIGHT: Senator Stafford, an explanation has been requested.

SENATOR STAFFORD: Mr. President, I appreciate this bill coming up. We passed the bill last year. I will explain, I think, some very meticulous circumstances, and I think most

people will understand.

There is a debate whether we should go into the Hudson and dig up the PCBs and put them in a landfill. There are some people who argue, and I'm going to get into some chemistry here, so don't hold me to the exactness but some say that there are materials that you can put in this sludge, leave it in the river and it will, in effect, change the molecules, change the material and you no longer will have PCBs. I believe it's a bacteria. Also they say that you can use it.

Studies are being made on this throughout the nation on this because it's a very serious problem because you have industrial areas where we have left PCBs, and I've often said that it's a problem, no question about it, because these mistakes were made by individuals, by communities and by industry. I think together they have to be corrected.

Now, the plan was, and I think there is still a plan, but we hope you'll never see it, they were going to dig up all these PCBs

in the Hudson, in the Glens Falls-Fort Edward-Hudson Falls area, and they were going to go and dig a landfill and put them right in the middle of a nice dairy country.

Now, this really made a lot of sense. We were -- that's right. We were definitely, definitely having a good situation here where people weren't really, in my opinion, thinking it out. Now, people had lived with the problems of PCBs in this area. We've been working on it, but when they were told that they were going to collect them all and then just dump them right here in your beautiful Washington County, in the dairy area where your cows are, where your hay is, where your grass is, you can see that people were concerned.

Well, they even decided where they were going to put the landfill, and the landfill was going to be in Fort Edward, and many of us said it's ridiculous to dig up the PCBs out of the Hudson, put them in a barge, take them to Fort Edward and put them in a landfill where they can be PCBs right there in

the nice dairy country, and actually - actually, Mr. President, we submit that it did not, and it does not make sense and what we're saying here before and I also want to stress this, there are authorities in the field that explain that a river like the Hudson, you don't dig up the sludge, stir it all up, because the sludge and the PCBs, the first thing we know are going to be down in, I won't mention any city because I wouldn't want you to have these PCBs, but they might even get into the great harbor of New York, and I don't think that's what we want and this is what officials have said.

So this bill would state that that landfill would not be in Fort Edward unless it was approved by the officials of Fort Edward. We're now working with a number of officials, but the plan that's in effect, Mr. President, I suggest does and did not make sense and I think the people of Fort Edward have a right to say that they don't want how many -- I haven't got any of my people -- how many millions of tons of this sludge dumped in their

town.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT LIBOUS: Senator Leichter.

SENATOR LEICHTER: Mr. President, this bill may be good politics, but it's terrible law. The Legislature should not give any community this sort of a veto power for the siting of landfills or the siting of hazardous waste facilities, particularly so when, after all the hazardous waste that we're talking about was generated in that particular community. But it's just not something for the Legislature to do.

Let me tell you, there isn't a town, a city or within a city or community that's willing to take on any of the onerous facilities, onerous services that are required if this society is going to function and, if you give everybody a veto power, you're never going to be able to put it anywhere in this state.

We have a mechanism to make

decisions that are going to be difficult for some communities but in the long run have to be made for the benefit of all the people of the state of New York. The county, whether it's the county in this instance or the state, has to decide where that landfill is going to be. I certainly hope they will have local input, but I do not agree that we can allow local veto power.

As far as Senator Stafford's ideas whether or not you should dredge up the sludge and the PCBs, there's been a lot of debates about that in the scientific community. There's view -- views both ways. I don't think we have the answer. I don't think Senator Stafford has the definitive answer, but that's really not the issue.

The issue is that this town cannot be given veto power and say don't put this in our community, even though it, I believe I'm correct, Senator Stafford, the PCBs came from plants that were located in Fort Edward. We've seen this bill before. I trust we'll see

it again next year. It's one of the regurgitating bills, but it's worth pointing out the problem that we have with it and why I find it difficult in this instance to support somebody that I very much admire, but I can't support Senator Stafford on this bill.

ACTING PRESIDENT LIBOUS: Read the last section.

Senator Paterson.

SENATOR PATERSON: Mr. President. I don't know if I have an objection to this bill continuing to come up. It's something that the sponsor believes in and so he's going to keep bringing it up, hoping that it becomes law, and those of us who oppose it are going to keep opposing it because we don't think it should become law.

I don't think there's a real procedural problem here, but I think that there is a problem with the precedents that the bill sets.

Senator Stafford is probably right. It doesn't make any sense to take PCBs

out of the river and dump them on a dairy farm which is an uncontaminated portion of land and is one that has a vital use and certainly does not need to be disturbed. But the General Electric Corporation is really responsible for the waste, is talking about leaving the PCBs in the river, just leaving them there, and although some of them have probably entrenched themselves in the bottom of the river and to dig them up might upset the water column by stirring them up again, the fact that it really absolves the corporation of any responsibility to just take the position that the PCBs should be left in the middle of the river.

The Environmental Protection Agency and the Department of Environmental Conservation are working jointly to try to find a place to -- to make this clean-up, but I just hope that we are not in the Legislature practicing perhaps the same naive sort of lack of recognition of what a problem really is.

The PCBs came out of plants, as Senator Leichter pointed out. They cause cancer

in animals. They are hazardous. We can't eat the fish in the Hudson because of them. This is just a menace that is going to continue to grow and although on other pieces of legislation some of my colleagues are fond of saying we want to bring business back into the City, I mean into the state, that may be true, but I'm going to tell you if we contaminate this state much more, there won't be any opportunity for business to flourish, because we will be very well versed in our economic development and dying from the hazardous diseases that are caused by this waste.

So I don't really know where the site should actually be, but I think that the enabling of this town of Fort Edward to just reject it out of hand without the environmental impact statement or the classic state overview, I think, opens up to a serious precedent and then we have a battle over who has the greatest political strength in connection with the reject of the hazardous waste dump from coming into their neighborhood.

Inevitably what we probably should do is have the same type of benefit packages that we have when we put prisons in their neighborhoods and then the neighborhoods will fight over the facilities, so I think that what we really need to do is take a very strong look at what we're doing to our environment, what we've done to our river and try to work collectively to, as a state, find a way to ameliorate this problem.

ACTING PRESIDENT LIBOUS: Senator Oppenheimer, do you wish to speak?

SENATOR OPPENHEIMER: Yes. Thank you, Mr. President.

This bill, while -- I think Senator Leichter said it was regurgitating. I think what he meant to say is it's regurgitated; it comes back at us each year, so it may be regurgitating too, but there's a problem with this, as I can conceive of no area in the state of New York, indeed probably anywhere, that would say yes, yes, please come and establish a facility within our borders. It's simply not

going to happen.

We have to find a hazardous waste area. There has been some progress made, I know in the recent months in different ways of capping it, which I think will lead us within the relatively short term to an answer to this problem, but to consider the possibility of a single town saying we will not site it, is just unreasonable, unrealistic, won't happen, and I would like to mention the 18 people last year who voted against this bill. They are Connor, Espada, Galiber, Gold, Leichter, Markowitz, Montgomery, Nanula, Ohrenstein isn't here, Onorato, Santiago, Smith, Solomon, Stachowski and Stavisky, and on the other side of the aisle Jess Present and no longer John Daly, but there are a lot of speakers who understand this simply is not a reasonable bill.

ACTING PRESIDENT LIBOUS: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, ever so briefly on the bill.

This is an instance, Mr.

President, when we give away our power, we may give away our ability to solve the problem. If we tell the town of Fort Edward that they have the ability to veto our choice as an acceptable site, we'll have to give this power to every other community that we ever try to locate anything in, whether it's a solid waste landfill or a hazardous waste landfill or a low level radioactive waste facility or a truck transfer station for the DOT or a highway or an airport or a radio tower. Suddenly we'll have a state which doesn't function like a state, but functions like a little confederation of communities, something akin to the Articles of Confederation which this country once had in place but decided no, we got to wipe that out and have a federal government that has the power to make federal decisions.

We have a state that has the power to make state decisions. I think we only balkanize this state if we give to the local communities the ability to say, nope, we don't want to follow the state policy. You've got to

come to us first to get our approval. When we give away our power to make those decisions, we will never get it back, and we won't be able to solve the state's problems, whether they be PCBs or anything else.

I think that this has some tremendous appeal for local communities, but it makes bad, bad public policy for this state.

ACTING PRESIDENT LIBOUS: Senator Mendez.

SENATOR MENDEZ: Mr. President, I for one do believe enormously on the responsi bility that the state of New York and on the citizens as well should have in preserving the environment. After all, we all do know that the planet earth has become a very small place and the rate of pollution that is going on throughout the world, especially in Third World countries where our corporations do go and really practically destroy beautiful areas.

Concerning this specific bill, I am going to support it. I'm going to support it because it is about time that the Department of

Environmental Conservation starts reviewing its policies so that it would not engage any longer in -- in environmental racism.

My district was the recipient of environmental racism and even though every single aspect of the process was followed to the end, the feelings, the real needs pertaining to the health of an area that is heavily populated, that was of no concern whatsoever, and I think, I have the feeling that really, the -- if these agencies would engage in reviewing these poli cies as it relates to people in the different communities, they would have to conclude that they have been very misguided and that those areas and neighborhoods where they perceive the people are weak in political power, they just go on, go there like bulldozers and -- and place whatever facility they want to place.

I, for one, feel better by having in this instance the people of Fort Edward have a say in this situation. It's a terrible problem that we're facing with the PCBs and the cleaning of the Hudson River area, but I say

that corporations also must be held responsible if they -- if they mess up the environment, Mr. President. They should be forced to pay for the -- for the clean-up, but in this instance, I will be once more supporting this bill.

Thank you.

ACTING PRESIDENT LIBOUS: Read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1179 are Senators Abate, Connor, Dollinger, Espada, Kruger, Leichter, Markowitz, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Santiago and Stachowski. Ayes 42, nays 14.

ACTING PRESIDENT LIBOUS: The bill is passed.

Senator Nanula, why do you rise?

SENATOR NANULA: Mr. President,

I'd like to request unanimous consent to be recorded in the negative on Calendar Number 1153.

ACTING PRESIDENT LIBOUS: Without objection.

SENATOR NANULA: Thank you.

ACTING PRESIDENT LIBOUS: Secretary will read. Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up my bill, Senate Calendar Number 1182, Senate Number 2259A.

ACTING PRESIDENT LIBOUS: Secretary will read.

THE SECRETARY: 1128, by Senator Skelos, Senate Print 2259A, Executive Law, in relation to directing the Division of Criminal Justice Services.

ACTING PRESIDENT LIBOUS: Senator, I believe I heard an explanation requested.

SENATOR SKELOS: Senator Paterson, did you request an explanation of this bill that is being supported by the League of

Women Voters of Westchester?

In New York State, Senator Paterson, about 200 women are killed each year by a male partner and an untold number of others commit suicide as a means of escape. Many of these victims have had contact with the legal system. Their cases hold valuable information on where weaknesses lie within the system.

This bill will direct DCJS to establish an independent fatality review board to review these cases involving deaths of victims of family offenses. The fatality review board would examine the cases of the victims of domestic violence who had intervention from the criminal justice system which would allow the board to identify where the system or process could be improved to prevent further tragedy.

ACTING PRESIDENT LIBOUS: Will the Secretary please read the last section. Secretary will be happy to read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

THE SECRETARY: Ayes 56.

ACTING PRESIDENT LIBOUS: The bill is passed.

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

ACTING PRESIDENT LIBOUS: I believe Senator Kuhl has some, Senator Skelos.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President, I wish to call up my bill, Senate Print Number 3909A, recalled from the Assembly, which is now at the deck.

ACTING PRESIDENT LIBOUS: Secretary will read.

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

SENATOR KUHL: Mr. President, I now move to reconsider the vote by which the

bill passed the house.

ACTING PRESIDENT LIBOUS: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

SENATOR KUHL: Offer up the following amendments.

ACTING PRESIDENT LIBOUS: Amendments received.

SENATOR KUHL: Also, Mr. President, I wish to call up my bill, Print Number 4218, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT LIBOUS: Secretary will read.

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

SENATOR KUHL: Move to reconsider the vote by which the bill passed the house.

ACTING PRESIDENT LIBOUS: Call

the roll on reconsideration.

(The Secretary called the roll on reconsideration.

THE SECRETARY: Ayes 56.

SENATOR KUHL: Mr. President, I offer up the following amendments.

ACTING PRESIDENT LIBOUS: Amendments received.

SENATOR KUHL: Thank you.

ACTING PRESIDENT LIBOUS: Senator Skelos, we have a substitution.

SENATOR SKELOS: Please make the substitution.

THE SECRETARY: On page 12, Senator Trunzo moves to discharge from the Committee on Rules Assembly Bill Number 7395, and substitute it for the identical Calendar Number 485.

ACTING PRESIDENT LIBOUS: Substitution ordered.

Senator Skelos, that completes the calendar. What is your pleasure?

SENATOR SKELOS: At this time,

there will be an immediate Conference of the Majority in Room 332 of the Capitol and if we could all like run over there, it would be good, and the Senate -- yes, Senator Paterson.

ACTING PRESIDENT LIBOUS: Senator Paterson why do you rise?

SENATOR PATERSON: If we could all run over there. That would really be different.

SENATOR SKELOS: That means everybody is going to be running.

SENATOR PATERSON: But for those who feel they might be revered at a Conference of the Minority in Room 315 -

ACTING PRESIDENT LIBOUS: There will be an immediate conference, immediate conference of the Majority in Room 332 and -

SENATOR SKELOS: The Senate will stand at ease.

ACTING PRESIDENT LIBOUS: And there will be an immediate meeting of the Minority in Room 315. The Senate will stand at ease.

(Whereupon at 3:35 p.m., the Senate stood at ease.)

(Whereupon, at 5:21 p.m., the Senate reconvened.)

ACTING PRESIDENT PADAVAN: Senate will come to order.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we at this time take up Calendar Number 351.

ACTING PRESIDENT PADAVAN: Secretary will read.

THE SECRETARY: Calendar Number 351, Budget Bill, Senate Print 1553B, an act making appropriations for the support of government.

SENATOR BRUNO: Mr. President. Is there a message at the desk?

ACTING PRESIDENT PADAVAN: Yes, Senator Bruno, there is.

SENATOR BRUNO: Can we take the message up at this time.

ACTING PRESIDENT PADAVAN: All in favor of accepting the message of necessity,

indicate by saying aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

ACTING PRESIDENT PADAVAN: Read the last section.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT PADAVAN: The bill is passed.

For those who wish to know, that was the Aid to Localities bill.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Leichter.

SENATOR LEICHTER: There seems to be some confusion here. Was the bill that just passed the Aid to Localities?

Was there a bill passed? Was it Aid to Localities?

Mr. President, would you -

ACTING PRESIDENT PADAVAN: It was Calendar Number 351 on the regular calendar.

SENATOR DOLLINGER: Mr. President. Could you tell us what the number is?

ACTING PRESIDENT PADAVAN: Just one moment, Senator Dollinger. Senator Leichter had the floor.

SENATOR LEICHTER: Yes. Could you give us the title of that bill, please?

ACTING PRESIDENT PADAVAN: "An act making appropriations for the support of government."

SENATOR LEICHTER: Was that item 350?

ACTING PRESIDENT PADAVAN: That is Calendar Number 351, Senate Print Number 1553B.

SENATOR LEICHTER: Was that the local assistance budget?

ACTING PRESIDENT PADAVAN: Yes, it is, Senator.

SENATOR LEICHTER: I make a motion we reconsider the vote by which the bill passed. I don't think it's a good idea to pass this while most of the members are not in the house.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Bruno.

SENATOR BRUNO: Mr. President, I would like to reconsider the vote on Calendar 351.

ACTING PRESIDENT PADAVAN: On Calendar 351, call the roll on reconsideration.

THE SECRETARY: Calendar 351, Budget Bill, Senate Print 1553B, an act making appropriations for the support of government.

ACTING PRESIDENT PADAVAN: The bill is laid aside temporarily. It is before the house and laid aside.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Paterson.

(Whereupon, there was a pause in

the proceedings.)

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Paterson.

SENATOR PATERSON: If you want, we can call up the bill and have an explanation, as long as -

ACTING PRESIDENT PADAVAN: The bill is before the house.

SENATOR PATERSON: -- as long as the explanation has, you know -

ACTING PRESIDENT PADAVAN: Are you requesting an explanation, Senator?

SENATOR PATERSON: Well, as long as it's at least a scintilla -

ACTING PRESIDENT PADAVAN: I'm sorry, Senator, I can't hear you.

SENATOR PATERSON: -- of the length that this bill would take to read it; in other words, to allow members to come in.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT PADAVAN: Senator Bruno.

SENATOR BRUNO: It's now 5:30. We have been one hour and 45 minutes in conference or in recess. We have a lot of work to do tonight, and it's time to get on with the work that is before us in this chamber so that we can finish our work at a normal hour.

ACTING PRESIDENT PADAVAN: The Chair recognizes the wisdom and the efficacy of the Majority Leader's statement.

SENATOR BRUNO: Thank you, Mr. President.

Senator Leichter, do you have a comment to make on the bill? The bill is on the floor.

SENATOR LEICHTER: I do, Mr. President. Thank you, Senator Bruno.

I just think it is unfortunate that this bill is being considered while the chamber is really empty, and my purpose in reconsidering the vote was because I know that there are people who have concerns about this bill.

It is perfectly true that we have

conferenced it for the last hour. That may seem like a lot of time, but this happens to be a very, very large bill. It happens to be of enormous significance to each and every person in the State of New York. I appreciate, Senator Bruno, that you probably have dealt very intimately with all the provisions of this bill and for a long period of time, almost 68 days beyond April 1, and I don't mean to make light of it because I know you have worked hard to get this accomplished as you see appropriate.

However, some people saw it in a different fashion, away; but the fact is that this bill again was done, as bills of this nature have been done in past years, in secrecy, and then the bill is brought out. It was brought out two hours ago, and to intimate that people should be ready to vote on it at 5:30 and should be fully familiar with the provisions of the bill is, obviously, on the face of it, an absurd proposition.

I could go on at some length. I have expressed my views of this budget. I think

it is a disaster. I think this just continues in the same vein. I appreciate that, mainly through the efforts of the Assembly, there have been some restorations so that the pain that's being inflicted on the people of the state has somewhat been mitigated, but there isn't a community in this state that is not going to suffer as a result of this budget and, of course, the centerpiece of this budget, which has driven it and which is, I believe, a colossal mistake, is that multi-year tax cut.

I was at a luncheon today with Professor Steve Gold of the Nelson Rockefeller Institute and a professor at SUNY, and probably the nation's biggest and -- or major expert on state finances, and I asked him. I said, "Steve, is there any other state in this nation that presently or at any time has ever had these multiple year tax decreases," and he said, "None." He said, "Some have had two-year tax decreases." He said, "But the only one that ever had a major four-year tax decrease was New York State," and that was in 1986 and we know

what a disaster that was.

But to have any sort of a tax decrease at a time when our finances are in such disarray is, I think, a terrible mistake and, of course, it reflects itself in failing to provide the assistance and the help and the support that we need to, to people in this state.

I'm just going to talk about one area, an area that has concerned me very much, and that is the New York City school aid to education budget, where this city, the real engine of economic growth -- and I know you often hear the word, "engine of economic growth" but it certainly is the city of New York - where we, year after year, get shortchanged in education aid, and this year it is even more so because the city of New York is looking to an increase in school population of approximately 25,000 people.

Now, the Governor froze school aid. That means, in effect, a significant decrease for the city of New York. There has been some restoration, I believe a total of some

$82 million, to account for increased school population. There's also been a change, as I understand it, in the Excellence In Teaching Program, so we now have another program that drives a small amount of additional monies to our schools.

But the result is that the city of New York is getting an amount which is not going to account for the increase in school population, and, as a consequence, that percentage, that deficit, if you will, that the city of New York had between the percentage of students and its percentage of school aid is going to grow even greater in relation to other parts of this state.

I think we could have done better for the people of the state of New York. We gave them a lot of slogans. They got a lot of slogans in the campaign. Unfortunately, some of these slogans were carried on into this budget, and what we see is a budget that fails the people of the state of New York.

ACTING PRESIDENT PADAVAN:

Senator Paterson.

SENATOR PATERSON: Mr. President. We certainly concur with the Majority that we have got to and have had to for the last 65 or 66 days move this budget. It's a responsibility that we have to our constituents, the residents of New York City and -- New York State -- excuse me -- and the taxpayers of New York State, the people who provide the broad revenue basis from which government can operate.

And we would just like to remind the Majority that we are always willing to begin the sessions when the Majority is, and we have people here who are available if we're just told that we're going to begin a session or come back from recess or whatever it is that we want to do and, as long as that's understood, that it's customary that we have representation from both sides of the aisle, then we can go ahead and move this bill, Mr. President.

SENATOR BRUNO: Read the last section.

ACTING PRESIDENT PADAVAN: Read the last section.

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

ACTING PRESIDENT PADAVAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PADAVAN: Results.

Negatives, please put up their hands so they can be seen at their seats, please, if possible.

THE SECRETARY: Those recorded in the negative on Calendar 351 are Senators Abate, Dollinger, Hoffmann, Jones, Leichter, Markowitz, Nanula, Oppenheimer, Santiago and Stachowski. Ayes 48, nays 10.

ACTING PRESIDENT PADAVAN: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we call for an immediate meeting of the Finance Committee in Room 332, and that to be

followed by an immediate meeting of the Rules Committee in the same room.

ACTING PRESIDENT PADAVAN: Immediate meeting of the Finance Committee in Room 332 to be followed up by the Rules Committee in the same room.

Senator Bruno, I'm advised we have some housekeeping motions. May we do that at this time?

SENATOR BRUNO: Take up the housekeeping at this time, Mr. President.

ACTING PRESIDENT PADAVAN: Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President.

On my bills, please remove the sponsor stars, Calendars 447, 449, 864.

ACTING PRESIDENT PADAVAN: So ordered.

SENATOR DiCARLO: On behalf of Senator Rath, please place a sponsor's star on Calendar 1155.

ACTING PRESIDENT PADAVAN: So

ordered.

SENATOR DiCARLO: Mr. President, on page 31, I offer the following amendments to Calendar 933, Senate Print 3875A, on behalf of Senator Nozzolio, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT PADAVAN: So ordered.

SENATOR DiCARLO: Mr. President, I wish to call up a bill, Print Number 3119, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT PADAVAN: Secretary will read.

THE SECRETARY: Calendar Number 1041, by Senator Kuhl, Senate Print 3119, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT PADAVAN: Senator DiCarlo.

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

ACTING PRESIDENT PADAVAN: The

Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT PADAVAN: The bill is before the house.

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

ACTING PRESIDENT PADAVAN: Amendments are received.

SENATOR DiCARLO: Mr. President, on behalf of Senator Sears, I wish to call up a bill, Print Number 210C, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT PADAVAN: The Secretary will read it.

THE SECRETARY: Calendar Number 230, by Senator Sears, Senate Print 210C, an act to amend the Penal Law, in relation to disseminating indecent material.

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

ACTING PRESIDENT PADAVAN: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

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

ACTING PRESIDENT PADAVAN: Amendments are received.

Senator Smith.

SENATOR SMITH: Thank you, Mr. President. On page number 22, I offer the following amendments to Calendar Number 763, Senate Print Number 2286A.

ACTING PRESIDENT PADAVAN: Amendments are received.

SENATOR SMITH: And I ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT PADAVAN: So ordered.

SENATOR SMITH: Thank you.

ACTING PRESIDENT PADAVAN:

Senator Oppenheimer.

SENATOR OPPENHEIMER: I would like to vote on Calendar -- what is it? Calendar Number 351.

ACTING PRESIDENT PADAVAN: It's Calendar Number 5 -

SENATOR OPPENHEIMER: I would like to be in the affirmative, not -

ACTING PRESIDENT PADAVAN: It's Calendar Number 350 -

SENATOR OPPENHEIMER: 351, and I would like to be recorded in the affirmative, not the negative.

ACTING PRESIDENT PADAVAN: Senator Oppenheimer is to be recorded in the affirmative. Without objection, so ordered.

(Whereupon, there was a pause in the proceedings.)

Senator Bruno. Senator Bruno, is it your pleasure to have the body stand at ease awaiting the reports?

SENATOR BRUNO: May we at this time stand at ease at this time, Mr. President,

awaiting the report of the Finance Committee and Rules Committee, which should be momentarily, five minutes, ten minutes.

ACTING PRESIDENT PADAVAN: The Senate will stand at ease awaiting the reports of the Finance and Rules Committees.

(Whereupon, at 5:40 p.m., the Senate was at ease until 5:50 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT TULLY: Senator Skelos.

SENATOR BRUNO: I believe there is a report of the Rules Committee at the desk. Could we please have it read.

ACTING PRESIDENT TULLY: Secretary will read.

THE SECRETARY: Senator Bruno from the Committee on Rules reports the following bill directly to third reading:

Senate Print 5337, by the Committee on Rules, an act to amend the Education Law, in relation to state aid to school districts and post-secondary

institutions.

ACTING PRESIDENT TULLY: Senator Skelos.

SENATOR SKELOS: The Senate will stand at ease.

Before we stand at ease, would you recognize Senator Stavisky.

ACTING PRESIDENT TULLY: Senator Stavisky.

SENATOR STAVISKY: Without objection, on Calendar 351, Aid to Localities, may I be recorded in the negative.

Thank you.

SENATOR SKELOS: Without objection.

ACTING PRESIDENT TULLY: Without objection.

The Senate will stand at ease.

(Whereupon, at 5:55 p.m., the Senate was at until 5:59 p.m.)

ACTING PRESIDENT TULLY: Senator Skelos.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT TULLY: Did you accept the report of the Rules Committee?

SENATOR SKELOS: Move we accept.

ACTING PRESIDENT TULLY: All those in favor of accepting the report of the Rules Committee, signify by saying aye.

(Response of "Aye.")

All opposed, nay.

(There was no response.)

The report is accepted.

SENATOR SKELOS: Will you please read the title of the bill.

ACTING PRESIDENT TULLY: The Secretary will read.

THE SECRETARY: Calendar Number 1176, by the Senate Committee on Rules, Senate Print 5337, an act to amend the Education Law, in relation to state aid to school districts and post-secondary institutions.

SENATOR SKELOS: Mr. President. Is there a message at the desk?

ACTING PRESIDENT TULLY: Yes, Senator Skelos, there is.

SENATOR SKELOS: Move we accept the message.

ACTING PRESIDENT TULLY: All in favor of accepting the message of necessity, signify by saying aye.

(Response of "Aye.")

All opposed, nay.

(There was no response.)

The message is accepted.

SENATOR SKELOS: Lay the bill aside temporarily.

ACTING PRESIDENT TULLY: Lay the bill aside temporarily.

(Whereupon, at 6:01 p.m., the Senate was at ease until 6:10 p.m.)

ACTING PRESIDENT NOZZOLIO: Senate will come to order.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Will you please call up Calendar Number 1111, by Senator Saland.

ACTING PRESIDENT NOZZOLIO:

Secretary will read.

THE SECRETARY: Calendar Number 1111, by Senator Saland, Senate Print 5103, an act to amend the Domestic Relations Law, in relation to special relief in matrimonial actions.

SENATOR SOLOMON: May we have a brief explanation?

SENATOR SALAND: Mr. President.

ACTING PRESIDENT NOZZOLIO: An explanation has been asked for.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is in response to the Hartog decision by the State Court of Appeals. Basically, it endeavors to create a mechanism whereby in a matrimonial action there is, either by way of stipulation or order, a requirement that a party provide life insurance and if that party fails to provide life insurance for the benefit of support or maintenance, this bill would enable the party

who had the benefit of the court order or of the situation to file a lien against the estate of the party who failed to provide the insurance as required by order or which was included in a stipulation or a separation agreement as part of the order.

SENATOR SOLOMON: Mr. President. Will Senator Saland yield?

ACTING PRESIDENT NOZZOLIO: Senator Solomon, why do you rise?

SENATOR SOLOMON: I would like to know if Senator Saland will yield to some questions.

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Saland yields.

SENATOR SOLOMON: Thank you. Senator, I have spoken to staff, and I have heard the part about the court -- the parties seeking a lien if they don't provide that.

I have a couple of questions regarding this.

(A) is, this directs the court actually to grant a lien against the estate if the party can't purchase that insurance policy, so if the party has cancer, the court can now -

SENATOR SALAND: Can I ask you to speak into your mike? I'm really having a little bit of a difficult time picking you up. Maybe it's the noise around here. I apologize.

SENATOR SOLOMON: Senator, the bill doesn't specifically say that the party can go into court and seek a lien. It says that the court, in fact, can direct a lien to be placed again the estate.

My questions are this. If the party remarries -- life insurance is a product that we purchase and, if you have cancer, it's impossible to purchase life insurance, in many instances, or you have to spend large sums of money because it's an actuarial product -- an actuarially-based product.

My question is this: We have the right of election in this state and, in fact, two years ago or four years ago, we passed a law

which included life insurance policies within the right of election by our spouse. If a party remarries, will not this affect the right of election of the second spouse?

SENATOR SALAND: Let me just backtrack first. There's only one set of circumstances under which this particular bill would become applicable. You have been in court. An order has been entered, based upon the facts and circumstances of your case, directing you to pay support; or you have willingly entered a stipulation or a separation agreement which survives and is not merged in your decree; and, thereafter, you have an obligation, an obligation to provide an insurance policy, an obligation to provide support, whatever the obligation may be, and you choose not to do it.

There is no mechanism to enforce that right and obligation under the existing law if that person dies. What this is saying is, you will now have the opportunity to file a lien against the estate. When it comes in to the

estate process, what will then happen will be the Surrogate's Court will -- you would have to file a notice of claim. The Surrogate's Court will determine the equities. Which comes first, the obligation which you entered perhaps before you were remarried to provide that support, or the right of election? That would be for the Surrogate's Court to determine.

The right of election is not being abandoned or banished. It's basically being juxtaposed with this lien which is going to basically create the obligation that should have been fulfilled and was never fulfilled way back when you were in court or signed that stipulation.

SENATOR SOLOMON: Mr. President, will the Senator yield?

ACTING PRESIDENT NOZZOLIO: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR SOLOMON: Senator, would this section that's being placed into law prevent an individual from gifting away his entire estate before he passes away?

SENATOR SALAND: That's an interesting question. I don't believe that this quite addresses that problem, although I think, in equity, the argument certainly could be raised that the gifting away was with the intent to defraud, and certainly whoever the donee of that gift might find a trust imposed upon it.

SENATOR SOLOMON: Mr. President, if Senator Saland will yield again?

ACTING PRESIDENT NOZZOLIO: Senator continue to yield?

Senator yields.

SENATOR SOLOMON: Senator, what I'm concerned about is, what you are saying, in effect, if there is a judgment and there's equitable distribution and Spouse A is given $100,000 and Spouse B is given their equitable share and Spouse A then finds out he or she has cancer and can not purchase that insurance

policy, that equitable share that Spouse A received could technically have an additional freeze put on it and they can't transfer it and use that asset as an individual.

SENATOR SALAND: No. What I'm saying is, in that case, that your individual, if they want to comply with whatever the obligation of either the separation agreement or stipulations or court order that renders that requirement, they can purchase an annuity. They don't merely have to go into the insurance market. If they want to abide by the obligation imposed upon them, they can do that without jeopardizing any other person to whom they might want to make a gift or any other person who might get the benefit of their estate.

SENATOR SOLOMON: Senator continue to yield?

ACTING PRESIDENT NOZZOLIO: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT NOZZOLIO:

Senator continues to yield.

SENATOR SOLOMON: Is there any other instance that you are aware of where the courts can generally provide a lien, a future lien, against an estate before someone has passed away? In effect, this is a lien before someone has passed away.

SENATOR SALAND: I can't tell you that I am aware. I'm not aware. I do not know. There may or may not be but, again, this person who -- whose well-being you're concerned with is a person who, number one, has been involved in an action; number two, as a result of that action, that litigation, he or she has been required by the court to make certain payments or to commit to providing an insurance policy.

In the alternative, that person has entered a written agreement, either by way of stipulation or a separation agreement, saying that they would do that very thing, and people relied upon that as part of that agreement.

Why in the world should that

person who voluntarily either made that decision or a court balancing the equities arrived at that decision -- why should that person not be bound by either the decision or the stipulation when we are talking about support, particularly when it's support of children that you helped bring into this world?

SENATOR SOLOMON: On the bill.

ACTING PRESIDENT NOZZOLIO: Senator Solomon, on the bill.

SENATOR SOLOMON: I think that, when you listen to some of the statements Senator Saland is making, yes, it sounds like it's very fair, but the case that arose out of this, the individual had prostate cancer. It wasn't something that he went out and said, "Well, I've got prostate cancer. Now I don't have to fulfill the obligations for child support."

I'm sure it's something he didn't seek. I'm sure anyone in this situation didn't go out and seek to get ill enough so that they couldn't purchase insurance.

But what concerns me is if this person had never been involved in a separation agreement and/or a divorce, he still wouldn't be able to purchase that insurance product and there's not going to be a lien against that estate, and we're getting into a situation where what we are doing is creating -- we're trying to solve one piece of litigation, and we're going to create additional litigation because, surely, we're going to have situations where there are additional spouses -- or second spouses, and that question is going to come before the Surrogate's Court: "How come you have a right to affect my right of election?"

And what really concerns me is some of the hidden -- some of the possible interpretations of this. Is the next step to freeze one's assets because one is unfortunate enough to have become ill?

We changed the law on insurance policies last year or in the last two years, where you can now buy policies, and insurance companies can pay those policies to you before

you die when you are terminally ill so you can pay medical bills, and that individual that becomes extremely sick may want to use some of that money to pay medical bills.

I'm worried we're getting down a course here -- in fact, proceeding down a course where that individual, in fact, may not have health insurance because it's difficult to purchase health insurance if you are terminally ill, and may want to use some of his assets to pay his medical bills.

Now, I'm just warning everyone in this Legislature we're trying to resolve one problem, but, in fact, we could be creating other problems which, in fact, could be very inequitable. We could, in fact, be denying someone who is terminally ill the dollars which they have in their liquid assets, which they were awarded under equitable distribution, to pay for medical bills, let alone the situation that's going to happen vis-a-vis the second spouse, if there is a second spouse, regarding the right of election.

That problem about medical bills was something that was done two years ago to allow insurance companies to pay an individual a portion of that life insurance when he was terminally ill, so he could use it for additional medical bills, or whatever, before he dies or she dies.

I'm just urging everyone to take a second look at bills such as this and other things and what we're doing; and, in fact, we could have a real adverse impact in certain situations, and I'm sure we're going to have additional litigation as a result of this piece of legislation.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

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

ACTING PRESIDENT NOZZOLIO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, will you call up Calendar Number 1176, Senate 5337.

ACTING PRESIDENT NOZZOLIO: Secretary will read.

THE SECRETARY: Calendar Number 1176, by the Senate Committee on Rules, Senate Bill 5337, an act to amend the Education Law, in relation to state aid to school districts and post-secondary institutions.

ACTING PRESIDENT NOZZOLIO: Read the last section.

SENATOR DOLLINGER: Mr. President, may we have a brief explanation to make sure we got the right bill? This is the language bill that goes with the school aid; is that correct?

SENATOR SKELOS: Yes.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger.

SENATOR DOLLINGER: Just for a brief explanation to make sure I have the right bill in my hand.

SENATOR TULLY: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Tully.

SENATOR TULLY: This is the Article 7 bill dealing with aid to education.

SENATOR STAFFORD: Thank you, Senator.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 140. This act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

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

ACTING PRESIDENT NOZZOLIO: Senator Stavisky, to explain his vote.

SENATOR STAVISKY: Not all parts of the state of New York are equally situated with regard to needs, with regard to pupils, with regard to wealth or lack of resources. Accordingly, it's important to note when there are new students, additional numbers of students, entering a school district who are not provided for with sufficient resources in order to carry out educational programs, I think there is an injustice here.

Not only does the formula, as always, fail to consider the special needs of urban areas, such as the city of New York, with regard to education but even the increase in the number of pupils is not recognized adequately. There are new children coming into the school system in New York City. Many come in with special handicapping conditions, not only physical and emotional handicapping conditions but limited English proficiency where, through no fault of their own, they came from parts of

the world which were not English-speaking, so they have to overcome that difficulty and they have to overcome, in many cases, poverty and dysfunctional family relationships.

Accordingly, I would have expected, and I think any fair person would have expected that the school aid portion would at least give to the city of New York in terms of the admittedly imperfect school aid formula, recognition for all of the additional pupils that are entering that system, and yet, while there is a partial recognition of that fact, the city of New York is capped in the reimbursement that it receives for new additional pupils, and that is a double injustice.

It is an injustice that, in many respects, starts with Washington, D.C., with the House of Representatives. It is perpetuated in the budget that was submitted by the Governor of this state, and, in some respects, it is reflected in the already limited resources available to the city of New York through the funding that is provided at City Hall.

I don't think we should be a participant to this kind of discrimination against children who are coming into our system. We want them to be educated, we want them to become productive members of society, and we are not doing that with this legislation.

For that reason, I wish to be recorded in the negative.

ACTING PRESIDENT NOZZOLIO: Senator Stavisky in the negative. Announce the results.

SENATOR STAFFORD: I would just like to explain my vote.

ACTING PRESIDENT NOZZOLIO: Senator Stafford.

SENATOR STAFFORD: Not that it's that important, but this is the first time in 30 years I've explained my vote, but I can't believe that my learned colleague from that great city, Queens -- of Queens -

SENATOR STAVISKY: (Comments inaudible.)

SENATOR STAFFORD: No, not "queen."

And then who had the honor and did that great job as Chairman of Education in the Assembly would say here this evening, first, that the aid is capped. It is not.

I will make that clear. It is not capped. So I make that very clear, and I would also point out that New York City gets the growth aid of last year and gets growth aid for this year, a combination. So I'm sure we want to have the record straight.

And I think this is a piece of legislation -- there is no question that some people, some of us, some members, some Senators, others, would like to see things that aren't here, possibly would like to see things not here that are here, but that is the way, and under the circumstances of this year, I would suggest that this is an excellent document.

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar 1176 are Senators Abate, Dollinger, Kruger, Leichter, Markowitz, Nanula, Smith, Stachowski, and Stavisky. Ayes 49, nays 9.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, the Senate will stand at ease until 7:45 sharp.

Is there any housekeeping at the desk?

ACTING PRESIDENT NOZZOLIO: Senator Farley.

SENATOR FARLEY: On behalf of myself, I would like to amend this bill. On page 31, I offer the following amendments to Calendar -- that's page 34, Calendar Number 987, Senate Print 4580, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

Senator Skelos.

SENATOR SKELOS: The Senate will

stand at ease until 7:45 p.m. sharp.

ACTING PRESIDENT NOZZOLIO: Senate will stand at ease until 7:45 sharp.

(Whereupon, at 6:30 p.m., the Senate recessed.)

(The Senate reconvened at 8:13 p.m., for the following announcement.)

ACTING PRESIDENT MARCELLINO: Senate will come to order.

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in Room 332 of the Capitol.

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

(Whereupon, at 8:13 p.m., the Senate was at ease until 8:35 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senate will come to order.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President. Could we return to reports of standing committees. I believe there is a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT KUHL: We will return to reports of standing committees. I ask the Secretary to read the report of the Rules Committee.

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

Senate Print 2854, by Senator Solomon, an act to amend the Civil Practice Law and Rules, in relation to fees for referees;

1622, by Senator Lack, an act to amend the Real Property Tax Law, in relation to assessments;

1674, by Senator Stafford, an act to amend the Public Health Law, in relation to ovarian cancer;

2511, by Senator Hannon, an act to amend the General Municipal Law and the State

Finance Law, in relation to the release of payments;

2721, by Senator DiCarlo, an act to amend the Real Property Tax Law, in relation to payment of taxes;

2782, by Senator Larkin, an act to amend the Education Law, the Penal Law, and the Vehicle and Traffic Law, in relation to denying driving privileges;

2785, by Senator Babbush, an act authorizing the City of New York to reconvey its interest in certain real property;

3247, by Senator Paterson, an act to authorize the City of New York to release its interest in and to reconvey to its former owner certain real property;

3663A, by Senator Velella, an act to amend the Insurance Law, in relation to provisions for motor vehicle insurance rates;

3817A, by Senator Velella, an act to amend the Insurance Law, in relation to extending the expiration date for Article 54;

3853A, by Senator Leibell, an act

to amend the Public Authorities Law, in relation to the powers of the State of New York Mortgage Agency;

3954, by Senator Velella, an act to amend the Insurance Law and the Vehicle and Traffic Law, in relation to licensing of auto repair body estimators;

4287, by Senator Spano, an act to amend the Local Finance Law, in relation to bonds issued by act of the Westchester County Board of Legislators;

4356, by Senator Tully, an act to amend the Public Health Law in relation to the New York State Innovation in Breast Cancer Early Detection And Research Awards Program;

4671, by Senator Trunzo, an act to amend the Public Authorities Law, in relation to clarifying the status of employees;

5177, by Senator Leibell, an act to amend the Real Property Tax Law, in relation to the rehabilitation of certain multiple dwellings;

5239, by Senator Hannon, an act

to amend the Public Health Law, in relation to utilization review agents;

5249, by Senator Stafford, an act to legalize, validate, ratify and confirm certain acts and proceedings of the Town Board, Planning Board, Zoning Board of Appeals and certain agents and employees of the town of Kingsbury;

5254, by Senator Seward, an act to amend the Real Property Law, in relation to mobile home parks;

5264, by Senator Padavan, an act to amend the Penal Law, in relation to possession of gambling devices;

5271, by Senator Maltese, an act to amend the Election Law, in relation to write in voting at primary elections;

5356, by Senator Hoblock, an act to amend the Public Officers Law and the Executive law, in relation to activities by former state officers and employees;

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President. If we can take up Supplemental Calendar Number 2, noncontroversial.

I'm sorry. First, we have to move to accept the Rules report.

ACTING PRESIDENT KUHL: The motion is to accept the Rules report.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The Rules report is accepted.

Senator Skelos.

SENATOR SKELOS: If we can take up the Rules report, Supplemental Calendar Number 2, noncontroversial.

ACTING PRESIDENT KUHL: Secretary will call the noncontroversial calendar for Supplemental Calendar Number 2.

THE SECRETARY: Calendar Number

1189, by Senator Solomon, Senate Print 2854, an act to amend the Civil Practice Law and Rules, in relation to fees for referees.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1190, by Senator Lack, Senate Print 1622, an act to amend the Real Property Tax Law, in relation to assessments resulting from a small claim proceeding.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1191, by Senator Stafford, Senate Print 1674.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1192, by Senator Hannon, Senate Print 2511, an act to amend the General Municipal Law and the State Finance Law, in relation to the release of payments.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator DiCarlo moves to discharge from the Committee on Local Government Assembly Bill Number 1473 and substitute it for the identical Calendar Number 1193.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

SENATOR PATERSON: Lay it aside.

THE SECRETARY: Calendar Number 1193, by Member of the Assembly Harenberg, Assembly Print 1473, an act to amend the Real

Property Tax Law.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1194, by Senator Larkin, Senate Print 2782, an act to amend the Education Law, the Penal Law and the Vehicle and Traffic Law, in relation to denying driving privileges.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Babbush moves to discharge from the Committee on Rules Assembly Bill Number 4675 and substitute it for the identical Calendar Number 1195.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title of Calendar Number 1195.

THE SECRETARY: Calendar Number 1195, by Member of the Assembly Perry, Assembly Print 4675, an act authorizing the City of New York to reconvey its interest in certain real property.

SENATOR DiCARLO: Lay it aside.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. The bill will be laid aside.

THE SECRETARY: Calendar Number 1196, by Senator Paterson.

SENATOR DiCARLO: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar number 1197, by Senator Velella.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1198, by Senator Velella, Senate Print 3817A.

SENATOR STACHOWSKI: Lay it aside.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1199, by Senator Leibell, Senate Print 3853A, an act to amend the Public Authorities Law.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside for the day.

THE SECRETARY: Calendar Number 1200, by Senator Velella, Senate Print 3954, an act to amend the Insurance Law and the Vehicle and Traffic Law.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1201, by Senator Spano, Senate Print 4287, an act to amend the Local Finance Law, in relation to bonds issued by act of the Westchester County Board of Legislators.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 1202, by Senator Tully, Senate Print 4356, an act to amend the Public Health Law, in relation to the New York State Innovation in Breast Cancer Early Detection and Research Awards Program.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: 1203, by Senator Trunzo, Senate Print 4671, an act to amend the Public Authorities Law, in relation to clarifying the status of employees.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1204, by Senator Leibell, Senate Print 5177, an act to amend the Real Property Tax Law, in relation to the rehabilitation of certain

multiple dwellings.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1205, by Senator Hannon, Senate Print 5239, an act to amend the Public Health Law, in relation to utilization review agents.

SENATOR STACHOWSKI: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1206, by Senator Stafford, Senate Print 5249, an act to legalize, validate, ratify and confirm certain acts.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1207, by Senator Seward, Senate Print 5254, an act to amend the Real Property Law, in relation to mobile home parks.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1208, by Senator Padavan, Senate Print 5264, an act to amend the Penal Law, in relation to possession of gambling devices.

SENATOR KRUGER: Lay it aside.

ACTING PRESIDENT KUHL: Bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1209, by Senator Maltese, Senate Print 5271, an act to amend the Election Law.

SENATOR KRUGER: Lay it aside.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1210, by Senator Hoblock, Senate Print 5356, an act to amend the Public Officers Law and the Executive law.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT KUHL: Senator

Skelos, we have a message of necessity at the desk on Calendar Number 1210.

SENATOR SMITH: Lay it aside.

SENATOR SKELOS: Move we accept the message.

ACTING PRESIDENT KUHL: 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.

Lay the bill aside.

Senator Skelos.

SENATOR SKELOS: Mr. President. If we could take up the controversial calendar now.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar commencing with Calendar Number 1190.

SENATOR DOLLINGER: Explanation.

THE SECRETARY: Calendar Number

1190, by Senator Lack, Senate Print 1622, an act to amend the Real Property Tax Law, in relation to assessments resulting from a small claim proceeding.

ACTING PRESIDENT KUHL: Senator Lack, an explanation of Calendar Number 1190 has been asked for by the Acting Minority Leader, Senator Paterson, and I believe a couple of other members.

Senator Lack to provide an explanation.

SENATOR LACK: Right. Mr. President, this bill would end the anomaly if a taxpayer receives a higher assessment in the year immediately following a successful tax grievance -- the finality is necessary to establish the assessment base, and any challenge to the assessment applies only to the assessment established for a given tax year, and this bill over a three-year cycle would even everything out.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Lack yield for a question?

ACTING PRESIDENT KUHL: Senator Lack, do you yield?

SENATOR LACK: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator Lack, I think I just didn't happen to hear the last part of what you were saying. You said it ends the anomaly that's existed in the past. I'm just trying to figure out what has existed in the past.

SENATOR LACK: Well, if the assessment is reduced, the determination will not be entered until after the taxable status for the taxable year that's challenged. The reduced assessment will also be effective for the first assessment roll subsequent to the challenged assessment roll.

The tax system and the procedures to challenge the tax assessments are unique, Senator, in that they are tied directly to the

annual budget process for local municipalities. Because of this annual cycle and to establish tax record finality, it is necessary to establish the assessment base.

The problem that develops stems from the failure of the court to schedule assessment hearings to the present tax year before the tentative assessment roll is completed for the following tax year.

For example, in the town of Smithtown, 120 taxpayers failed to have their 1992-93 tax hearings until after May 1st, 1993. They then receive a reduction in their '92 -- in their '93 assessment, but the reduction was not subsequently reflected onto their '93-94 tax bill. This bill rectifies that problem and allows it to go back to the tax roll that was affected.

SENATOR PATERSON: So in other words, you are covering for -

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

SENATOR LACK: I continue to

yield, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: So you are actually making up for the period of time dating back from the most recent filing to the time where the discrepancy actually occurred, which could be somewhere up to three years.

SENATOR LACK: That's correct, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: All right. So then, in other words, a tax assessment for one year would never throw the whole cycle out of balance. If you can go back three years, you are going to cover any type of activity that occurred relative to the -- either -- the challenge to the actual assessment?

SENATOR LACK: That's correct, Mr. President.

SENATOR PATERSON: All right, Senator. Thank you very much.

SENATOR LACK: You're welcome.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: I have a few questions, Mr. President, to the sponsor.

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

Senator yields.

SENATOR DOLLINGER: Just so I understand this, Mr. Chairman, how does this make up for the lost revenue that would occur when the assessment roll is changed? I assume that the town or the community has already made its planning based on a certain amount of assessed valuation. If there's a reduction in the total assessed valuation, that would theoretically drive the property tax rate up for other properties to make up for the shortfall in revenue.

Can you just explain to me how that works?

SENATOR LACK: It doesn't. Mr. President, it doesn't. It's not designed to.

It's designed to help the taxpayer, not the municipality.

SENATOR DOLLINGER: Okay. So what does the municipality do for the loss of revenue that's occasioned upon the reduction in assessments to a particular taxpayer?

SENATOR LACK: Mr. President. One would hope the municipality would spend less, I mean if it really comes down to that.

SENATOR DOLLINGER: Well, again, through you, Mr. President. If there were $10 million in the budget, they calculate what they need on a property tax rate based -

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: -- on a certain valuation.

ACTING PRESIDENT KUHL: Senator Dollinger, excuse me just a minute. Senator Lack, I notice, is having a difficult time hearing you. It is very noisy in the chamber. So if members want to have a conversation amongst themselves, I would ask that they take

their conversations out of the chamber; and if staff feel the necessity for having a conversation, please take it out of the chamber. Have a lot of bills to do, a lot of work yet to do, a lot of conversation yet to be had.

Thank you, Senator Dollinger, for the interruption.

SENATOR DOLLINGER: Thank you, Mr. President.

I just want to understand. How does the community make up for the shortfall in revenue if the assessment roll is already established and the tax rate is already established, as well?

SENATOR LACK: I don't think it will, Senator Dollinger. It depends upon the impact in any particular locality, but that impact shouldn't be made off of the backs of the taxpayer who has legally and correctly - correctly challenged and won a reassessment of whatever his or her assessment is for that period, and not to get the refund or the

reassessment base back on the tax year for which the locality has collected the money is wrong for the taxpayer.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section, please.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1191, by Senator Stafford, Senate Print 1674, an act to amend the Public Health Law, in relation to ovarian cancer.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Stafford, an explanation of Calendar Number 1191 has been asked for by Senator Paterson.

SENATOR STAFFORD: Thank you, Mr. President. This bill concerns a disease that I know something about. I assure you that it was not of my own making, or it wasn't my choice. This bill will provide for the dissemination of material concerning ovarian cancer.

There are many things about this disease that are important to know, and I do not say to you that I'm an authority; but, as I say, I have been exposed. Early detection -- no matter who you talk with about this disease - that's one of the reasons we should have physicals at least once a year, as some will say, "whether we need it or not."

I suggest we need it. I think this is something that is extremely worthwhile. It is provided for in the budget, and this legislation will implement what has been provided for in the budget.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Stafford.

Mr. President, on the bill.

That explanation was quite satisfactory. Senator Stafford has waged quite a war on this issue, legislatively in this chamber and also personally. I know that all the members of the chamber and staff members and his friends, like myself, admire him for the work that he has done on the issue, and this is a fine bill.

I was going to ask a question about fiscal impact, but when you realize the value of early detection, as Senator Stafford just said, there really -- whatever the fiscal impact is, it can't, in any way, be too much to spend on something that can prolong and allow life to flourish.

Thank you.

SENATOR DOLLINGER: One question to Senator Stafford.

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

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: Senator

yields.

SENATOR DOLLINGER: Senator, just an unusual term that I hadn't heard before. On page 2, line 19, it says, "All female patients in the 40 and above age cohort." What does that mean, "above age cohort"? It's an unusual term to use there. It's just a drafting question.

SENATOR STAFFORD: What line, please?

SENATOR DOLLINGER: Line 19. It uses the term "cohort," and I just ask you what that means there.

SENATOR STAFFORD: First, I compliment you for reading the bill well.

I can be stumped very easily.

SENATOR DOLLINGER: I was. That's why I ask.

SENATOR STAFFORD: I always lose when I play whatever game it is that tests your vocabulary.

Well, I say this -- category, I say. Category.

SENATOR DOLLINGER: That's fine.

I just didn't see the term before.

No further questions, Mr. President.

ACTING PRESIDENT KUHL: Read the last section, please.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1192, by Senator Hannon, Senate Print 2511, an act to amend the General Municipal Law and the State Finance Law, in, relation to the release of payments.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DICARLO: Senator Hannon, an explanation has been requested by Senator Paterson.

SENATOR HANNON: This legislation is designed to ensure that when payments are made on a municipal contract and there are subcontractors whose subcontracts are above $25,000 that the payments shall be made in regular order as soon as they have been certified to the subcontractors.

ACTING PRESIDENT DICARLO: Read the last section.

Senator Paterson.

SENATOR PATERSON: If the sponsor will yield for a question?

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT DICARLO: Senator yields.

SENATOR PATERSON: Senator, is there a time limit on this?

SENATOR HANNON: No. It's a functional time limit because municipal contracts or state contracts there will be periodic payments made and so that, instead of putting an absolute time payment, it talks about

a formula, so that as soon as each of the line items are certified by the owner as being completed, then there will be a payment relatively promptly to the subcontractor.

SENATOR PATERSON: My question, if Senator will continue to yield?

ACTING PRESIDENT DICARLO: Senator Hannon, do you continue to yield?

Senator yields.

SENATOR PATERSON: Senator, do you think that the certification, the fact that it is in the bill, is, in a sense, a de facto time limit of and in itself, meaning that the subcontractor will not be paid almost automatically based on the fact that we have now codified this whereas, in other situations, the subcontractor might have been paid immediately?

SENATOR HANNON: No.

SENATOR PATERSON: Just no?

SENATOR HANNON: No, I don't think so.

SENATOR PATERSON: Okay, "No." Thank you.

SENATOR DOLLINGER: Chairman.

ACTING PRESIDENT DICARLO: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield for just a question?

SENATOR DiCARLO: Senator Hannon, do you yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT DICARLO: Senator yields.

SENATOR DOLLINGER: The way I understand this bill, Mr. Chairman, is that the -- the owner would be required upon certification from the subcontractor to pay the retainage according to the subcontractor's line item.

My question is, my understanding of most retainage accounts held with respect to subcontractors or with respect to general contractors for the owner, the owner holds the retainage on the whole deal not just on a line item, and I have -- in my personal experience, I've seen very few subcontractor agreements in

which there is a specific amount of the retainage applied to a line item in the contract. The retainage is usually held as the big club at the end.

And so my question is what evidence do you have that retainage is now held in specific line items for subcontractors as suggested on page 2, lines 9 through 13, in the bill?

SENATOR HANNON: The various information supplied to me by the subcontractors in this state, by subcontractors in different parts of the state, Tonawanda, Dutchess and Ulster, Capital District here, Capital District again. Those would be the indications that I have that it's being done and I would presume that, unless it was being done, they wouldn't see the need to offer it.

SENATOR DOLLINGER: Just on the bill briefly, Mr. President.

I'm going to vote in favor of this. I think it's a good idea. I'm not convinced -- and I appreciate the chairman of

the Health Committee giving me that information, but my understanding, at least in the practice in my part of the state, is that the retainage account is held as a big tool, the big hammer, that gets the subcontractor or the general contractor to perform all the terms of the contract, and they're not usually divided into line item -- line item portions for the retainage account.

So I think it's a good idea, but the problem must not have come as far as Western New York yet.

ACTING PRESIDENT DICARLO: Senator Paterson.

SENATOR PATERSON: Mr. President. I have one last question for Senator Hannon if it's -

ACTING PRESIDENT DICARLO: Senator Hannon, do you yield?

Senator Hannon yields.

SENATOR PATERSON: Senator Hannon, the merit of this bill is undoubted, and I'm going to vote for this bill. Generally,

what the subcontractors, I guess, are probably trying to do is they want to get paid at the rate that the general contractors are, and that's fine. The subcontractors traditionally were paid at the end of the job; and, here, what we would be doing is we'd be making it possible for them to be paid sooner.

All I'm asking is, wouldn't this accrue a great deal more responsibility on the state, when we look at the fact that the state is going to have to issue a lot more checks, there's going to be a lot more paperwork; and if there is a dispute between the contractor and the subcontractor, then the state is basically involved in the dispute even though the state is not a party to the dispute?

SENATOR HANNON: I really don't think so. The current nature is that there is to a fair extent an excess withholding and there's already the dispute. There will be already questions of liens being filed by the subcontractors who, despite their name as subcontractors, are not necessarily the small

corporations or partnerships or entities that we may think of as, you know, doing work in a house. These are some major steel suppliers and different major trades.

So there's already probably an inordinate amount of paperwork and litigation connected with any big project. I think this would just substitute one part of it for another and work some fairness that's not there now.

SENATOR PATERSON: All right, Mr. President. That very well clears up the confusion.

Thank you.

ACTING PRESIDENT DICARLO: Secretary will read the last section.

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

ACTING PRESIDENT DICARLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT DICARLO: The bill is passed.

THE SECRETARY: Calendar Number 1193, by Member of the Assembly Harenberg, Assembly Print 1473, an act to amend the Real Property Tax Law, in relation to payment of taxes in installments.

SENATOR PATERSON: Explanation.

SENATOR DiCARLO: Mr. President. This bill is to provide low-income elderly with the relief from rising real property taxes. What happens now, if you are on SSI and your income, your money in the bank is over a certain amount, you become ineligible for SSI. What this bill allows local governments to do is to allow those individuals to pay their real estate taxes in four installments so that they don't fall and have more money so they would lose their SSI benefits.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would yield?

ACTING PRESIDENT KUHL: Senator DiCarlo, do you yield?

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator DiCarlo, thank you very much for taking my question.

Is this an optional matter for the localities or is this something that each local government will be automatically placed in?

SENATOR DiCARLO: This is local option.

SENATOR PATERSON: This is local option. The quarterly payments, I assume, are a convenience suiting the available amount of money that exists for the individuals who are eligible?

SENATOR DiCARLO: Absolutely. What this says, if -- what happens is, they save up enough money to pay their taxes, and that will then put them over the amount that they are allowed to keep and thus creating a problem in losing their benefits. So this is for -

SENATOR PATERSON: Right. So as they pay down, they can keep the amount under the ceiling.

SENATOR DiCARLO: Yes.

SENATOR PATERSON: All right. Thank you very much, Senator.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR LAVALLE: Mr. President.

ACTING PRESIDENT KUHL: Senator LaValle.

SENATOR LAVALLE: Would Senator DiCarlo yield to one question?

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

SENATOR DiCARLO: Absolutely.

SENATOR LAVALLE: Senator DiCarlo, just -- I'm going to support the bill so I just want to preface my statement. One of my concerns is more of a technical nature rather than a substantive nature, in the fact that each of the counties have tax acts. Suffolk County has a Suffolk County Tax Act.

My question, really, for the record is whether you have to amend the Suffolk County Tax Act to allow a county to take this particular action rather than give them broad authority to do so?

SENATOR DiCARLO: I believe it depends on when the taxes are paid and depending on the county. That's something that -- you know, we look into, also.

SENATOR LAVALLE: Thank you very much.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1194, by Senator Larkin, Senate Print 2782, an

act to amend the Education Law, the Penal Law and the Vehicle and Traffic Law, in relation to denying driving privileges.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Larkin, an explanation of Calendar 1194 has been asked for by Senator Paterson.

SENATOR LARKIN: Mr. President. Senator Paterson, this bill would allow the Department of Motor Vehicles to deny driver's licenses to students who are suspended from school for an alcohol or drug-related offense. There are specific summaries -

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator Larkin?

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: If that is all that the bill said, then I would agree with it wholeheartedly, but my reading of the bill is that this also applies to school dropouts.

SENATOR LARKIN: Yes, it does, but it's covered very clearly in the bill. If a school dropout has a bona fide reason, he can submit that; and if it's not accepted, he has an appeal process within 15 days.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: If Senator Larkin would continue to yield?

ACTING PRESIDENT KUHL: Senator Larkin, do you yield?

SENATOR LARKIN: Yes, sir.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Let's turn to the original offense, Senator Larkin. If a person has an alcohol or a drug-related offense driving infraction, then the punishment relates

very close to the actual offense because we're talking about the same area. We do not want people who are intoxicated or suffering from some deficiency related to a substance abuse or a person that has some kind of driving record or diminished capacity that causes them to have car accidents on the road.

How do you relate the ones - denying the privilege to drive to an individual who would be otherwise eligible based on a problem that they have with school, which is a totally different thing? Even if we didn't accept their particular reason for why they are not in school, the fact is that it doesn't really relate to their ability to operate a motor vehicle.

SENATOR LARKIN: Well, Senator, I think you are making light of what we're trying to do here. One, we don't want young people who have been dismissed from school for drug or alcohol-related offense. That's one.

SENATOR PATERSON: Right.

SENATOR LARKIN: That's part one.

SENATOR PATERSON: We agree with that totally.

SENATOR LARKIN: Part two, we're saying if an individual drops out of school for no reason -- he just doesn't want to go to school any more -- no bona fide reason, that's also a problem for us today. We are talking about young people making sure that they have a responsibility for one another, creativity.

We're saying if you drop out of school and you got a bona fide reason, you have to submit it, and then you have the appeal.

Let me say, Senator, on this floor there are over 12 states that have this in being today. We have been trying for two to three years on this same bill, and we find that there is nothing wrong in this here. What's wrong with saying to somebody, "You don't want to go to school, fine; let's hear your reason why you don't want to go to school"?

Then, there's every reason for them. Last year, the issue was brought up that there is no appeal process. If somebody decides

to do that, there should be an appeal. We have amended it. We put in this bill the ability to have an appeal.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President. Senator Larkin, first of all, your including the appeal process is responsive to some of the concerns that were raised, and that's why I'm glad we're having this conversation, because it was from the debate last year that it was decided and you made the ultimate decision to amend the bill, and that really is what I guess validates the Socratic method. I don't know if it validates this process, but we appreciate that you would do that.

But what I'm saying, Senator, is suppose a person drops out of school to work, and the appeal process -- we might not think the person should be working. We think they should be in school, but the person has decided that they want to work. If there is a financial

hardship to the family, we would probably accept that as a bona fide reason. But this person, maybe they are a star athlete and they got a contract to play professional baseball or something. They've decided they are going to work, and we tell them, "Well, we don't like the fact that you are leaving school," which is a valid concern, and maybe there is a responsibility that we might deem as not being adhered to; but at the same point, our own New York State law says that a person must be a student in a secondary school until age 16.

But you have this bill at age 16 and 17, and I'm not trying to make light of it. I'm just asking you the question, how can we do that when we have a law on the books that is allowing people who want to leave school at 16 to work the opportunity to do that?

SENATOR LARKIN: I guess you are asking me, although you said, "On the bill."

SENATOR PATERSON: No, no, I was asking you. I'm sorry.

SENATOR LARKIN: Okay. Senator

Paterson, again, they have an appeal process. If they are not satisfied with that administrative judge's action, they have recourse to a 78.

But let's go back to what we're really talking about. You are talking about somebody wants to play professional baseball. We're trying to address the issue of somebody who just wants to walk out of school, and "I don't want to go to school any more."

I think that we also have some moral responsibility in this state. We're giving him an opportunity -- if he feels that he has a bona fide reason to drop out of school, Senator, we're giving him that opportunity.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator Larkin, do you know that Senator Leichter likes this bill?

SENATOR LARKIN: He said to me, "I will not harass you; I like your bill."

Am I correct, Senator?

SENATOR PATERSON: Well, before, I just wanted to ask a couple of questions. Now I'm just getting warmed up.

(Laughter.)

Senator, I like your bill. I like the part that relates to drug and alcohol offenses, but let's take the situation where the individual is claiming financial hardship. They drop out of school, and they want to work. They have to go through this administrative law judge and then they may have to go through the appeal process. They still might lose; but in the meantime, over a period of what might be a month, we have denied them the opportunity to make a living because in many parts of our state, as you know, a person would probably need a motor vehicle to actually perform their job.

I'm just saying that the legislation is well merited, and great minds such as yourself and Senator Leichter appreciate the bill and great minds think alike, but maybe a person of diminished capacity like myself might have one point to offer, and the point

that I'm just trying to raise to you is the fact that the legislation might be a little over reaching. We might really be infringing upon the rights of individuals who don't finish school, who may actually be doing something worthwhile with their lives, even though it may not be what we might consider to be the best thing that they could do with their life, which all three of us would agree would be to be in school.

SENATOR LARKIN: Senator, one final point in the bill. Reading it very carefully, you will find out -- you had said there that we're going to deny him during this process. There is no denying during the process. The individual retains their driver's license until the final action is taken.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I didn't know that before right now, Senator. I thought that whenever there is an appeal process the person has already lost. In other words, after you

have lost the first time, the appeal process as in any kind of an administrative ruling, that the administrative ruling goes into effect, and the reason it has to go into effect is because the entity does not know that the complainant is going to appeal.

So if I can just ask one last question?

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Can you verify for me that after the administrative decision and up to the appeal process that the person can still operate the vehicle? Is that correct?

SENATOR LARKIN: Yes.

SENATOR PATERSON: All right. I don't see where the bill addresses that. On the bill, Mr. President.

SENATOR LARKIN: Line 34 on page 2, Senator.

SENATOR PATERSON: Line 34, Section 2. Well, I would just say that -- it says when the determination is made.

SENATOR LARKIN: On line 33, "When a determination that the student has withdrawn from or been suspended or expelled from school is no longer subject to the appeal to the Commissioner or judicial review, the Commissioner of Motor Vehicles shall deny all driving privileges to such student pursuant to section so and so and so of the Vehicle and Traffic Law until such student attains his 18th birthday."

That tells me that he has that license until the final action on his appeal was taken.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: And that tells me the same thing, Senator. I stand corrected and beg your indulgence on that point.

SENATOR PATERSON: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: I certainly thank Senator Larkin for clearing that up. It certainly will not deny an individual the opportunity up until the time the situation is completely -- has completely finished a process.

But I would caution those who support the bill that I still think that the bill is somewhat overreaching and, although the merit is quite well founded, I don't really think that we have a right because we are unhappy with individuals and how they are conducting their lives to excessively exact punitive measures on them that don't relate to whatever it is that they are actually involved in.

If necessary, Senator Larkin, what I would probably be more interested in is actually raising the age from which we allow people to leave school, more than penalizing them in an ancillary way for the fact that they

do. But I thank you for clearing up a couple points that I didn't understand.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to a couple of questions?

ACTING PRESIDENT KUHL: Senator Larkin, do you yield to a question from Senator Dollinger?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator Jones and I are over here somewhat perplexed. Does this bill, in essence, increase the age of compulsory education in this state from 16 years to 18 years if you want to drive a car?

SENATOR LARKIN: Would you restate your question, please?

SENATOR DOLLINGER: Well, under current law in the State of New York, as I

understand it, you are required to go to school until age 16. After that, you can leave and go any -- you don't have to pursue a course of diploma. You can leave and go do anything you want to do. You're not in violation of any law of the state of New York.

My question is if a student decides at age 16 to leave school, as he's got the right to do it under our law, does he run afoul of your bill, give up his right to drive a car?

SENATOR LARKIN: Yes, if he doesn't have a bona fide reason for driving.

SENATOR DOLLINGER: Again, through you, Mr. President. Under current law, he doesn't need a bona fide reason. He can leave school for any reason at all. We leave that entirely up to him or her.

Are we now putting the requirement that in order to both exercise your right to leave school at 16, which we have under current law, and your right to have a driver's license if you pass the test and show your

competency as a driver -- are we now adding a third requirement that says you also have to go to school to have a driver's license?

SENATOR LARKIN: Senator, I think you are mixing, again, a right and a privilege. To drive a car in this state is a privilege. It's not a right. We're talking about privilege.

SENATOR DOLLINGER: Okay. Mr. President, I can understand that.

Again, through you, Mr. President, are we putting a new condition that says you have to not only be able to competently drive a car, you now have to be 16 years of age, but you have to be in school, as well? Is that what we're saying?

SENATOR LARKIN: Not if you have a bona fide reason, the same thing I gave to Senator Paterson, Senator.

SENATOR DOLLINGER: Again, through you, Mr. President.

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

Senator yields.

SENATOR DOLLINGER: That's the whole point, Senator. You don't need a bona fide reason now. You can leave school for any reason you want after age 16; correct?

SENATOR LARKIN: You still can't drive.

SENATOR DOLLINGER: Okay. So you now have another requirement. You have to be proficient as a driver; you have to be in school, and you have to be 16 years of age.

Two other questions briefly, Mr. President.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Senator, what is the administrative cost to the school districts of this state of filing an attendance form for those who are between 16 and 18, which

they are not legally required to do now, and what's the requirement that they keep that attendance, that they notify the Commissioner, that they get involved in the Commissioner's determination because they will be the witnesses who will testify to the fact that the student is no longer in? What is your anticipated cost to the 729 school districts in this state of having to comply with this new unfunded mandate -- or this mandate?

SENATOR LARKIN: Senator, the school districts that I talked to, they told me they thought it would be insignificant because their big concern is making sure that the student is in school because aid to school districts is based on attendance, how many students are there.

SENATOR DOLLINGER: Okay. So - through you, Mr. President -- do you have any kind of -

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

Senator continues to yield.

SENATOR DOLLINGER: Do you have a local fiscal impact note on this?

SENATOR LARKIN: No, Senator, because they don't feel it's needed and neither do I.

SENATOR DOLLINGER: Okay. So we're telling them to do something, but we're not giving them any funds to support their doing it. Is that a fair statement?

SENATOR LARKIN: I don't appreciate your statement, Senator. I think what we're trying to do here is to be of assistance to school districts, to individuals. We're trying to add some demeanor of responsibility to them and, if they take on a factor of drugs and alcohol, I think we as legislators have a responsibility of -- as Senator Paterson mentioned, about people driving and drinking.

SENATOR DOLLINGER: Mr. President, just one final question -

ACTING PRESIDENT KUHL: Senator Larkin, do you yield to one more question?

SENATOR DOLLINGER: -- for the sponsor.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: What is the penalty to a school district -- does he yield, Mr. President?

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: What is the penalty to a school district to enforce this provision and to get their compliance that they will actually do what you want them to do? What is the penalty?

SENATOR LARKIN: No penalty.

SENATOR DOLLINGER: So if a school district decides to disregard this, nothing happens?

SENATOR LARKIN: Well, Senator, I think, once again, you're trying to -- in my opinion, Senator, no disrespect, you are trying to belittle something that about 22 other states have done, very successful -- with very

successful rates with young people tying two things in, reduction of utilization of drugs and alcohol and keeping young people in school for their own personal benefit not only for today but for their future.

SENATOR DOLLINGER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: If this bill simply did what Senator Larkin described, I would agree with him. If the bill provided that if you were found guilty of a drug offense and expelled from school you would lose your driving privileges, that would make sense. I agree with Senator Paterson, that would make sense.

But as I read this bill, it goes a step further than that. It says that if you are over 16 years of age and you decide to leave school for any reason, not drug-related -- you simply decide, "I'm not required to go to school. I don't have to. The law of the State of New York doesn't require me to go to school.

I'm not a truant. I have a right as a 16-year-old to leave school" -- then if you do leave school, you lose your driver's privileges. That's the part of the bill I don't understand.

I think it is an unfunded mandate. I can think of the school districts that I represent who are going to spend oodles of time roaming around trying to take attendance for people they don't necessarily take attendance for, for trying to determine what their bona fide reason for not being in school is, and I can also understand that without any penalty to require the districts to do it they're simply going to look at this and say, "It's another unfunded mandate from Albany; why should we comply with it?"

I think there are all kinds of problems with this bill. I think it perhaps needs another think. Under those circumstances, Mr. President, I would be opposed.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi.

SENATOR MARCHI: I think it's excellent. The first part of it is fine, but it may be counterproductive to go that extra mile. That youngster may drive illegally. I have seen -- I shouldn't be even talking about the 18-year-old drinking age, but that's another thing where a lot of youth has become very cynical about the law simply because it doesn't correspond with reality, so you have rampant disregard of a law that was functioning well under the circumstances.

I'm not sure -- I feel that we're carrying it a bit too far; and, for that reason, I oppose it. I do hope that he preserves that first part of it which is excellent, makes real sense to me.

ACTING PRESIDENT KUHL: We have two other people who want to speak.

The Chair recognizes Senator Jones.

Senator Jones, before you take the floor. Can we have a little quiet here, please. Senator Leibell, other members, can you

take the conversations out of the chamber. Can't hear each other.

Thank you.

Chair recognizes Senator Jones.

SENATOR JONES: Yes. Will the sponsor yield to a question, please?

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR JONES: Senator, if you will indulge the school teacher in me. I'm trying to figure out how this would work. What would happen, let's say, a student who academically fails, who is asked to leave school for academic failure, is not making the grade. He's failed all his courses at 16, and the school suggests he leaves. What would happen in that case?

SENATOR LARKIN: I gather your question is if we have a student who just can't

cut the mustard.

SENATOR JONES: Correct.

SENATOR LARKIN: He can go with that as a bona fide reason. He has the opportunity. It's very clear in there. He can say that I can't -- "I don't have the capacity to learn. I don't have the capacity to study. I can't have a concentration." He can do that. That is his bona fide reason, and he has the appeal process.

SENATOR JONES: Would the Senator yield to another question?

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

The Senator yields.

SENATOR JONES: I'm trying to find that in here. I see "personal family hardship." What would that come under, the academic failure?

SENATOR LARKIN: When you say in there "personal," Senator Jones, I think there are a multitude of personal reasons, a family hardship, a death in the family, a number of

children there, and mental capacity.

I can remember when I was growing up, young people dropped out of school because there were seven and eight, nine children, and they helped some of the other children, the younger or the older. That was a valid reason to leave school in those days, and I'm confident that it would be a valid reason by an administrative judge today.

SENATOR JONES: Will the Senator yield to one more question?

ACTING PRESIDENT KUHL: Senator Larkin, do you yield to one more question?

Senator yields.

SENATOR JONES: The other thing I'm a little concerned about is, where do the parents enter into this? Let's say, for whatever reason, it's fine with the parents. The child wants to drop out of school. Mom and dad have no objection. I have no idea what he's going to do, but I happen -- not that I approve, but there are families where the child doesn't work and they just leave school with the

parents' permission. Do you envision any problem with the parents when the state now steps in and takes their child's driver's license?

SENATOR LARKIN: Senator, I think we ought to go back to the basic premise of this bill. We're trying to encourage young people to stay in school. If that individual decides he wants to drop out and the parents don't care, he can drop out of school, but he's just not going to have a driver's license.

SENATOR JONES: To rephrase my question, do you envision that there would be any problem with parents over an issue like this who didn't happen to agree with this ruling of the school?

SENATOR LARKIN: It's done.

SENATOR JONES: You don't envision lawsuits on the part of the parents or any such thing?

On the bill.

ACTING PRESIDENT KUHL: Senator Jones on the bill.

SENATOR JONES: You know, I am very supportive of the drug and alcohol piece. I think that's excellent, but I think there's a lot of problems with the issue when we have a law on our books that says at 16 they don't have to stay in school and now we're saying the school not only has to police what happens after that, they are going to have to, you know, take away their driver's license.

I think we're really stepping into a problem here. I certainly think we all want the goal of keeping kids in school. There's another issue that I would bring up that I brought up last year on this floor; that I happen to know in the city of Rochester, we have children collecting social services who are showing up one day out of 20, having the paper signed, and are able to collect social services and are not attending school, and here's a person, technically, would be able to have a driver's license even though they are missing 19 of the 20 days.

So I think there's a lot of

things that need to be looked at again as far as just a person who drops out of school. I'm very supportive of the drug and alcohol piece. I think anything we can do to work with students with these kind of problems or take away privileges, or whatever it takes, but I'm very concerned about basically changing another law that's on the books that they do have a right to a driver's license.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 1194 are Senators Abate, Connor, DeFrancisco, Dollinger, Farley, Hoffmann, Jones, Kruger, Marchi, Markowitz,

Montgomery, Nanula, Paterson, Present, Sears, Seward, Smith, and Wright. Ayes 40. Nays 18.

The bill is passed.

Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President. Is there a substitution from the Assembly on Calendar Number 350?

ACTING PRESIDENT KUHL: There is, at the desk. I will ask the Secretary to read the substitution.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Rules Assembly Bill Number 3051B and substitute it for the identical Calendar Number 350.

ACTING PRESIDENT KUHL: Without objection, substitution is ordered.

Senator Bruno.

SENATOR BRUNO: Would you read the title of the bill, Mr. President.

ACTING PRESIDENT KUHL: Secretary will call Calendar Number 350. We are on the regular calendar.

THE SECRETARY: Calendar Number

350, Budget Bill, Assembly Print Number 3051B, an act making appropriations for the support of government.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is a message of necessity at the desk, Senator Bruno.

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

ACTING PRESIDENT KUHL: The motion is to adopt the message of necessity at the desk on Calendar Number 350.

All in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is adopted.

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: I see that there's a couple members who would like to -

SENATOR DOLLINGER: Point of order, Mr. President.

ACTING PRESIDENT KUHL: Yes.

SENATOR DOLLINGER: Can you just tell us which bill this is?

ACTING PRESIDENT KUHL: This is Calendar Number 350 on the first calendar of the day, Calendar Number 61.

SENATOR DOLLINGER: Does it have a short title, Mr. President?

ACTING PRESIDENT KUHL: Legislature and Judiciary Budget.

SENATOR DOLLINGER: That's a good one, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, I can understand the alacrity with which you

called for the reading of the last section, and I think all of us are delighted to see a legislative and judiciary bill before us because it certainly signals that this long, arduous and painful budget process is coming to an end.

One may also rejoice as a legislator in the thought that we're finally going to get paid after working 60 days without any pay.

But I just wish that we had before us a legislative and judiciary budget that was in proper form, a bill that kept what I thought was the promise that had been made by the new administration that we're really going to turn a new leaf.

All we heard after the November election and as this legislative session started is that things are going to be done differently.

SENATOR STAFFORD: Mr. President.

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

SENATOR STAFFORD: I apologize for interrupting my constituent, summer

constituent, but I want to get it right here. Now, was an explanation asked for?

ACTING PRESIDENT KUHL: No, an explanation was not asked for. The Chair recognized Senator Leichter.

SENATOR LEICHTER: But I will yield. You want to explain the bill, Senator? I'll certainly yield.

SENATOR STAFFORD: Well, that's what I was driving at.

SENATOR LEICHTER: All right. Sure. Let me yield to you, and I will make my comments afterwards.

ACTING PRESIDENT KUHL: Senator Leichter yields to Senator Stafford for an explanation of the bill.

SENATOR STAFFORD: I thought maybe I could put things in a bit of a different light and speaking of light, I don't want to overdo this; but, again, like many, I have been here for a number of sessions during the budget process and we have certainly seen a lot more light during this session than we've ever seen

before.

I will just speak generally and then, of course, be glad to answer any questions. I'm sure some will and, of course, Senator Leichter will make his comments. But, you know, I want to be general here. You can all see it.

My friends, the spending has been going down here in the Legislature and when there is any rise in any parts of it, it has been less than the Consumer Price Index, and I think we have to explain this.

We have a job to do. I know one time I was running, and it was my first time, and someone was saying let's repeal this tax and let's repeal this tax, and I got thinking a minute. Well, it sounds good. I said let's repeal every tax, and I said let's do away with all the fees. Obviously, it made no sense.

And, of course, it would make no sense for us to say that we could do our job here without having the proper support and the proper funding. I want to emphasize that

revisions are being made, and I believe starting next year there will be itemized expenses for everyone serving in the Senate.

Again, I certainly want to emphasize that, actually, we have been spending less, much less, than what the Consumer Price Index as it has risen would provide for and, of course, this is used in many businesses, and it's used very often as a barometer.

Let me get into just some specifics, please.

The judiciary budget: It should be pointed out that, after a great deal of hard work, many conferences, the Judiciary Committee, the staff, here in the Senate and, yes, the Assembly, there is an $18.1 million reduction in what -- reduction in the General Fund from the Judiciary's request. It's $18.1 million less than was requested.

Of this amount, 14.5 million results from the approval of the following Article VII bills -- and I could go down all of them, but they involve the New York City County

Clerks, nonjury function, the elimination of mandatory sequestration of deliberating jurors in certain cases -- we're one of the few states that still had this -- a change from two to one in the number of transcripts which must be filed for criminal appeals -- I'm getting into too much detail here -- that save $500,000, a change in the electronic recording devices, how they would be used, and a transfer of jurisdiction of the New York City Administrative Code violations to New York City -- it's criminal court, turn it over to the administrative tribunal, which would save $1 million.

There are other savings I could go into, but I think you get the gist of what the judiciary budget is.

Now, again, I have mentioned generally the legislative budget. Now, please listen. Our legislative budget, 177 million for fiscal year 1995-1996 is $200,000 less than 1994-95. How many areas -

Actually, as I say, I could get into specifics more, but I think you understand

that a good job has been done here by both houses and by the staffs, and I would submit that it's a good budget.

ACTING PRESIDENT KUHL: Chair recognizes Senator Leichter.

SENATOR LEICHTER: Mr. President, I thank my good friend for his explanation, clear and, I thought, telling in the emphasis that he put on the judiciary budget. The judiciary budget, as he pointed out, was $18 million less. Then he comes to the legislative budget and says, "Look what we did, $200,000 less." But I want to get to that in a moment, Senator, because that was really not the main point that I was trying to make, and let me say, I think that we perform a very important function. We are an equal branch of government. I think that legislators in this house, in the other house, whatever party, they come to work hard, provide an important service, and you can't provide that service unless you have resources, staff, and so on.

If you deny legislators staff,

you deny a legislator the ability to function because you don't give him or her an office or computer, and so on, that legislator cannot represent his or her constituents, and the Legislature cannot perform its function. So I agree and I make no apologies and I am not ashamed of the fact that we will require certain funds, and I think that, by and large, the expenditures on the Legislature are well spent, but I do think that there is waste within the legislative budget and that we have not taken to the legislative budget the same sort of scalpel -- actually, it was more than a scalpel -- a hatchet that we've taken to so many social programs, to so many governmental programs, this year.

But before Senator Stafford got up, what I wanted to talk about -- something I've talked about often in this chamber, and if you are tired of hearing it, I have some sympathy for it, but I think it's terribly important because it really deals with the integrity of this legislature. What has

offended me from the very first legislative budget I ever saw, when I was in the Assembly, and that was the fact that the Legislature treats itself differently than it does the Judiciary and the Executive.

We exempt ourselves from the rules, the principles, even the laws that apply to other branches of government, that apply to other governmental agencies and authorities. We do not have a detailed budget. We spend a very large sum of money. Whether it's all fully justified or not, it is certainly a very large sum of money and we do not tell the public how we spend that money. That's just wrong. You can't under any circumstance justify that and in the past, as you know, we've put forth amendments to make our point.

Earlier this year, when you moved your one house legislative-judiciary budget, we came up with certain amendments. I'm not going to put forth these amendments again. You know what they are. The votes have been recorded, but the point we want to make -- and I want to

address it even though this may be the second time around this year on the legislative judicial budget -- is to keep on making the point that we have an obligation to have an honest budget, and this is not an honest budget.

Now, Senator Stafford, if I understood him, said, "Well, we're going to do it next year." Next year? Why couldn't we do it this year? What was it that prevented us this year from coming up with a detailed, itemized budget. I've heard some talk, "Well, the computers haven't been programmed," and this and that. I submit to you that that's just not a washable explanation. You certainly could have come up with a much greater detailed budget than we have here.

This is a budget even within the broad categories that exist and the vague itemization and the description of what the items are, the Majority Leader and the Speaker are allowed to shift appropriations between this category, so it's no budget at all. It's

totally meaningless.

I understand that the beginning of this year that when there was an effort to reconstruct what the Senate had spent last year that it was extremely difficult to do, that there were questions -- not that there was any wrongdoing, as such, but that there was not a clear identification of how monies had been spent, and one of the reasons was because there was no standard as to which you could judge how the money was to be spent. You weren't in a position to say, "Well, wait a second, you can spend only so much for postage, you can spend only so much for telephone," because you're able to shift appropriations categories, and I think that we ought to stop that.

What I think is particularly unfortunate about the budget this year is because I understood certain commitments were made -- when I say commitments, I don't mean legal commitments, but promises were made, and I think we've moved, Senator Bruno, forward in some areas, but it's more than just starting the

Senate on time. It also means having a fair, honest legislative budget, and it means something else. It means also making it clear how the monies are spent and that they are spent in an equitable, in a fair manner as between members of the Majority and the Minority.

The disparity in spending that exists is just inexcusable. You don't find it in Congress, but you do find it in the New York State Senate, and let me say, many of the things that I say apply equally to the Majority in the Assembly, but I know at least one thing that the Assembly does is that all members get the same equipment, all members have access to the same resources. That's not the case here. We have some members here who have equipment that is totally antiquated.

There is no justification under law and, if necessary, this thing will eventually be challenged in court that members of the Majority can have new computers, laser printers whereas, members of the Minority have to wait for it, and I wish that we would get

away from that because it's petty, it's sophomoric. It takes away, I think, from the common purpose that we all have, which is to serve the people of the State of New York.

Let me just address the issue of whether the amounts, the total amounts provided in this budget show a real restraint on the part of the Senate, and I wanted to preface my remarks, as I did, that I think we perform important services and, obviously, you've got to pay for these services. But we put forward in the past a budget which shows a significantly lower reduction and provides certainly enough monies in staff and equipment for everyone to do their job. This particular budget, while Senator Bruno has touted the fact that the legislative budget is $200,000 less than last year, the fact is that the Senate budget last year -- if you took a look at the appropriations for 1994-1995 for the Senate, they were $66,679,000. This year the appropriation in the bill before us is $70,049,000. So there is an increase of roughly $3,369,000.

Now, part of that is due because some legislative commissions have apparently been folded into the overall Senate appropria tion but the bottom line is that there is an increase. In fact, there has been an increase of $1-1/2 million since we voted at the end of March on your version of the legislative judiciary budget.

Our itemized budget has a total appropriation for the Senate of $57 million, to be precise $57,653,000. That is an adequate budget to run the Senate fairly, efficiently, effectively, and our budget lays down how much each member gets, how much each committee gets. It sets forth precisely how much goes for equipment, how much goes for postage, how much goes for telephone. Somebody reading this will say, "I know how the Senate spends its monies." You look at this bill, you have no way of knowing it.

Now, you pride yourselves on being fiscal Conservatives, fiscally respons ible. Then don't put forth a budget like this.

Can you go and justify to your constituents why the Senate does not disclose how it spends public monies? We never allow the Executive to do that. We insist that the Executive comes up with an itemized budget.

In fact, in the same bill, we have a very itemized budget for the Judiciary but, when it comes to the Senate, that's different. We're above the law. We just shouldn't do it, and I would -- I won't say "hope" -- I would expect that next year, we will do the right thing, and these promises of, "This is a new administration, this is a breath of fresh air, we're going to do things differently, we're going to be responsible to the public," would be reflected first and foremost in the legislative budget.

Just, in conclusion, let me say that here we are. It's June 7. It's approaching June 8, and we're finally passing a budget, and it's a budget that was put on our desk at the last minute, negotiated among three leaders behind closed doors, very significant

important provisions, programmatic changes in the law that the public did not have an opportunity to see, a legislative budget which is not itemized, which is not detailed, which is not subject to the same economies that we demanded of the Executive. If that is a breath of new air, if that is turning a new leaf, if that is a change towards greater responsibility, all that we really have is a lot of words. We certainly don't have any actions.

I strongly urge upon all of us that as we pass this budget -- and, of course, it will be passed -- that there be a commitment by us, commitment by all of us collectively that we will have an honest, itemized and reasonably funded legislative budget.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Senator Dollinger to explain his vote.

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

I share many of the sentiments which Senator Leichter echoed, and I want to applaud Senator Bruno and my Republican colleagues. When Senator Bruno was elected the Temporary President, he did talk about making a new sweep in this house and bringing new tools and new attributes in this house and a change in the way we practice and other things. I feel a little bit like the kid. I've seen the broom sweep the floor, and I look down at the floor, and the floor is clean. The only problem is the dust hasn't settled yet, and I'm still waiting for the dust cloud to sort of work its way down in the kitchen and, when it's finally done, we'll then look at the floor to see whether there is still the old dust on the floor and whether the sweeping actually swept it all up or

just put it in a bunch of clouds that eventually settled back down.

I am waiting to see the clean floor, Senator, the clean floor that will have an itemized budget, that will have a better distribution of the resources, that will have a tool to allow this house to function even more efficiently. I certainly think that's in the offing. I do want to see how that dust settles down, and maybe we'll settle down next year when we see the fully itemized legislative budget, and we'll be able to decide whether the room is really clean or whether it's just all suspended up in the clouds.

I will be voting nay, Mr. President.

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

Results.

THE SECRETARY: Those recorded in the negative on Calendar 350 are Senators Abate, Dollinger, Hoffmann, Jones, Leichter, Oppen heimer, Santiago and Smith. Ayes 50, nays 8.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we call for an immediate meeting of the Finance Committee followed by a meeting of the Rules Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Senate Finance Committee in the Majority Conference Room, 332. Immediate meeting of the Senate Finance Committee in Room 332, the Majority Conference Room. That meeting will be followed immediately by the Senate Rules Committee meeting in the same room, Room 332. First Senate Finance, then Senate Rules.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we ask for unanimous consent to move Calendar Number 536 -

ACTING PRESIDENT KUHL: May we have order in the chamber, please.

Senator Bruno.

SENATOR BRUNO: We ask for unanimous consent, Mr. President, on Calendar Number 5363, move it directly to third reading.

ACTING PRESIDENT KUHL: Without objection, Calendar Number 5363 -- it's a pension supplement bill -- will be moved directly to Third Reading Calendar.

The Senate will come to order.

The Chair will recognize Senator Bruno.

SENATOR BRUNO: Mr. President, there's some housekeeping things to be done at the desk. We might do them at this time.

ACTING PRESIDENT KUHL: We have a lot of housekeeping, Senator Bruno. We'll return to motions and resolutions.

The Chair would recognize Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, For Senator Tully, on page 37, I offer the following amendments to Calendar Number 1107, Senate Print Number 4673,

and ask that said bill return its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 1107 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Farley, on page 34, I offer the following amendments to Calendar Number 982, Senate Print Number 26, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 982 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Hoblock, I wish to call up his bill, Senate Print 3108, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 963, by Senator Hoblock, Senate Print 3108, an act to amend the Civil Service Law and others.

ACTING PRESIDENT KUHL: Senator Libous.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Mr. President, I offer up of the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Cook, I call up his bill, Print Number 2902, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 373, by Senator Cook, Senate Print 2902, an act to amend the Education Law, in relation to authorizing wire transfer.

ACTING PRESIDENT KUHL: Senator Libous.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Mr. President, I offer up the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, I call up Senator Velella's bill, Print Number 4112-A, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

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

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Mr. President, I now 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 58.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Mr. President, I offer up the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

We have one more here, sir. On behalf of my colleague, Senator Maziarz, on page 37, I offer the following amendments to Calendar Number 1131, Senate Print Number 4435-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESDIENT KUHL: The amendments to Calendar Number 1131 are received and adopted.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT KUHL: The Senate will come to order.

The Chair -

SENATOR BRUNO: Mr. President, can we at this time return to reports of standing committees and I believe there's a report from the Finance Committee.

ACTING PRESIDENT KUHL: There is. The Chair would just note that prior to our standing at ease there was a request that Calendar Number -- I should say Bill Number 5363 go directly to third reading, but the Majority Leader objected to that without the benefit of it going through a Finance Committee, so we had a Finance Committee. Now there's a report at the desk that I'll ask the Secretary to read.

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

Senate Print 5360, by the Committee on Rules, an act in relation to

certain provisions which impact upon the expenditure of certain appropriations;

Senate Print 5363, by the Senate Committee on Rules, an act to amend the Retirement and Social Security Law and the Education Law, in relation to supplemental retirement allowances.

All bills reported to third reading.

ACTING PRESIDENT KUHL: Without objection, the bills will be reported directly to third reading.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we now take up Calendar 1211?

ACTING PRESIDENT KUHL: The Secretary will read the title of Calendar Number 1211.

THE SECRETARY: Calendar Number 1211, by the Senate Committee on Rules, Senate Bill 5360, an act in relation to certain provisions which impact upon the expenditure of certain appropriations.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message of necessity at the desk, Mr. President?

ACTING PRESIDENT KUHL: The Secretary informs me that there is a message of necessity at the desk.

SENATOR BRUNO: I move that we adopt the message.

ACTING PRESIDENT KUHL: The motion is to adopt the message of necessity on Calendar Number 1211. 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 113. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Senator

Dollinger, why do you rise?

SENATOR DOLLINGER: Is this the Aid to Localities language bill?

ACTING PRESIDENT KUHL: Yes.

SENATOR DOLLINGER: Thank you.

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

THE SECRETARY: Section 113. 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 57, nays 1, Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President -

SENATOR LEICHTER: Is this 5360, Mr. President?

ACTING PRESIDENT KUHL: That was

the bill that was just before the house. Senator Leichter, you will be recorded in the negative along with Senator Dollinger, along with Senator Jones, along with Senator Hoffmann, along with Senator Nanula, along with Senator Stachowski and Senator Abate. Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 1211 are Senators Abate, Dollinger, Hoffmann, Jones, Leichter, Nanula and Stachowski. Ayes 51, nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1212?

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 1212.

THE SECRETARY: Calendar Number 1212, by the Senate Committee on Rules, Senate Print 5363, an act to amend the Retirement and

Social Security Law and the Education Law, in relation to supplemental retirement allowances.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: The Secretary informs me that there is a message of necessity at the desk.

SENATOR BRUNO: Can we move its adoption at this time, Mr. President?

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity to Calendar Number 1212. 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 17. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50...

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR HOFFMANN: Can I have my name called?

ACTING PRESIDENT KUHL: Senator Hoffmann to explain her vote.

SENATOR HOFFMANN: Mr. President, it troubles me that we're receiving this bill at this hour with so little time to reflect on it. I asked in Finance at what point an agreement had been reached and was informed that at approximately 7:00 o'clock this evening the Governor and the two legislative leaders of this state's legislative bodies came to an agreement without the consent of the Comptroller or the consultation of the Comptroller on this provision.

It is now a little past 10:00 p.m. this same evening. None of us have had an

opportunity to adequately read and review this measure, much less discuss it with those affected pensioners in those districts who would be affected.

I'm very concerned about retired police officers, firefighters, teachers, other public employees who very much would like to see and deserve, in some cases, desperately deserve an increase in their pensions, but I'm equally troubled by the fact that there is an apparent raid on a pension fund used to do some other budget balancing.

Apparently, $120 million will be going to localities and 110 million will be going to the state from the pension fund by this piece of legislation. That constitutes, to most business people's way of thinking, fiscal gimmickry and it's simply not something that I'm willing to condone and I don't think the people in the 48th Senate District believe that it is a reasonable way for us to be balancing our budget at this late hour.

So, reluctantly, I will be

casting a no vote.

ACTING PRESIDENT KUHL: Senator Hoffmann will be recorded in the negative. Announce the results.

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

ACTING PRESIDENT KUHL: The bill is passed.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, would you please recognize Senator Santiago.

ACTING PRESIDENT KUHL: Senator Santiago.

SENATOR SANTIAGO: Thank you.

Mr. President, I ask unanimous consent to be recorded in the negative on Calendar 1194.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Santiago will be recorded in the negative on Calendar Number 1194.

Senator Santiago again.

SENATOR SANTIAGO: Yes. I would also like to be recorded in the negative -- if I had been in the chambers last week, I would have been recorded in the negative on Calendar 1092 and I would have voted in the affirmative on Calendars 342, 1091 and 1090.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Santiago, I have that -- and I didn't hear the last number that you would -- had you been in the chamber, you would have voted in the negative on Calendar Number 1092?

SENATOR SANTIAGO: Yes, sir.

ACTING PRESIDENT KUHL: And would have voted in the affirmative on Calendars Number 342, 791 -

SENATOR SANTIAGO: No, 1091.

ACTING PRESIDENT KUHL: 1091.

SENATOR SANTIAGO: And 1090.

ACTING PRESIDENT KUHL: 1090. Okay. The record will so reflect.

SENATOR SANTIAGO: Thank you.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Bruno.

SENATOR BRUNO: We don't have anything on the floor presently, Mr. President?

ACTING PRESIDENT KUHL: No.

SENATOR BRUNO: Okay. Mr. President, we have completed the budget. On behalf of the people of this state -- and I want to commend my colleagues for having addressed what is necessary on behalf of the people of this state at a reasonable hour, in a reasonable way, as reasonable people, and we now will move on to other business, Mr. President, and I would like to recognize that there is no further business to come before the Senate and I move that we adjourn until tomorrow at 11:00 a.m.

Thank you.

ACTING PRESIDENT KUHL: Without objection, the Senate will stand adjourned until tomorrow, Thursday, June 8th, at the regular hour, 11:00 a.m.

(Whereupon, at 10:25 p.m., the Senate adjourned.)