ALBANY, NEW YORK

June 13, 1995

10:01 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

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

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Monday, June 12th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Sunday, June 11th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Spano, I wish to call up his bill, Print Number 1701, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

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

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Thank you, 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. Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 32.

ACTING PRESIDENT KUHL: Senator Libous.

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

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Sears, on page 49, I offer the following amendments to Calendar Number 1238, Senate Print Number 4903A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL:

Amendments to Calendar Number 1238 are received and adopted; the bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: On behalf of Senator Cook, on page 40, I offer the following amendments to Calendar Number 1283, Senate Print 4864, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 1283 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: And, Mr. President, on behalf of myself, on page 35, I offer the following amendments to Calendar Number 1233, Senate Print Number 3856, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL:

Amendments are received and adopted, bill will

retain its place on the Third Reading Calendar.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, there's a motion to alter the rules which I gave notice to the Journal Clerk yesterday that I believe is appropriate at this time. I'd like to -

ACTING PRESIDENT KUHL: Senator Dollinger, you're incorrect. The motions to discharge are held after the calendar in the normal process of business, so after we're through with the process of the day we will then be ready for motions to discharge.

SENATOR DOLLINGER: Mr. President, with all due respect, this is a motion filed pursuant to Rule XI which deals with altering the rules. It is not a motion to discharge. It is a motion to alter the rules because the rules currently prohibit a motion to discharge at this time in the Senate.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Therefore -

ACTING PRESIDENT KUHL: Senator Dollinger, you are out of order at this point. You have not raised any issue at this point. You asked a moment -- just a sense of inquiry. I gave you my interpretation of the rules at that point. There has been no ruling, official ruling, so you are out of order.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: We do have some other -- we're doing motions and resolutions. We do have some other things at the desk to do. Now, if you want to raise a point of order, you want to issue the point of order, I'll make a ruling on the point of order, and then you can challenge that if you'd like to do that, but essentially you are out of order at this moment.

SENATOR DOLLINGER: I -- I appreciate that, Mr. President.

SENATOR PATERSON: Mr. President.

SENATOR DOLLINGER: I raise a

point of order.

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

SENATOR PATERSON: Mr. President, I'm rising on a point of order to ask for a ruling of the Chair so that we can have clarification on this particular issue.

What I first would like is an explanation from you. The motion that Senator Dollinger is making, as I would understand it, is not a motion to discharge.

ACTING PRESIDENT KUHL: Senator Paterson, can I interrupt you for just a moment?

SENATOR PATERSON: Sure.

ACTING PRESIDENT KUHL: I think I can shortcut this whole process by a long period of time. If we can take up the substitutions and complete the housekeeping and then, if you would like to take up Senator Dollinger's motion, we'll do it that way. Is that acceptable to you?

SENATOR DOLLINGER: That's fine.

SENATOR PATERSON: That's fine.

ACTING PRESIDENT KUHL: O.K., fine. There are some substitutions at the desk, Senator Bruno. I'll ask the Secretary to read if that's O.K. with you.

SENATOR BRUNO: Fine.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: On page 5, Senator Rath moves to discharge from the Committee on Rules Assembly Bill Number 7755 and substitute it for the identical Calendar Number 160.

On page 39, Senator Libous moves to discharge from the Committee on Mental Health and Developmental Disabilities Assembly Bill Number 2788 and substitute it for the identical Calendar Number 1282.

On page 40, Senator Levy moves to discharge from the Committee on Investigations Assembly Bill Number 5975 and substitute it for the identical Calendar Number 1284.

On page 41, Senator Gonzalez

moves to discharge from the Committee on Rules Assembly Bill Number 3411 and substitute it for the identical Calendar Number 1291.

ACTING PRESIDENT KUHL: Substitutions are ordered.

The Chair would recognize Senator Dollinger for presentation of his motion to discharge -- excuse me, motion to alter the rules.

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

ACTING PRESIDENT KUHL: Relating to the date of discharge.

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

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: This is a motion to alter the rules to allow a motion to discharge the ban on assault weapons which passed the state Assembly.

Mr. President, I think that the rationale for this motion ought to be obvious to

most of the members of this chamber. This is an opportunity for this body, the state Senate, to be heard on an issue that is of vital importance to the people of our state. It's simply to be heard on the issue of assault -- banning assault weapons, restricting access to high numbers -

SENATOR VELELLA: Mr. President, a point of order.

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

SENATOR VELELLA: A point of order. Are we on a procedural motion, or are we discussing a substantive issue? If the Senator is raising a procedural issue, I think we ought to stick to discussing the procedures that the members will have to vote upon and not getting to a substantive discussion of a particular issue.

I'd like a ruling from the Chair as to whether or not discussing particular issues is in order or whether or not the Senator should keep his remarked confined to the procedural motion that he's making.

ACTING PRESIDENT KUHL: Senator Velella, you are correct in that the motion before the house being made by Senator Dollinger is a motion to amend the rules. It's being done for a specific purpose, and debate should contain itself around that motion. You are correct, and I hope that the other members of the chamber, Majority and Minority, will keep that in mind as we discuss the bill. Senator Dollinger, the floor is yours.

SENATOR DOLLINGER: Mr. President, I -

ACTING PRESIDENT KUHL: The floor is yours.

SENATOR DOLLINGER: Right. I appreciate that direction. I think that's appropriate.

In order to convince my colleagues that we ought to alter the rules, we have to at least a take peek at what altering the rules would get this chamber and get the people of the state of New York; so in order to be able to make an argument that we ought to

change our procedures, I believe that we have to provide a justification for changing those, and we can't do that unless we look around the corner to see what the ban on assault weapons would do.

It's already passed the Assembly. It can become law within the next five or six days if it passes this chamber today because the Governor of this state has indicated he supports a ban on assault weapons. He's also indicated that the state Assembly supports it; the Attorney General supports it. There's almost unanimous support for it in this state.

What does this ban do? What would this ban do? This ban would restrict access to clips on weapons that could rapid fire weapons.

SENATOR BRUNO: Mr. President.

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

SENATOR BRUNO: Forgive the interruption, but are we on a procedural motion? Is that what is before us?

ACTING PRESIDENT KUHL: Yes.

SENATOR BRUNO: And are we now discussing the merits of some specific piece of legislation and, if so, isn't that out of order?

SENATOR DOLLINGER: Mr. President.

SENATOR BRUNO: If the discussion centers around changing the procedures let's talk about the justification of changing the procedures, and, if that holds, then we will discuss the specific issue.

SENATOR DOLLINGER: Mr. President, with all due respect to the Majority Leader, it seems to me the issue is what is the argument in favor of altering the rules under Rule XI. Why should we do this? Why should we change our procedures, The rules of this Senate, why should we alter them under Rule XI?

I believe, Mr. President, I'm entitled to argue that there's a substantive basis for doing that and that there's an imperative for doing that and that is the opportunity before the end of this session to accomplish something we have never accomplished

before in this state, and that's restricting access to violent weapons, Mr. President.

I believe that there is a nexus between arguing for a ban on assault weapons and at least these style clips that are banned under this bill -

SENATOR SKELOS: Mr. President.

SENATOR DOLLINGER: -- and convincing my colleagues that we ought to alter our rules in order to be able to discuss this.

ACTING PRESIDENT KUHL: Senator Dollinger, excuse me just a moment. Senator Skelos, why do you rise?

SENATOR SKELOS: Mr. President, I think a point of order has been raised as to whether this is a procedural motion or a discussion on the merits of a bill that is not before the house, and that Senator Dollinger neglected to make the motion in a timely fashion and now he's looking to disrupt and change all the rules of the Senate which have been adopted by this body just to suit his political needs at this time.

Now, we are trying to run an orderly house. We are trying to close session this Thursday. If Senator Dollinger had been diligent and made his motion in a timely fashion rather than trying to grandstand politically at the close of session, the motion would have been heard in a timely fashion and decided.

So at this time, I would ask that he be ruled out of order if he continues to talk on the merits of a bill that he neglected to make a motion on or just continue to speak on the procedural motion of whether the rules should be amended.

ACTING PRESIDENT KUHL: Senator Paterson, I assume you'd like to be heard on the point of order?

SENATOR PATERSON: Me, yeah. Mr. President -- Mr. President, a point of order. It's my understanding that Senator Dollinger filed his motion last Friday and gave the requisite one-day notice that the Senate rules provide for the -- to move to change the Senate rules. Is that not correct?

SENATOR BRUNO: Not the information we have. That is not the information that we have, Mr. President. The information that I have is that this request was filed after the closure date, and you had all session to file, and why would we be waiting until this moment as we are trying to close down?

My counsels tell me that this is on the floor after the date that we had established and everyone else here knew the dated, related to the date and has abided by the date.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, would you like to be heard on Senator Skelos' -

SENATOR PATERSON: Mr. President, I would like -- I -- what we're doing is that we're looking at this whole issue with a sort of anachronism guiding the whole principle. This is the way we agreed upon the process earlier in the session. The budget process would end on

April 1st. Then on April 11th, the second Tuesday in April, that was the deadline for the file of motions; but what happened, and I think that this body has to be sensitive to what actually occurred, is that the second Tuesday in April passed while we were still in budget negotiations. So here we passed the budget on June the 8th, and once the budget was passed, Senator Dollinger immediately puts in his motion on June the 9th, which is one day, far short of what would normally be 11 days, and what I'm saying is, he filed it Friday. He gave notice on the floor. I was here. I heard him. It's in the Senate record. He gave notice on yesterday, and so even with our desire to close on Thursday -- and this is in no way attempting to thwart the effort of the Majority Leader, who has made it very plain -- and we hear him - that he wants to close business on Thursday, but the fact remains that this session has in many ways been altered by the late budget and, though we may have had a late budget, I know, Mr. President, that we would not want the residents

of the state of New York to feel that we did not conduct business in a proper way and that we did not address issues that some members might feel are critical; and so, without any discussion on what the issue is, here's an attempt by a member who feels that an issue has raised itself to a threshold that it needs immediate government action, who wants to change the rules under Rule XI such that we might now take up his motion to discharge this bill from committee. I don't know whether or not you would agree with that, but I don't think it is right to say that that kind of a motion is out of order.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, do you want to be heard on the motion to discharge, the point of order?

SENATOR GOLD: Yes, I do.

I won't repeat what's been said by Senator Paterson, because I think he's accurate, but I want to make a point.

We understand what's happening here, and the Majority will leave today saying

that we had a procedural motion, and people who are thinking people will understand that, if you really want gun control in this state, you have to support this.

But Senator Skelos, I'm upset for two reasons: Number one, I can understand that you've got political baggage to carry and that I respect. I don't respect the fact that there's a game that goes on here and, if Senator Dollinger has the guts to bring to the fore certain issues, that's no excuse for freshness and some of the remarks that are made on this floor to Senator Dollinger, nobody would have the nerve to say to anybody else, and I think we ought to cut it out.

Senator Dollinger doesn't need political games. He is very well respected in his district, and he earned that, so the snide remarks that are made are, in my opinion, very much out of order.

Now, as far as the orderly issue, Senator Bruno, I am thrilled that we start on time, and you know that. You and I have

discussed that for years, and it's very important.

SENATOR DeFRANCISCO: Mr. President.

ACTING PRESIDENT KUHL: Senator DeFrancisco, why -

SENATOR GOLD: I won't yield right now, sir.

ACTING PRESIDENT KUHL: Well, are you -

SENATOR GOLD: Now, there are certain things -

ACTING PRESIDENT KUHL: Senator Gold, excuse me just a minute. Are you asking Senator Gold to yield, Senator?

SENATOR DeFRANCISCO: Yes, I am; I requested Senator Gold to yield.

SENATOR GOLD: And I said I would yield in a minute.

ACTING PRESIDENT KUHL: And Senator refuses. O.K. Senator Gold.

SENATOR GOLD: What's more important here is that we do have rules, Senator

Bruno, and we do have order, and I'm all for that but when you, Senator Bruno, take it upon yourself to have the Rules Committee take over this place and knock out the committees, because we have to end, well, you do it, people don't scream. You look at the rules and theoretically we have committees and they can work all year long, and the Constitution, Senator Bruno, says that every member on your side and on my side are entitled to three days to consider bills. They're got to be here printed and on our desks for three days, but emergencies come up and things happen. Things happen, and so the Constitution says we can change those three days.

Well, as Senator Paterson very, very well pointed out, things happen. The budget was late this year. Maybe, if we had elected a Republican governor, it would have come in on time, that's what they promised us, but the budget was late, and so we're now trying to bring it down; but there are things that we must deal with, and I -- and I don't understand

your side of the aisle, Senator Bruno.

If you do not believe in this bill that we are trying to waive the rules to consider, I would imagine you're proud of that, that you believe the NRA, and you believe all the people who think that you can not go hunting without major assault weapons, and you can't bring up a child in a healthy atmosphere unless the kid learns how to use an AK-47. Be proud of it and say, My gosh, they called it a procedural motion, but I would have voted against it any way. Don't hide behind it.

I mean, Senator Dollinger has my respect. Why? Because he looks you in the eye and tells you what he believes. He's not ashamed to look at the NRA or anybody else and say, We need this bill in New York and that's why I'm going to make the motion, and I think, Senator Bruno, in closing, there's an issue here.

Is an orderly house worth people dying for? You know, I think it's amazing all the time. We have put in money and programs and

I saw the New York Times, read about one program I put in, 15,000 to help kids to wear helmets and not hurt themselves on bicycles and the program has -- has worked three-fold, and they -- they may question it. Of course, if you had a kid that was in a well and the television was there, we can spend millions to get 'em out because we got a media event.

Well, we better get our priorities in order, all right? I understand the rules, Senator Bruno, and I respect your respect for the rules, but if passing this bill saves lives, to heck with the rules. We can change them for one event and, if we're going to change them for any one event, Senator Dollinger has picked the right one.

And in closing, Mr. President, I would remind you of something you know very, very well and have respected. Speech in this house has never been an issue of relevance. If I'm speaking on a motion or if I'm speaking on a bill and I can convince somebody to go with me by using an analogy, by reading a fairy tale, by

referring to the minutes or referring to the bill or a different bill, I'm allowed to do that. That's my method of argumentation and if you were to rule that Senator Dollinger is out of order because of his speech -- remember, that's what we're talking about here -- you keep saying, Well, is this your motion; is your motion this, or is your motion that.

It is clear that his motion is to suspend the rules or change the rules but, if you rule against his speech, Senator Kuhl, which I know you won't do, it will be the first time in the history of this chamber, the distinguished history of this chamber, that any presiding officer has tried to limit the right of speech of a member.

ACTING PRESIDENT KUHL: Senator DeFrancisco, you want to rise on the -

SENATOR DeFRANCISCO: Will Senator yield now?

SENATOR GOLD: Yes.

SENATOR DeFRANCISCO: Senator, this is a little out of context because I rose

at the time the statement was made, but since you were so offended by the comment by Senator Skelos that characterized it as being snide, to the effect that Senator Skelos called Senator Dollinger's actions today political grandstanding, I wonder, could you tell me how you'd distinguish that snide remark, as characterized by you, by the remark you made to Senator Skelos of the political baggage that you know he has to carry on this issue? Is there some distinction that I'm missing?

SENATOR GOLD: Yes. I -- my - my children, Senator, refer to it as AAOTP, alive and on the planet. If you're alive and on the planet, you know when somebody is being snide. You know when somebody is being crass to somebody else. You know when somebody has a job to do.

I respect very much the fact that Senator Skelos has risen to the position he's risen in, and he does a very good job, but there are lines to cross and we know when somebody crosses it and when they don't and, Senator,

you're smart enough from Syracuse to know where that line should be drawn also.

SENATOR DeFRANCISCO: You're smart enough from wherever you're from to recognize that calling -

SENATOR GOLD: Not as smart as you.

SENATOR DeFRANCISCO: -- calling Senator -- saying that Senator Skelos' political baggage and that's the reason for his remark, and you don't see the distinction -- you don't say there's a distinction between those two comments.

SENATOR GOLD: Yes, because when I look at Senator Skelos in the eye, sir, and I make that comment, I say it with respect and not to degrade him. The comments he made to Senator Dollinger -- (Laughter) (Oooooh!)

SENATOR GOLD: Well, I guess the agreement of that side proves my point.

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

SENATOR DOLLINGER: Procedurally,

are we still on the point of order? Do I have the floor, Mr. President?

ACTING PRESIDENT KUHL: No, there's a slight issue to be resolved prior to your re-taking the floor. There was a point of order made by Senator Skelos relative to whether this was procedural or whether or not -- I'm attempting in a discussion with counsel to resolve that, at the same time listening to debate, so if you want to talk on the point of order, you're free to talk on the point of order as to why I should not uphold Senator Skelos' point of order.

SENATOR DOLLINGER: What I need to know is a clarification of Senator Skelos' point of order. As I understood it, the only issue raised by the point of order was whether or not the discussion should be limited to the imperative of altering the rules or whether it could be related to the substance of the bill.

My understanding, Mr. President, is that, because of the linkage, because of trying to convince my colleagues of the need to

alter the rules, the imperative to alter the rules lies in putting this issue forward on the floor, having it voted on and hopefully having it passed.

And so, Mr. President, I'm willing to refrain until there's a decision from the Chair, but I -- I look at these things as linked. I don't know how I could convince you to alter the rules if I couldn't talk about why we should alter them.

Why should we alter them? The answer is to pass this bill because of what it does, not what's behind it.

ACTING PRESIDENT KUHL: Senator Dollinger, if I might, O.K.?

A point of issue or point of order was raised by Senator Skelos as to what type of a motion this was, and it's clearly in your notice of motion, a motion to amend, as you have it -- a motion to alter the rules.

Now, the Majority Leader has consented in taking this out of order. I hope you keep that in mind, that normally this type

of a motion would be taken up, under our rules of our house, at the end of the day as Item Number 10 in the listing in the rules, and so we're taking it out of order.

I would agree that, in fact, this is a procedural motion, but I find nothing in the rules that is limiting, as Senator Gold has indicated, any debate. So while the issue is raised by Senator Skelos that this is a proced ural motion, truly is a procedural motion, and while there has been some question as to whether or not technically the motion is before the desk properly today because you never filed the resolution amending the rules which is part of what our process is, again the Majority Leader is saying he's willing to let you voice your - your motion.

So you now have the floor to essentially debate the question as to whether or not the rules of this house should be altered, in your words, or amended in the rules -- in the words of the rules of the house.

SENATOR DOLLINGER: Thank you,

Mr. President. Thank the Majority Leader for your courtesy.

ACTING PRESIDENT KUHL: Senator Dollinger, on the motion.

SENATOR DOLLINGER: This bill which I seek to bring before the house through the alteration of our rules, will allow this state to step forward on the issue of assault weapons.

I'd simply read a short letter from another man that perhaps some people know as to why we ought to alter the rules today. It says: "Senator Dollinger, I'm sorry I could not be in Albany today as you attempt to move the assault weapons ban to the floor of the Senate. I sincerely hope that your colleagues will allow this important legislation to be heard.

"Sensible gun laws work. After President Bush banned the importation of assault rifles in 1989, their use in crime dropped 45 percent. In just a few short months since passage of the domestic assault weapon ban we have already seen dramatic increases in the

price of assault weapons and large capacity clips. The supply is dwindling, and we are getting these weapons of war off our streets.

"But make no mistake, the federal assault weapons ban is on the table in Congress. Poll after poll shows that 80 percent of the American public supports this ban. The same is true in New York. The NRA and increasingly radical special interest groups want to kill the ban, and the leadership in Congress says they're going to accommodate them. Every major national law enforcement organization in the country supported the federal ban on these 'cop killer' weapons. Remember, it is your police officers, not the NRA who face the daily risk of looking down the barrel of an Uzi or an AK-47. I can't understand any elected official who would rather stand with the militant gun lobby than our men and women in blue.

"I hope that the New York State Senate will stand up for the extremists in the gun lobby and support a state assault weapons

ban. The people and police officers in your state will be better off." Signed: James S. Brady, a man who gave this country a law called the Brady Law that restricts access to weapons.

This bill and consideration by this floor is long overdue. 80 percent of the people in this state, every poll knows that that's what it shows about assault weapons. I'd point out that the Republican Party in this state has taken a position in favor of banning assault weapons. The Republican Congressional Delegation in New York State, including the entire Long Island delegation, voted by an 8 to 6 margin in favor of the federal ban on assault weapons. The Republican Party and its leadership, its Congressional leadership in this state, has stood behind the concept of banning assault weapons.

Keep in mind, none of those Republican Congressional people lost in a primary. There will be no job loss in New York. We don't manufacture these weapons in New York. They're manufactured other places. Our

children's lives and the children of people like two constituents of mine at the corner of Ferndale, Crescent and Goodman Street in Rochester gave their lives in an assault weapon blitz.

SENATOR VELELLA: Mr. President, a point of order. I believe the Chair -

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

SENATOR VELELLA: I believe the Chair has been very liberal and very considerate of Senator Dollinger's request that, in discussing a procedural motion, he be allowed to allude to, to make reference to, and to briefly discuss the reason behind that. I don't believe that he has political motivations. I think that he and the word "Republican Party", Republican leadership, Republican this, Republican that, certainly he would never do that in a bill -- in a motion that he's discussing before the house.

However, I think he's gone beyond the bounds of what the Chair has allowed and I think he's totally out of order now in getting

over -- getting into a meritorious discussion of a bill that procedurally is not before the house.

I -- I don't think this is the Assembly where we -- where we just disregard motions to discharge as the Speaker had tried to do. This house allows people a procedure. They allow them to have the opportunity to speak. You have very liberally -- I might have ruled differently if I was on the Chair -- very, very liberally allowed him to make allusions to the merits of the bill he wants to speak about, but this is a discussion to be brought before the Senate on whether or not we should change our rules. He's given us the reason. You've given him that opportunity. We know what he wants to do. Now, let's talk about whether or not we should be changing our rules, and I would ask the Chair to please rule Senator Dollinger out of order if he continues to go along and discuss the merits of a bill that is not before the house.

The issue is, do we change our

rules or not, not the merits of a piece of legislation that he wishes to discuss.

ACTING PRESIDENT KUHL: Senator Dollinger, you want to be heard on this point of order?

SENATOR DOLLINGER: Yes, I do, Mr. President.

There can't be any better reason, as Senator Gold said, to do this bill today, to alter the rules and to allow this motion -

SENATOR VELELLA: You can't move the bill today, Senator.

SENATOR DOLLINGER: No, I'm arguing that we should.

SENATOR VELELLA: There is no way to do it.

(Talking over exchange between Senator Dollinger and Senator Velella.)

ACTING PRESIDENT KUHL: Gentlemen! Gentlemen! Gentlemen! (Gaveling) I hate to break a historic thing here, but you're out of order. Let's get some order in this chamber. This is not indicative of the New York

State Senate, and it's not very complimentary to either one of you two.

Now, let's control this. Senator Velella, contain yourself, please. Senator Dollinger, you had the floor.

SENATOR DOLLINGER: Thank you, Mr. President.

I will apologize to the President for my comments to Senator Velella. I regret them.

I, however -- I still believe, Mr. President, that this alteration of the rules is necessary today, now, because that's the only way, as Senator Gold said, we can achieve the goal that this bill will achieve, to alter the rules, allow the motion to discharge to come forward, allow this bill to be put on the floor so that we can stop the killing. It's that simple.

That's the point. That's the point of everything I wanted to say. I could talk for 20 minutes on this. I'll avoid that, Senator, but don't forget for a second that what

I'm arguing for is that we save people's lives, that this little piece of paper, this little piece of paper, this little piece of paper can be better than any bullet-proof vest we can buy because we can save policemen's lives; we can save the lives of kids, might even save the lives of the two kids that died at the corner of Ferndale, Crescent and Goodman Street. That's why we ought to do it today.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the motion.

SENATOR OPPENHEIMER: A point of order.

ACTING PRESIDENT KUHL: There's already one point of order on the floor. Would you like to be heard on that?

SENATOR OPPENHEIMER: O.K.

ACTING PRESIDENT KUHL: Speak quietly. My stick is a little short here. Senator Oppenheimer -

SENATOR OPPENHEIMER: This always happens when I step up.

ACTING PRESIDENT KUHL: -- on a

point of order.

SENATOR OPPENHEIMER: I always speak softly. I'm not touching that.

Mr. President, my question is, you said that under Point 10 in our agenda, at the end of the day, that that would be the proper time for us to be entertaining this - this motion. Is that indeed the position, Mr. President, that at the end of the day this motion can be handled without altering rules and creating the current situation? Can this be heard at the end of the day?

ACTING PRESIDENT KUHL: Normally, Senator, that's when it would be heard, but the Majority Leader consented that this motion to amend the rules of the house be taken out of order, so we are procedurally out of order on this particular motion, and there is an opportunity, obviously, and a willingness to accommodate Senator Dollinger's motion.

Anybody else -- Senator Paterson wanting to be heard on the point of order?

SENATOR PATERSON: Mr. President,

regardless of the -- the issue, it was certainly benevolent of the Majority Leader to take up this issue at this particular time, but just a point of clarification. We were at the point in the calendar where we had passed presentation of petitions, messages from the Governor, messages from the Assembly, reports of standing committees, reports of select committees, reports from state officers, and we were at motions and resolutions.

By the way, Mr. President, if your stick is too short, I can take your place if you really want me to. But the point is that, why is this discussion being taken out of order? Motions and resolutions, that's when I think it would be -- when it would occur.

ACTING PRESIDENT KUHL: Is that a question of the Chair, Senator Paterson?

SENATOR PATERSON: Yes, that's a question.

ACTING PRESIDENT KUHL: Well, if you look at the rules, I don't think it's really germane necessarily to this point of order, but

if you look at the rules -

SENATOR PATERSON: Number 10, that pertains to motions to discharge and amendments to the rules, that's where you -

ACTING PRESIDENT KUHL: Senator Paterson, I'm looking at Rule V, page 7, of the rules, subsection (2) under Item 10. It reads specifically: "Motions to discharge and to amend the rules." Now, item 10 comes after motions and resolutions, after the calendar and after special orders. I just simply mentioned that to kind of point out to the chamber that in fact there's being an accommodation here, but it has nothing to do with the point of order.

I'm ready to rule on the point of order.

SENATOR PATERSON: All right.

ACTING PRESIDENT KUHL: I'm ready to rule on the point of order.

SENATOR PATERSON: O.K. Point well taken, Mr. President, and it also answers my question.

ACTING PRESIDENT KUHL: Thank

you, Senator Paterson.

The Chair at this time would rule that, in fact, the point of order raised by Senator Velella is certainly well taken in that this is a procedural motion, but there is nothing in the rules of the house that would limit the debate on that particular ruling so, if Senator Dollinger wishes to raise what he perceives to be the reason why there needs to be an alteration of the Senate rules, then, in fact he's entirely within the rules of the Senate.

So the Senate would rule that the point of order as raised by Senator Velella is actually out of order and that, Senator Dollinger, you now have the floor.

SENATOR DOLLINGER: Thank you, Mr. President.

I had intended to talk at some length about this and, frankly, the discussion to this point has suggested to me that I should -- should shorten what I was going to say.

The debate about this issue and why we should debate it today, why it's so

important, it seems to me, comes down to something elemental, and that is people are dying. These weapons are being used.

SENATOR VELELLA: Mr. President.

ACTING PRESIDENT KUHL: Excuse me, Senator Dollinger. Senator Velella, why do you rise?

SENATOR VELELLA: Mr. President, I appeal the ruling of the Chair.

ACTING PRESIDENT KUHL: You're absolutely entitle to do that, Senator Velella. Excuse me, Senator Dollinger, while we deal with an appeal of a ruling of the Chair based upon the point of order that was raised by Senator Velella.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, would Senator Velella yield for a question? Would Senator -- Well, I might ask Senator Velella to yield for a question, but I don't understand -- would he explain his appeal of the rules? In other words he just appealed them. I

just wanted to know why.

ACTING PRESIDENT KUHL: Senator Velella.

SENATOR VELELLA: Because the Chair erred in its ruling, Senator, and I'd like the full body to make that decision.

SENATOR PATERSON: That's my point, Senator. I would like you to yield for a question and explain to you why you would like the Chair's ruling to be overturned.

SENATOR VELELLA: Senator, I believe, when I stated my objection originally and my point of order, I believe that Senator Dollinger was out of order in going into the discussion on the merits of a particular piece of legislation when he was making a procedural motion to change the rules of this house which ultimately would apply to all bills, not to any one particular bill.

The Chair ruled at one point that he had the opportunity to make some allusion to the bill that was motivating this, which he did, but I believe he has gone far beyond what was

necessary to explain to the house and has violated the rules, and I believe when the Chair upheld him that they were out -- that they were incorrect, and I'd appeal the ruling of the Chair.

ACTING PRESIDENT KUHL: The question is on the -

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: If the Senator would continue to yield for a moment.

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

SENATOR PATERSON: He has nothing to discuss?

SENATOR VELELLA: Call the question.

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

SENATOR BRUNO: Mr. President, can we call the question?

ACTING PRESIDENT KUHL: You can,

Senator Bruno. The question is called.

SENATOR GOLD: Mr. President.

SENATOR ABATE: Mr. President.

ACTING PRESIDENT KUHL: Let us call the question first, Senator Gold. The question is the appeal of the ruling of the Chair. A -- a -- yes, Senator Paterson.

SENATOR PATERSON: There's nothing in our rules that says that I can't debate Senator Velella's attempt to overturn the ruling of the Chair, is there, and if that being -- I mean, perhaps Senator Velella doesn't want to discuss it, but it doesn't mean that it can't be discussed in the house, and what I'm saying is that Senator Velella just got up and he said that it was all right for Senator Dollinger to start talking but then at a certain point it was unnecessary for him to go as far as he went in his conversation, and I think that would relate back to what Senator Gold so eloquently pointed out just a little while ago. We can not allow our subjective determinations of what people say to govern our practice of rules. Then, as a

Senate, we're really going to bring ourselves down as much as the contention discussion that you rightfully relieved us of a little while ago. In other words, we can't stop people from talking because they don't like -- we don't like what they say.

Yes, Senator Dollinger did allow himself to get into a substantive discussion of why we should alter the rules, but that's what we're here for. That's what the Senate is for. I heard a discussion a couple months ago about how the budget was passed, and yet we were in negotiation and maybe I might not have liked that some of my colleagues on the other side did it, but they were perfectly entitled to. They're making their point to the public who is represented here and is listening to this discussion, and that's all Senator Dollinger is doing.

I think, to some extent, we get up sometimes when we deny that we are here to publicize some issues. I think it was President Woodrow Wilson who said that to publicize is

often as important as it is to legislate, and Senator Dollinger is challenging a rule to bring an issue to the floor.

I don't see that as something to run away from or something to actually pretend that is wrong. It's absolutely right. One day, if we ever pass this bill that Senator Dollinger is interested in, I'd like to point out, Mr. President, at no point have I discussed what the bill was, that at one point when that bill is passed, they will point to the fact that he raised it at a time when there was a procedural issue, and so what I'm saying is I can understand that Senator Velella does not feel that he should have gone into the -- the actual substance of legislation as much as he did, but that's a subjective determination that he is making. The Chair allowed him to speak. This is America. This is not Bosnia. He has a right to say what he wants to say, and I think we're going too far in this discussion.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT KUHL: Senator

Bruno.

SENATOR BRUNO: Mr. President, I appreciate Senator Paterson lecturing us here in this chamber on how we should function and how we should operate, and I want to just remind Senator Paterson, as he leads the Minority presently, that without rules, without established procedures, you have chaos and we have witnessed the chaotic 20 minutes in an attempt of Senator Dollinger and the Minority to prove a point that, if they don't get their way, that they can disrupt the proceedings of the Senate.

Well, we are well aware that you can be disruptive. It's not good government to just plain be disruptive. Somewhat childish to stomp around and act in an unbecoming way because we don't get our way. When you have rules and you deal with children, when you establish rules, you have procedures -

SENATOR PATERSON: Mr. President.

SENATOR BRUNO: I will not yield,

Mr. President.

-- many times when people would like to do as they please whether they're children or adults, they have to relate to an order, to a discipline. Some of us don't like the rules and the regulations and the laws, but we obey them. We have rules in this Senate. We agreed on those rules. We agreed on those procedures, and it serves no becoming purpose to try and be disruptive because you don't get your way, and when this statement was made that you're being political and that you are grandstanding, that's exactly what is happening in this chamber this morning, and I am sorry, Mr. President, if the good Senator doesn't like it, but people have a right to voice their opinions just as well and as much as you have a right to be disruptive in the chamber to get your way.

You will not be disruptive. This chamber will operate in an orderly procedural way established by this Majority and, Mr. President, this Majority's elected by the people

of this state, and this Majority elects a leader and the leader will manage the affairs of the Senate and, if any person wants to be disruptive, they can to the best of their ability, but the Chair has an obligation to rule, keep order, and I don't know whether you have a new gavel or not, but I think you're going to need it? Do you?

ACTING PRESIDENT KUHL: Good, a bigger and stronger one, Senator Bruno.

SENATOR BRUNO: Good, bigger stronger. That is -- it looks like it can do the job.

We have a long day before us, Mr. President. We want to get on with the people's business. We are not going to be intimidated. We are not going to be bludgeoned into doing other than following the rules of this Senate that we established together.

So I would ask my colleagues in this chamber if you would like to conclude this session in the dignified orderly way that we have been proceeding since we went into session

in January, I would ask your cooperation in that on both sides of the aisle.

Thank you.

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

SENATOR ABATE: Yes, I'd like to speak on the motion. Yes, Senator Paterson. Would you yield?

SENATOR PATERSON: Yes.

ACTING PRESIDENT KUHL: Senator Abate. I didn't hear that discussion. Senator Paterson, did you want to be recognized also?

SENATOR PATERSON: Yes, I did, Mr. President, because the remarks of the Majority Leader were made to me, and I would like, as a high point of personal privilege, to respond to them.

I don't know that anything -

ACTING PRESIDENT KUHL: Senator Paterson, could we take up -- the Senate Majority Leader has called the question. I'd like to get to the question of sustaining the Chair on the point of order that Senator Velella

raised. After that, we can come back.

SENATOR PATERSON: Mr. President, but the Majority Leader made some remarks about my conduct and my behavior, and I don't know how we can call the question since he was speaking on the motion until I get a chance to respond, and in response, I -- I resent my behavior being described as childish, and I don't think that any action that I have taken on this floor is in any way callow or puerile or in any event in contravention to the desire of the Majority Leader to end this session by June 8.

Disruptive would be abusing the right of speech; it would be interrupting when others are speaking. It would be not listening to the directive of the Chair. That's what I think abusive and childish behavior would be. What I'm saying is that I have been trying to point out that the rules of the Senate provide for the kind of motion that Senator Dollinger made. He wanted to amend the rules to bring forth a motion to discharge.

Now, no, I don't like the fact

that Senator Dollinger's motion is probably going to fail but, if Senator Dollinger had finished speaking on his motion and we'd called the question, we would be in some other procedure right now, probably passing some legislation. But the reason Senator Dollinger never got to the end of his conversation is because he was challenged on the substance of what he was talking about and that, in my opinion, is in no way something that needs to be raised or to critique one's colleagues as being childish or immature. He had a right to speak on his motion as we have always allowed in the Senate, and Senator Gold pointed that out a little while ago.

Senator Gold said that this would be the first time in the history of this chamber that anyone had ever been, in a sense, usurped from continuing because someone didn't like what they were saying, and then -

SENATOR VELELLA: Mr. President, may I interrupt for a moment? I withdraw my -- I withdraw my motion to appeal the ruling of the

Chair.

ACTING PRESIDENT KUHL: All right. Call is withdrawn. The motion to appeal the ruling of the Chair is withdrawn. We're now on debate on the actual motion itself to alter the rules of the Senate.

Senator Abate.

SENATOR ABATE: I think we have to put politics aside today, and I know it's very difficult, and I agree with the Majority Leader who said -- would you prefer -

SENATOR CONNOR: Yes.

SENATOR ABATE: Yes, I will explain my vote during the roll call.

ACTING PRESIDENT KUHL: The motion before the house is a motion to alter the rules of the Senate relative to the deadline date for the filing of discharge motions. A vote in favor will be for altering the rules of the house. A vote against will be a vote not in favor of altering the current rules of the house.

Senator Paterson.

SENATOR PATERSON: Mr. President, I would -- and thank you, Mr. President. I think you have tried to be fair to both sides in this discussion. We would like -- we would like a slow roll call on this.

ACTING PRESIDENT KUHL: Are there five Senators -- there are five Senators requesting. Secretary will call the roll slowly.

THE SECRETARY: Senator Abate.

SENATOR ABATE: Yes, I'd like to explain my vote.

ACTING PRESIDENT KUHL: Senator Abate to explain her vote.

SENATOR ABATE: Yes, clearly we all in this chamber agree with Senator Bruno that this is a body of great tradition and great rules, and I would say 99 percent of the year we honor those rules, but I believe there's an old expression that exceptions prove the rules, and there are times that public debate or maybe public catastrophe or the public will mandate that we not just be driven by formula and rules,

and I suspect if the public were here today, the communities we represent and serve, if they heard this debate and the minutes we have wasted talking about rules and whether they should be broken and traditions and chaos and whether we have the authority to amend the rules, they would say, how silly we are.

Shouldn't there be a public debate around an issue so critical, around saving lives and banning assault weapons?

So I believe it's our responsibility as leaders today, whether you believe in the ban on assault weapons or not, that we have a public debate and we support amending the rules. I think if we look at this issue dispassionately, the public will demand of us, will demand of us, because it's in extraordinary times, if there was an Oklahoma City that occurred and we needed to take -- make some measure around anti-terrorism, do you think the public would allow us to say the rules won't allow public debate? We have no time to legislate public safety.

I believe this is an issue of the same kind of import. It deals with safety of our children; it deals with safety of our law enforcement. This is the time to air these issues. The public demands that we do so.

I vote yes.

ACTING PRESIDENT KUHL: Senator Abate will be recorded in the affirmative. Secretary continue to call the roll slowly.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

SENATOR BRUNO: No.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Aye.

THE SECRETARY: Senator Cook.

SENATOR COOK: No.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: No.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: No.

THE SECRETARY: Senator Dollinger.

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

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Since I have something to do with the matter before the house and I guess the procedural posture in which it's located.

Mr. President, I, as a lawyer and as an elected official, I have great respect for rules. There are a whole bunch of them I don't like, but nonetheless I believe it's my job to respect those rules and to follow them when my conscience tells me that it's the right thing to do and when my view of society and my role in it tells me what I ought to do.

But I also believe, I guess, like a whole bunch of American thinkers in the past, be they Henry David Thoreau or Martin Luther King and others, that sometimes when the rules don't do what both your conscience tells you you

should do and what you think is the right thing to do for the public, at that point the rules seem to have minor significance and it becomes more important to get the substance and to make sure that you do the right thing.

We've talked a lot about the will of the majority. I don't think there's any doubt in this state that the will of the majority, if we could pack all of those 17-1/2 million people in this room and said, How many of you want to vote to suspend the rules of the Senate to allow a motion to discharge so that the consequence of that is that all your elected officials would have an opportunity to pass a ban on assault weapons, my guests 12 or 13 million hands would go up. That's the majority that we're ultimately responsible for.

I'll close with just one thought. I'm not used to getting my way in this chamber. I don't think I've ever gotten my way in this chamber, but I dislike it when someone says that I'm disruptive and childish, that I'm being political and grandstanding because for

once I don't want to get my way, I want to get something that will benefit the people of this state. I think that's worth challenging rules. I think it's worth challenging authority. I think of it's worth making every attempt to make sure that the people's will rules.

That's why I did this.

ACTING PRESIDENT KUHL: Senator Dollinger in the affirmative?

SENATOR DOLLINGER: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger will be recorded in the affirmative. Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: No.

THE SECRETARY: Senator Galiber.

(There was no response.)

Senator Gold.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, to explain his vote.

SENATOR GOLD: Mr. President. Mr. President, I first of all want to congratulate you because I did think that anyone that sits in that Chair must take that responsibility very seriously, and I think in the rulings you've had to make today you have taken it seriously and, as one little old Democrat to a Republican, I want to tell you that I appreciate the fact that the Constitution means something to you. To some, it means something else.

But the importance of this motion is that we follow the rules, Senator Bruno, and in preparing rules which this side of the aisle may have made differently, you created a sane, logical mechanism to change the rules if we felt it necessary just as the three-day rule on bills can be overruled if it's necessary.

I think it's important that that language not only be part of our rules, Senator Bruno, but that we take it seriously and, while

the majority party in this house has always had that language in the rules, it's incredible - incredible that for 20 years or more, there's never been one little itsy-bitsy situation where the rules might be changed in order to bring an issue to the floor.

So I'm not going to discuss the merits of the bill involved, Senator Dollinger's bill. Those merits are overwhelming and they're clear. I'm going to discuss why I'm voting yes because the motion has merit.

The motion has merit because the rules provided by the Republicans anticipated because they're all honorable men and woman, anticipated that there would be this day and this day has come and, therefore, in voting for the motion to suspend the rules to air the bill, my vote in favor is a vote in favor of the dig nity of our rules and the dignity of this chamber.

I vote yes.

ACTING PRESIDENT KUHL: Senator Gold will be recorded in the affirmative.

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: No.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: No.

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Holland.

SENATOR HOLLAND: No.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: No.

THE SECRETARY: Senator Jones.

SENATOR JONES: Yes.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: No.
THE SECRETARY: Senator Lack.
SENATOR LACK: No.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: No.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: No.
THE SECRETARY: Senator Leichter.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: Nay.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: No.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: No.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

(There was no response.)

Senator Nanula.

SENATOR NANULA: Yes.

THE SECRETARY: Senator Nozzolio.

(There was no response.)

Senator Nozzolio.

SENATOR NOZZOLIO: No.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: To explain my vote.

ACTING PRESIDENT KUHL: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: In this house there are many rules and we in the minority have to live by them.

ACTING PRESIDENT KUHL: Excuse me, Senator Oppenheimer. Can we have a little order in the house please? It's very, very, very quiet. Let's make it very, very, very quiet. Thank you, Senator Oppenheimer.

Senator Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: As I was saying, there are many rules in this house that we, the Minority, live by and I think we live by them with a fair amount of equanimity, recognizing that we are the Minority.

There's the rule, though, that doesn't permit discussion on issues because we can't get those issues up on the floor. This is the rule I find most distressing in a democratic society. A lot of my constituents have said, Well, why can't you pull an issue up to the

floor so at least it can be discussed, because there are many issues, and I feel particularly strongly about this issue, because I'm a co-sponsor of the bill, but there are many issues that the people want to hear discussed, and if their legislator doesn't agree with their opinions, then they want to be able to have the opportunity to address those issues with their legislator, who knows, in listening to arguments may have some important points that they can make to us and they can perhaps cause us to change our votes.

On this particular issue which is before us on this bill, there are so many people that have supported this, including at some times our Attorney General, our Governor, perhaps 80 percent of the people in this state have spoken in support of this, and I believe this is the type of issue that must be brought to the floor at whatever cost.

I'm glad Senator Dollinger did it. I also want to commend our President who has acted in a very presidential manner and has

tried to weigh both issues and present them in as fair a manner as possible. But our law enforcement community wants this bill desperately, as does by far -- by far the vast majority of the people of this state, and this is something that we should be discussing and we shouldn't be running away from it.

I vote yes.

ACTING PRESIDENT KUHL: Senator Oppenheimer will be recorded in the affirmative.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, to explain his vote.

SENATOR PATERSON: Very briefly, I came to this chamber in 1986 and I cast a vote in the Health Committee, at the time I believe Senator Padavan was the chair, to allow the issue of parental consent for abortion to come

to the floor of the house.

I was somewhat pilloried and cajoled by pro-choice groups at that time forecasting that vote, even though I assured them that when the bill came to the house, I was going to vote against the bill. The reason I did that, and the way I've tried to follow in my career here, is the recognition that there are issues that I may not agree with but they really deserve attention on the floor of a high body such as the New York State Senate.

The assault weapons bill, which I have not commented on to this point, is, I think, one that really touches at the hearts of individuals -- tragedies such as the Long Island Rail Road incident and issues that are on people's minds and need to be discussed, and I think that's why Senator Dollinger tried to amend the rules today to afford us that opportunity.

I don't mean to lecture. I don't mean to condescend. I only mean to suggest that what we do around here to try to win our

political battles is fine, but we really don't need to engage in the personal acrimony. We're all just trying to serve our constituents. I think we recognize that, and I think that this was actually a good thing. It took an hour, but I think it was a well spent hour making sure that an individual had an opportunity to try to bring an issue that affects individuals all over the state to the floor of the Senate and, if it doesn't appear that he was going to succeed in his motion at least he can go home knowing that he tried.

ACTING PRESIDENT KUHL: Senator Paterson in the affirmative.

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye. No.

THE SECRETARY: Senator Rath.

(There was no audible response.)

Senator Saland.

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

ACTING PRESIDENT KUHL: Senator Saland, to explain his vote.

SENATOR SALAND: Mr. President, my understanding of the rules of this house which certainly I think we all could agree are imperative in the sense that we should conduct our business in an orderly fashion given the fact that there are some 10,000 or so bills that will be introduced during the course of the session, that anybody can introduce a motion to discharge, and my understanding is that Senator Dollinger in this instance could have issued this motion in January, in February and in March and on in, perhaps, to mid-April.

I suspect that for whatever reason that was not done and only he can tell us why that wasn't done, but we find ourselves here now in an endeavor to amend rules not at the 11th hour but probably something approaching five to 12, and I would think that this either reflects the fact that this was a conscious effort on his part to try and maximize the political capital to be derived from the

underlying issue for which he sought to amend the rules or, in fact, he was remiss in not doing what he's done on more than one occasion, in fact, several times in this chamber, just offering a motion to discharge.

I think what we've done here is experience and endure a bit of political brick bat. I think what we've done here is endure a significant waste of time and I, Mr. President, vote in the negative.

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

The Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Sears.

SENATOR SEARS: Nay.

THE SECRETARY: Senator Seward.

(There was no response.)

Senator Skelos.

SENATOR SKELOS: No.

THE SECRETARY: Senator Smith.
SENATOR SMITH: Aye.
THE SECRETARY: Senator Solomon.
SENATOR SOLOMON: Yes.
THE SECRETARY: Senator Spano.
SENATOR SPANO: Nay.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Explain my voted.
ACTING PRESIDENT KUHL: Senator Stachowski, to explain his vote.
SENATOR STACHOWSKI: Mr. President, I didn't plan on explaining my vote but I do have to comment to Senator Saland in answer to something he said. I'd like to point out that, if the Majority had decided to merely let Senator Dollinger challenge the rule, state his case and vote accordingly, this would have been over a long time ago; so if any party in this house is guilty of wasting time, it probably was by trying to be a little bit too heavy handed in something that could have been

quite simply done procedurally, quickly and in a timely fashion, and we'd probably be well into our Finance meeting and moving the bills that are on the floor.

I vote yes.

ACTING PRESIDENT KUHL: Senator Stachowski will be recorded in the affirmative.

The Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Stafford.

ACTING PRESIDENT KUHL: Senator Stafford to explain his vote.

SENATOR STAFFORD: Mr. President, first Senator Paterson, I think this is the second mistake you've made this year. Senator Lombardi was the chairman of Health when you cast that vote. I was sitting beside you.

On the other hand, what I'm going to say is going to be, I hope, with good will. I'm saying this simply, the point is we have 61 Senators in this chamber. If everyone tried to do what he or she wanted to do and did not

follow the order, we would have chaos.

Mr. President, I've served in this Senate when there's been chaos and fortunately, there is no chaos right now. I would say that we have to understand, there isn't a person in this chamber, myself included, that doesn't have bills or issues that they want to have discussed and, Mr. President, I hardly ever disagree with my friend and Senator from the west, but if anything, I would suggest this has not been heavy handed but again, we all have to understand it has to be with order when you have 61 people.

Thank you.

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

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Stavisky.

(There was no response.)

Senator Trunzo.

SENATOR TRUNZO: No.

THE SECRETARY: Senator Tully.

SENATOR TULLY: No.

THE SECRETARY: Senator Velella.

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

ACTING PRESIDENT KUHL: Senator Velella to explain his vote.

SENATOR VELELLA: Mr. President, let's make no mistake about it. This was not a vote on the merits of any legislation. It's not an issue about gun control, assault weapons or anything other than one Senator's political agenda and the facts bear that out.

April 11th was the deadline for filing motions to discharge. Senator Dollinger filed 13 motions to discharge on time in order following the procedures of this house, but he saved one, tucked away in that little desk drawer for the right day, today, so that he could bring his issue up and try to embarrass the Majority.

I think that kind of conduct was out of order, Senator, and I apologize if I

offend you, but I think the merits and the facts speak for themselves. You did it for 13 other bills; you couldn't do it for this one. You saved it for one special day so you could get the attention.

I vote no.

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

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: No.

THE SECRETARY: Senator Waldon.

ACTING PRESIDENT KUHL: Senator Waldon, to explain his vote.

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

My colleagues, our founding fathers were smarter than us. They were much smarter than us. They ensured that this government would run because there would be a balancing of power. They created the judiciary to review whatever we do and the executive

does. They created the executive so that he or she could be above the fray, above the fray of the arguing, the debating, the groveling and the grit and grime of politics that is the legislative process, and in their wisdom they ensured that the smallest constituency would have a voice in this chamber and in our lower house, and the purpose for that was that the things that need to be discussed would be discussed in an open air and open forum with the light of day shining thereupon.

And, therefore, I would encourage my colleagues to recognize the wisdom of the founding fathers and let us not be overly meddlesome in what we do. Let us not allow our personal animosity to interfere with the process of this august body. Let us recognize that no matter the date, the rhythm of the process is what drives us, not someone's personal crop.

I vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Waldon will be recorded in the affirmative.

Secretary will continue to call

the roll slowly.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Nay.

ACTING PRESIDENT KUHL: Secretary will call the absentees.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Hoffmann.

(There was no response.)

Senator Leichter.

(There was no response.)

Senator Levy.

SENATOR LEVY: Aye -- or no.

ACTING PRESIDENT KUHL: No.

THE SECRETARY: Senator Montgomery.

(There was no response.)

Senator Santiago.

(There was no response.)

Senator Seward.

(There was no response.)

Senator Stavisky.

(There was no response.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 18, nays 35.

ACTING PRESIDENT KUHL: The motion is lost.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time, there will be an immediate meeting on behalf of Senator Wright of the Alcoholism and Substance Abuse Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: Immediate meeting of the Alcoholism and Substance Abuse Committee in the Majority Conference Room, Room 332. Immediate meeting.

SENATOR SKELOS: That meeting, just for preparation purposes after that will be Crime Victims and Corrections in Room 332 following Senator Wright's committee meeting.

ACTING PRESIDENT KUHL: There will be an immediate meeting after the Committee on Alcoholism and Substance Abuse of the Crime

and Corrections Committee in Room 332.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, at this time if we could return to motions and resolutions and I move that we adopt the Resolution Calendar in its entirety.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

SENATOR SKELOS: Mr. President, I also believe that Resolution Number 1640 by Senator Galiber, he requested that the resolution be left open for sponsorship.

ACTING PRESIDENT KUHL: The -

SENATOR SKELOS: The resolution honors Kareem Abdul Jabar.

ACTING PRESIDENT KUHL: Are there

members who would like to go on the Resolution Number 1640 honoring Kareem Abdul Jabar in the chamber? Is there anybody who doesn't want to go on it? If we could adhere to past practice, Senator Skelos, and put all the members on that resolution except for those who don't want to be on it.

SENATOR SKELOS: I think the members should notify the desk if they wish to go on the resolution.

ACTING PRESIDENT KUHL: All right. I'll ask the members to notify the desk if they wish to go on it. Those members who wish to go on Resolution Number 1640 signify by raising their hands, please. Hold them up for just a moment.

SENATOR SKELOS: Mr. President, while we're doing this, if you could recognize Senator Padavan.

ACTING PRESIDENT KUHL: Chair recognizes Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

By unanimous consent, I would like the record to show if I had been in the chamber yesterday, Monday, June 12th, I would have voted no on Calendar 994, Senate Bill Number 5019.

ACTING PRESIDENT KUHL: Senator Padavan, the record will reflect that had you been in the chamber when a vote was called on Calendar Number 994, that you would have voted in the negative.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

SENATOR GOLD: Senator Markowitz has some housekeeping, Mr. President.

ACTING PRESIDENT KUHL: Yes, there is, Senator Skelos. We do have a motion. The Chair will recognize Senator Maltese for a motion.

SENATOR MALTESE: Mr. President, I wish to call up my bill, Print Number 3718A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1218, by Senator Maltese, Senate Print 3718A, an act to amend the Administrative of the city of New York.

ACTING PRESIDENT KUHL: Senator Maltese.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: Bill is before the house. Senator Maltese.

Would you like to offer up the following amendments?

SENATOR MALTESE: Yes, Mr.

President.

ACTING PRESIDENT KUHL: Amendments are received and adopted, Senator Maltese.

The Chair recognizes Senator Skelos.

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

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

THE SECRETARY: On page 4, Calendar Number 87, by Senator Holland, Senate Print 1247A, an act to amend the Education Law, in relation to contracts for the transportation of school children.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 90, by Senator Cook, Senate Print 290C, an act to amend the Social Services Law, in relation to the establishment of the Scenic Vistas program.

ACTING PRESIDENT KUHL: Secretary will read the last -

SENATOR PATERSON: Explanation.

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

THE SECRETARY: Calendar Number 128, by Senator Levy, Senate Print 2591D.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

authorizing the county of Tompkins.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 225, by Senator Levy, Senate Print 975B, an act to amend the Vehicle and Traffic Law and the Public Health Law, in relation to requiring businesses selling or leasing bicycles.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 229, by Senator Levy, Senate Print 3488A, an act to amend the Public Authorities Law, in relation to requiring the Metropolitan Transportation Authority to implement and maintain subway station signs.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 230, by Senator Sears, Senate Print 210D, an act to amend the Penal Law, in relation to disseminating indecent material to minors.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: Bill is passed.

THE SECRETARY: Calendar Number 241, by Senator Volker, Senate Print 2445.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 279, by member of the Assembly Dinowitz, Assembly Print 4814A, an act to amend the Election Law, in relation to appointment of election inspectors.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of December.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 280, by Senator Maltese, Senate Print 3084, an act to amend the Election Law, in relation to political committees making no expenditures.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 307, by Senator Seward, Senate Print 2825A, an act to amend the Tax Law, in relation to extending the expiration of the provisions authorizing the county of Cortland.

ACTING PRESIDENT KUHL: Secretary will lead 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 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 506, by Senator DeFrancisco.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 668, by Senator Velella, Senate Print 3456A, an act to amend -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 675, by Senator Marchi, Senate Print 593A, an act to amend the Real Property Tax Law, in relation to providing to property owned by an educational institution.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 676, by member of the Assembly Weprin, Assembly Print 3147A, an act to amend the Education Law, in relation to authorizing waiver of certain age requirements.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 690, by member of the Assembly Rules, Assembly Print 7394, an act to amend the Civil Service

Law, in relation to certification of eligible lists.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 702, by Senator Velella, Senate Print 3763, an act to amend the Insurance Law, in relation to agent termination reporting requirements.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 728, by Senator Levy, Senate Print 973C, an act

to amend the Vehicle and Traffic Law, in relation to operation of a motor vehicle.

VOICE: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: 806, by member of the Assembly DiNapoli, Assembly Print 5182A, an act in relation to directing the Department of Education to distribute information to school districts.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 52, nays one, Senator Kuhl recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 831, by Senator Johnson, Senate Print 4469, an act to amend the Election Law, in relation to transmitting of certain information in computer readable form.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 833, by Senator Maltese, Senate Print 4524, an act to amend the Election Law, in relation to the names of independent bodies.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

834, by member of the Assembly Sidikman, Assembly Print 444, an act to amend the Election Law, in relation to clarifying that certain provisions of such law apply to all special elections.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of December.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 837, by member of the Assembly Sweeney, Assembly Print 4746A, an act to amend the Election Law, in relation to conforming acceptance declination and substitution deadlines.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 838, by Senator Maltese, Senate Print 4668, an act to amend the Election Law, in relation to listing ward numbers on petitions.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 15th day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 895, by Senator Rath, Senate Print 2011A, an act to amend the Environmental Conservation Law, in relation to conformity with federal water use standards.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 910, by Senator Present, Senate Print 1625B, an act to amend the Tax Law, in relation to extend ing the authorization of the county of Cattaraugus.

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 53.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 921, by Senator Present, Senate Print 2715A, an act to amend the Tax Law, and Chapter 574 of the Laws of 1986, amending the Tax Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 922, by Senator Cook, Senate Print 2964.

SENATOR COOK: Lay aside.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. The bill will be laid aside.

THE SECRETARY: Calendar Number 929, by Senator Kuhl, Senate Print 3533A, an act

to amend the Alcoholic Beverage Control Law and the Tax Law, in relation to the shipment of wine.

ACTING PRESIDENT KUHL: Secretary will -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 933, by Senator Nozzolio, Senate Print 3875B, an act to amend the Tax Law, in relation to extending the sales tax in the county of Cayuga.

ACTING PRESIDENT KUHL: Secretary will -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 934, by Senator Volker, Senate Print 3890, an act to amend the Tax Law, in relation to extending the sales and use taxes by the county of Wyoming.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 939, by Senator Libous, Senate Print 4386, an act to amend the Tax Law, in relation to extending the effectiveness of provisions authorizing the county of Broome.

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 53.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 940, by member of the Assembly Matusow, Assembly Print 6345A, an act to amend the Alcoholic Beverage Control Law, in relation to authorizing farm winery licenses.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: The motion is to withdraw the roll call, reconsider the vote -- excuse me, by which the bill passed.

Secretary will call the roll on reconsideration.

THE SECRETARY: Calendar Number 940, by member of the Assembly Matusow, Assembly Print 6345A, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 954, by Senator Saland, Senate Print 4025A, an act to amend the Family Court Act and the Domestic Relations Law, in relation to issuance of mutual orders of protection.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 962, by Senator Levy, Senate Print 2817, an act

to amend the Vehicle and Traffic Law, in relation to authorizing issuance of distinctive license plates.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 963, by Senator Hoblock, Senate Print 3108A, an act to amend the Civil Service Law and others, in relation to certain United States civilians serving in World War II.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 982, by Senator Farley, Senate Print 26A, an act to amend the Banking Law, in relation to enabling mortgage brokers to make Federal Housing Administration mortgage loans.

SENATOR STACHOWSKI: Lay aside.

THE SECRETARY: Calendar Number 987, by Senator Farley, Senate Print 4580A, an act to amend the Tax Law, the Banking Law.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1017, by Senator Padavan, Senate Print 667, an act to amend the Penal Law, in relation to making citizenship document fraud a Class E felony.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1278, by Senator Stachowski, Senate Print 4389, an act authorizing the city of Buffalo to discontinue use as park lands certain lands.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1281, by Senator Jones, Senate Print 4738, an act to authorize the city of Rochester to discontinue the use of certain lands as park lands.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the non-controversial calendar.

SENATOR SKELOS: Mr. President, as we take up the controversial calendar, I urge the members on both sides of the aisle to be

present when the bills come up if they want to explain them or they want to debate them, so we can move along. Controversial calendar.

ACTING PRESIDENT KUHL: Secretary will call the controversial calendar beginning with Calendar Number 90, by Senator Cook.

THE SECRETARY: On page 4, Calendar Number 90, by Senator Cook, Senate Print 290C, an act to amend the Social Services Law, in relation to the establishment of the Scenic Vistas Program.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Cook, an explanation of Calendar Number 90 has been asked for by the acting Minority Leader, Senator Paterson.

SENATOR COOK: Mr. President, this bill would enable a county to establish a Scenic Vistas program, in other words a program by which public assistance recipients would be employed actually by the county to -- to clean up the highways, improve the views, cut brush, actually make improvements along roadways

primarily, as an alternative to being on public assistance.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would just yield for a brief question.

SENATOR COOK: Yes, sir.

SENATOR PATERSON: I'm just a little confused as to where the money is going to come from and where the excess money is going to come from to create wages.

SENATOR COOK: Senator, Mr. President. Senator, the funds -- this is a local cost; it's a local option; it's a local expense. Obviously, since there's no state par ticipation in this, as there would be if they were on public assistance, it's going to be more cost to the locality.

On the other hand, there are some localities that would like to have the program to improve the view along their roads and generally clean it up, and particularly those -

those counties that are in tourist areas, that would be very useful for them, so it's a means by which, instead of putting the money into the public assistance program, they use a slightly additional amount of money and spend it on this program instead.

SENATOR PATERSON: Mr. President, if the sponsor -

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Just one last question.

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

SENATOR COOK: Yes, I will.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, this is an excellent idea, and it's one that creates jobs, and we're happy to have this legislation on the floor. Just a procedural question, Senator. Do we need legislation to accomplish this since it's a local government initiative?

Do we need to pass this bill in the state Legislature to make it happen?

SENATOR COOK: Senator, I -- I assume that a county could probably do this. The difference is, however, that there is an ability under this bill to require the public assistance recipient to participate in this program. In other words, if this job is offered to someone who is on home relief and they refuse to accept this job, then they no longer are eligible for home relief.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Well, the home relief individual refusing the benefit is something that's -- at least that issue is codified into law now, but this is a good piece of legislation. I thank the sponsor for -- I thank Senator Cook for taking my questions.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Yes, Mr. President. The Minority has removed their objection to Calendar Number 668 and 895. If we could have those called at this time?

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 668.

THE SECRETARY: Calendar Number 668, by Senator Velella, Senate Print 3456A, an act to amend the Environmental Conservation Law and the Navigation Law, in relation to adding areas of Bronx and New York.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 895, by Senator Rath, Senate Print 2011A, an acted to amend the Environmental Conservation Law, in relation to conformity with federal water use standards.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, the Crime Victims Committee is meeting at this

time. Following that Committee, there will be a meeting of the Aging Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: Immediate meeting of the Crime and Corrections Committee in the Majority Conference Room, Room 332. Immediately following thereafter, there will be a meeting of the Aging Committee in the same Conference Room, Room 332.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 128, by Senator Levy, Senate Print 2591D, an act to amend the Public Authorities Law and the Administrative Code of the city of New York, in relation to establishing the committee on personal security.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR PATERSON: Can we have an explanation of that?

ACTING PRESIDENT KUHL: Senator Levy, an explanation has been asked for of

Calendar Number 128 by the Acting Minority Leader, Senator Paterson.

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

Senator Paterson, this bill is supported by the MTA, and it is an outgrowth of a report that the Legislative Commission on Critical Transportation Choices did on the marked escalation of violent and other subway crime in New York City's subway system, and this bill is one of the recommendations of that report, and one of the recommendations really expressed concern that, after the merger of the Transit Authority Police Department into the New York City Police Department, there was a concern as to whether there would be continuing progress in dealing with violent crime in the subway system, and this concern arose because prior to 1990 the MTA Board, that report found, ignored the sharp escalating violent and other crime in the subway system. They had no strategy; they had no plan, they provided no oversight and they took no action, and the failures of the MTA and

its board materially contributed to the sharp escalation, really an out-of-control run of violent crime in the subway system.

So this bill not only deals with the Transit Authority, it also deals with Metro-North and the Long Island Rail Road as it relates to violent crime, and it establishes a committee which I indicated to you the MTA supports, and it also requires certain reporting both by the police department of the city of New York as well as the Long Island Rail Road and Metro-North police, and the purpose of this bill is to make sure that we have a committee in place at the MTA and that they are providing continuous oversight not only as it relates to the ongoing effort to deal with crime in the subway system, but also with the Long Island Rail Road and Metro-North.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I'm always really quite pleased that Senator Levy takes a

couple of moments out when I request, to thoroughly explain these pieces of legislation. I know we're in a rush for time, but I really appreciate that and, if the Senator would yield for a question.

SENATOR LEVY: Surely.

SENATOR PATERSON: Senator, do you think -- I see that the MTA is in favor of this, but Metro-North is opposed. I mean -- I'm sorry. They're all in favor of it. It's the Mayor, Mayor Giuliani, who is opposed, and he feels that this is sort of an attempt to micromanage the security around Metro-North, the Long Island Rail Road, et cetera.

Can you explain to us how this would not be an attempt to micromanage it?

SENATOR LEVY: Senator, this is not micromanaging the New York City Police Department and its efforts to continue the - their actions to -- to either maintain the progress or to improve the progress in the fight against crime in the subway system.

What this bill does on a compre

hensive basis, because it goes beyond the subway system to the Long Island Rail Road and Metro-North, but with particular emphasis on the subway system, notwithstanding the good intentions of the mayor, and I certainly take him at his word that -- that the intensity of the fight against violent crime in the subway system is going to continue.

I remember back before 1990 in a three-year period of time when violent crime escalated out of control in the subway system. So given the merger, given the fact that the Transit Authority does not have its own police department to continue that progress, we've got to make sure, and the MTA has to make sure, that the New York City Police Department continues the intensity of that job and the mayor -- the mayor may not be pleased with the fact that that attention is going to be placed on his department, and that they're going to have to keep comprehensive statistics of what is going on with crime in the subway system, but we can not, and I say we -- we cannot, nor can the MTA

Board permit the progress that has been made by the -- by the Transit Authority Police Department in any way to be diminished or compromised, and that's what this oversight will provide.

SENATOR PATERSON: Thank you, Senator Levy.

Mr. President, on the bill.

Senator Levy, I don't know if you're aware of this, but your legislation may actually have an ancillary benefit that might have not been within your contemplation when you wrote the legislation. The security plan and the crime fighting capacity and some of the incidents that occurred that caused you to draft the legislation certainly stand out, and it's significant that you address them.

But just about three weeks an African-American male who was getting off of a Metro-North train was taken into custody by the Metro-North police, even though he did not fit the description of the individual for which they were pursuing. The individual they were

pursuing was six inches taller and wore a moustache and did not in any way fit the physical description of this person. This person was taken into custody pursuant to an anonymous letter that was written to the Metro-North police that a well dressed African American male was riding on the train with a gun. It was later determined that the well dressed African-American male was someone else, and was actually a police detective regularly on his way to work, and as a result of being taken into custody, this individual eschewed the opportunity to sue Metro-North and instead demanded a public apology. He is the publisher of a noted economic development magazine.

And so the whole new security plan might incorporate in it some procedures to make sure that individuals who are not in any way causing any kind of a problem to their fellow riders on any Metro-North or New York City subway or Long Island Rail Road trains, that these individuals be allowed to ride in piece unless there is reasonable cause to

question them.

In this case, there obviously was not and the Metro-North police did apologize. However, one of the issues that might be discussed when we re-examine security is just what is the criteria to cause the police to engage in this conduct which we will admit that they were willing to say was absolutely outrageous.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 197, by Senator Seward, Senate Print 2016A, an act to amend the Tax Law -

SENATOR SKELOS: Lay aside,

please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 225, by Senator Levy, Senate Print 975B, an act to amend the Vehicle and Traffic Law and the Public Health Law, in relation to requiring businesses selling or leasing bicycles.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Levy, an explanation of Calendar Number 225 has been asked for by Senator Paterson.

SENATOR LEVY: Senator Paterson, as you know, we've passed legislation to require children under the age of 14 to wear bicycle helmets. That law took effect June 1st of 1994. We had about an eight percent or less usage of bicycle helmets in the state before that law. It has sharply escalated.

What this bill does is to require the posting -- the posting of a sign by persons who sell or who -- who regularly sell or rent bicycle helmets of the -- of the requirements of

that particular law. Like the law that we did here, and I sponsored it a number of years ago, requiring facilities that serve alcoholic beverages to -- to post warnings about fetal alcohol syndrome, that job was done by the State Liquor Authority. The New York State Department of Health has already prepared the signs, Senator Paterson -- I have a copy of that sign with me -- they -- they have 5,000 signs which they have prepared. They are ready to distribute them, and what this bill does is require, like the fetal alcohol syndrome signs, that the signs be displayed in a conspicuous place.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT KUHL: Senator Levy, do you yield?

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator Levy, last year Senators Dollinger, Jones and Hoffmann voted against this issue of legislation, over an issue, I believe, that has been raised by colleagues on both sides of the aisle this year, which is taking -- putting into effect certain provisions that impede business.

I wanted to give you an opportunity to respond to that, because it does seem to be the tenor of the land that we're trying to encourage business in this state.

SENATOR LEVY: I certainly don't think the posting of this sign which tells people who are going to buy a bicycle that - that -- what the law does and what the law requires is going to pique business. This isn't aimed at business. The sign is aimed at -- at the consumer and particularly at parents of children of under 14, as well as children themselves so that they know that they've got to wear a helmet.

SENATOR PATERSON: Mr. President, if the sponsor would yield for one other

question.

SENATOR LEVY: Certainly, yes.

ACTING PRESIDENT KUHL: Senator Levy continues to yield, Senator Paterson.

SENATOR PATERSON: In a discussion I had with Senator Hoffmann, Senator Levy, we were talking about the possibility of an imposition of a penalty for failure to comply with the new regulation. Is there such a penalty?

SENATOR LEVY: There is no penalty, Senator.

SENATOR PATERSON: All right. Thank you, Senator.

ACTING PRESIDENT KUHL: All right. Thank you, Senator Paterson. Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce

the results when tabulated.

Senator Hoffmann to explain her vote.

SENATOR HOFFMANN: Thank you, Mr. President.

I believe that this is an imposition on businesses, and it would probably be simply a matter of time before sanctions are also imposed on businesses which fail to display yet another state required placard.

As a very practical consideration businesses which are in the business of selling either bicycles or bicycle equipment would probably find it in their best interest to make people aware of the need for a helmet based on state law.

So it really seems like a superfluous piece of legislation for us to be passing but, more importantly, I'm objecting and voting no based on the fact that I think we have far too many of these regulations that are an imposition on business people in this state and are not found in other states.

So in the interest of a better competitive nature and a more compatible business climate in this state, I'm going to vote no, and urge my colleagues to do the same.

ACTING PRESIDENT KUHL: Senator Hoffmann will be recorded in the negative. Announce the results -- Senator Gold to explain his vote.

SENATOR GOLD: Yeah, I'd like to explain my vote.

Mr. President, as part of the budget negotiations we've just completed, we were able to give money to a local hospital in Queens which has been running a program to advertise the benefits of children using helmets. The little bit of money that we gave to them resulted in a 300 percent increase in children using helmets and an enormous decrease in accidents.

I vote yes.

ACTING PRESIDENT KUHL: Senator Gold will be recorded in the affirmative. Announce the results.

Excuse me, Senator Jones to explain her vote.

SENATOR JONES: Yes, I voted in the negative last year and my reason, of course, was that I -- I felt the same way that we continued to take away some kind of parental responsibility. I think a parent should know if they have a young child that it's the law and really it's their obligation, not the bicycle seller, to see that that child is wearing a helmet; but since Senator Levy indicates this year that there is no penalty, that it has been removed in this bill, if it's a suggestion then I guess I have no problem with voting for it this time.

ACTING PRESIDENT KUHL: Senator Jones will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 225 are Senators Hoblock, Hoffmann, Holland, Kuhl, Libous and Maltese. Ayes 48, nays 6.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 241, by Senator Volker, Senate Print 2445, an act to amend the Civil Practice Law and Rules, in relation to limitations on certain actions against professional engineers.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 5....

SENATOR GOLD: Which bill are we talking about?

ACTING PRESIDENT KUHL: Calendar Number 241 was laid aside. Senator Volker is in a committee meeting.

THE SECRETARY: Calendar Number 506, by Senator DeFrancisco, Senate Print 3402A, an act to amend the Uniform City Court Act and the Judiciary, in relation to creating the position of part-time city court judge.

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: Last section?

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 702, by Senator Velella, Senate Print 3763, an act to amend the Insurance Law, in relation to agent termination reporting requirements.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 728, by Senator Levy, Senate Print 973C, an act to amend the Vehicle and Traffic Law, in relation to operation of a motor vehicle.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 831, by Senator Johnson, Senate Print 4469, an

act to amend the Election Law, in relation to the transmitting of certain information.

SENATOR JONES: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 831 has been asked for, I believe by Senator Jones.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: The Aging Committee will meet now in Room 332 of the Capitol, and following that there will be a meeting of the Mental Health Committee in the same room.

ACTING PRESIDENT KUHL: Immediate meeting of the Aging Committee and immediately thereafter, there will be an immediate meeting of the Health Committee in the Majority Confer... Mental Health Committee, excuse me, in the Majority Conference Room, Room 332.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT KUHL: Thank you for the interruption, Senator Johnson.

SENATOR JOHNSON: This bill is a rather simple bill providing a cost-efficient and contemporary method of transmitting infor mation required under the "Motor Voter" bill, the national Voter Registration Act, from the Motor Vehicle Bureaus where people do sign up to the county board of elections in Suffolk County. We don't have the employees to do all the paperwork. We've got a new electronic computer transmission system in -- in place and we'd like to use that system for transmitting that information, so that we can comply efficiently and effectively with the law.

We're getting about a thousand new registrants every week; we anticipate some 400,000 new or changed joint registrations in the year and we don't have the personnel to do it, and this system will allow us to do it, as I said, in a cost-effective and efficient manner.

ACTING PRESIDENT KUHL: Chair recognizes Senator Jones.

SENATOR JONES: Would the Senator yield to a question, please?

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to a question from Senator Jones?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR JONES: I notice there is no fiscal note, Senator, and could you tell me if there is a cost to this and if there is, could you tell me who the cost is borne by, the state or the county?

SENATOR JOHNSON: You want to know the cost to our county?

SENATOR JONES: Or city. Right; is there a cost? My question is, is there a fiscal implication and, if so, is it a state cost or is it a cost to Suffolk County?

SENATOR JOHNSON: It's going to let Suffolk County save money, because otherwise they're going to have to hire many more employees to do this work if it's going to be done manually, so I don't think there's any

problem with the Motor Vehicles since they're already set up to make this kind of transmission so I'd say it's going to save money, but I can't tell you the exact amount.

ACTING PRESIDENT KUHL: Senator Jones.

SENATOR JONES: Senator yield to another question?

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR JONES: All right. Is it correct, Senator, that the same material is required of all counties?

SENATOR JOHNSON: Well, I mean every county has to comply with the "Motor Voter" law, yes.

SENATOR JONES: Thank you, Senator.

Mr. President, I believe I have

an amendment at the desk. I would waive its reading and -

ACTING PRESIDENT KUHL: Senator Jones, there is an amendment at the desk. You're asking that the reading be waived and that you have an opportunity to explain it?

SENATOR JONES: Yes.

ACTING PRESIDENT KUHL: Reading will be waived, and the Chair recognizes Senator Jones to explain the amendment.

SENATOR JONES: Yes. I had spoken to Senator Johnson earlier about this. I have correspondence from the Monroe County Board of Elections who is asking for this same ability to have this material transmitted to them. They have a very efficient system in Monroe County, are well known throughout the state for their board of elections.

They're very anxious to have this same service and are requesting that they be included as well in this bill; so I'm asking that it be amended to also include Monroe County.

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

(Response of "Aye.")

Opposed nay.

(Response of "Nay.")

The amendment is lost.

On the bill. The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Chair recognizes Senator Jones to explain her vote.

SENATOR JONES: Yes. I'm going to be voting no on this legislation, not because I think it's wrong but I think there's an issue of fairness here. When one county, my own, says

they're ready to go, have the same equipment and I do believe there is a cost to the state involved in this, so I don't see that it's fair that one county should be able to go ahead and do this and another county left out.

It's just as costly for Monroe County to have to transmit this material by hand as it is for any other county. There may not be the same large number, but we are processing 50,000 of these, and it's -- you know, it seems to me that it's only fair that this county also should be allowed the same thing.

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

Announce the results.

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

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 922, by Senator Cook, Senate Print 2964, an act to amend the Tax Law, in relation to imposing a sales and compensating use tax.

SENATOR WALDON: Explanation, please.

ACTING PRESIDENT WRIGHT: Explanation has been requested by Senator Waldon.

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT WRIGHT: Bill is laid aside.

THE SECRETARY: Calendar Number 929, by Senator Kuhl, Senate Print 3533A, an act to amend the Alcoholic Beverage Control Law and the Tax Law, in relation to the shipment of wine.

ACTING PRESIDENT WRIGHT: Explanation has been called for by Senator Onorato.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President.

This is a bill that essentially would allow for the out-of-state shipment of wine to states that have a reciprocal piece of legislation allowing for shipment of wine from

those particular states. There is a limitation that this sale can only be made to people who are 21 years of age or older, and that there's also a limitation on the number of cases that can be shipped during any one year and that limitation is to two cases of wine any one year.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Gold.

SENATOR GOLD: Thank you very much.

Will Senator Kuhl yield to one question?

ACTING PRESIDENT WRIGHT: Senator Kuhl, will you yield to one question?

SENATOR KUHL: Yes.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR GOLD: What committee does this come out of, Senator?

SENATOR KUHL: I can't tell you.

SENATOR GOLD: Does it say on the

bill?

SENATOR KUHL: Yes. It's committed to the Committee on Taxation, Investigations and Government Operations.

SENATOR GOLD: Thank you. Senator Goodman yield to a question?

SENATOR GOODMAN: Yes.

ACTING PRESIDENT WRIGHT: Senator Goodman, will you yield to a question for Senator Gold?

Senator Gold.

SENATOR GOLD: Senator Goodman, I'm sorry that I didn't see you earlier, but yesterday we had a bill that took care of a particular problem of a particular little area where they wanted to make sales which varied from the norm, so to speak. Today we have Senator Kuhl's bill which wants to authorize some limited sales.

Senator Solomon and I -- probably you too, Senator Goodman, unless you haven't been dealing with the issue through no venality reason -- have been very much concerned because

through many parts of this state and a lot of them in New York City, there are Orthodox Jews; there are Muslims, there are other people who have, for religious reasons, decided that one day of the week they will be closed. The Orthodox Jewish community, as you very well know, it's on Saturday and then a few times a year, as one example Passover, they will have the necessity because of the way those communities operate, to want to be open on Sunday so that the people that they service can take care of their needs -- or at different times; Passover is only one example -- and Senator Solomon and some others have put in legislation in your committee, Senator Goodman, which would deal with that problem; and what my question really is, is why don't we try, instead of taking an individual approach to this one's problem, whatever, do something of a more general nature so that it's -- we take care of everybody's problems.

I mean I know you, Senator Goodman, and I know you are sensitive to the

problem Senator Solomon raises. His bill is 2461 and I don't want to slow down Senator Kuhl's bill because I respect Senator Kuhl and his fight for his constituents. But, Senator Goodman, I did recall requesting you to yield. The question is really rhetorical, but I believe that before the session ends, your good offices would be very useful in advancing Senator Solomon's bill, 2461. It is a real problem and, while some of this happens in Senator Skelos' area, the police and local officials are usually pretty good in terms that, well, they sort of look the other way because they know the needs of the community, but the local police should not have to do that and what happens very often, Senator, is that once in a while a policeman decides that he's going to enforce the law and the Liquor Authority is faced with the situation where they know the store owners are closed 52 days a year, every sabbath, and yet -- what? And all other Jewish holidays, thank you. And yet they are - will not let them service their community.

So, Senator Goodman, I'm going to support this bill. Many of my colleagues and I supported yesterday's bill, and I think it really would be a travesty if we ended this session without dealing with the needs of those particular groups that would benefit from Senate 2461.

ACTING PRESIDENT WRIGHT: Senator Onorato.

SENATOR ONORATO: Mr. President, would Senator Kuhl yield to a question?

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

SENATOR KUHL: Be happy to.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR ONORATO: The question is, Senator, won't this bill actually hurt the New York State wineries by allowing other states like California which currently share about 60 percent of the New York State market of domestic wines?

SENATOR KUHL: The people who

have and are in support of this bill, Senator, don't believe so, no. They are wineries and there are about a hundred farm wineries now in the state of New York who view this as an opportunity to actually provide their product to people who can't get it now. What you will find is, if you go to other states, there are -- is a limited selection of New York State wine available.

What these wineries that I'm talking to and hearing from tell me is that they have a great number of people who come and visit them during the summer, predominantly once our tourism season opens, we have several of what we call wine trails around the Finger Lakes now and I know they do the same in the mid-Hudson, and the Long Island wine industry is flourishing tremendously, and what happens is these people come in and they visit and then they go home, whether it's Pennsylvania or Vermont or Texas or wherever it is, and they say, Gee, would you send me some wine, and the winery has to respond that they cannot do that; it's a violation of

law. They cannot do that, so they view that as an opportunity, an additional market for them that's currently not available to them now.

They think that, if people are going to buy, say, California wine that they're already going to do that, but these people, who are going to buy California wine will go to the liquor stores in New York City where they can get a competitive price, probably cheaper than the winery, they can get it at Jaffe's or some place like that in New York, and get it cheaper than they can at the wineries themselves, and they buy it when they buy it at the winery they're buying at a retail price not marked down at all, plus they'll have to pay a shipping cost, so they're really not competing with a winery's product except where it's not available and people just don't go out in the wine industry.

I don't know how much you're familiar with people who consume wine, but most of them don't just arbitrarily order a wine without knowing what it's like, and so if

they've had experience with it, they like it, and they want to continue it and they've had experience with it and they want to continue, that this actually provides an additional market for our wineries.

SENATOR ONORATO: Will - Senator, will you continue to yield?

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

SENATOR KUHL: Yes, certainly.

SENATOR ONORATO: Is there anything in this bill which would prevent under age people from obtaining this wine through the mail system?

SENATOR KUHL: It specifically says it can only be shipped to people who are 21 years of age or over and the process is there has to be a means of showing identification at the receipt end of it, so it's shipped by shipper; it requires a person receiving it showing proof of identification of their ages.

SENATOR ONORATO: Thank you. On the bill.

ACTING PRESIDENT WRIGHT: Senator Onorato, on the bill.

SENATOR ONORATO: Mr. President, I have a great deal of concern about this particular bill, not that I'm not willing to help the New York State winery, but I don't think this bill is going to help our New York State wine growers because of the fact that California is the largest producer and seller of wines in this state, and they've done it not because they have so much of a superior product than New York State.

The reason that they have the market for it is because of their tremendous amount of advertising, and I'll give you an example. About 10 or 15 years ago we had this little fellow on the airwaves telling you, with a little white suit, have a little wine on the rocks, under the rocks, and he did appear to be the most romantic man in the world surrounded by beautiful women. This wine was imported from Italy, and it happened to be one of the worst products around, but it became the number one

seller in the United States only because of the fact that it had a tremendous amount of adver tisement, and I think that this would be the way to help New York State wine growers is by assisting them in their advertisement of our particular product, because I believe that this bill will actually hurt New York State in the loss of a tremendous amount of taxes and perhaps the loss of jobs in our package stores that are currently hurting from the loss of sales right now, and I would really recommend a no vote on this bill.

Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 929 are Senators

Abate, Onorato and Padavan. Ayes 52, nays 3.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 933, by Senator Nozzolio, Senate Print 3875B, an act to amend the Tax Law, in relation to extending the sales tax in the county of Cayuga.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT WRIGHT: Explanation has been requested by Senator Paterson.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, my colleagues, this measure extends the sales tax in the county of Cayuga an additional one percent. The extension expires on August 31st, 1997 and also allows the city of Auburn to preempt the allowed one percent as set forth in paragraph -- excuse me, 1224 paragraph (a) of the New York State Tax Law.

SENATOR JONES: Mr. President.

ACTING PRESIDENT WRIGHT: Senator

Jones.

SENATOR JONES: Would the sponsor yield to a question?

ACTING PRESIDENT WRIGHT: Senator, would you yield to a question from Senator Jones.

SENATOR NOZZOLIO: Yes, sir.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR JONES: But I -- again I just want to state this has nothing to do with you, Senator, or certainly your county, but I just needed to get a couple things on record. Could you just explain how the substance of your bill, the details of it, were arrived at?

SENATOR NOZZOLIO: I don't -- Mr. President, I don't understand the question.

SENATOR JONES: Let me rephrase it.

The bill, you stated, it says an amount in the county and what the county is going to do. I just wondered how those details, if you could explain how the details in the bill

were arrived at. Were they yours -- I guess my question is, did you decide or where did they come from?

ACTING PRESIDENT WRIGHT: Senator Nozzolio continue to yield?

SENATOR NOZZOLIO: Certainly.

ACTING PRESIDENT WRIGHT: Senator?

SENATOR NOZZOLIO: Mr. President, I'd be glad to try to answer Senator Jones' question.

I -- it has been my philosophy, Senator, that these types of local bills are decided not here in Albany but in this case in Auburn as the County Legislature sits in Auburn. The City Council of Auburn met with the County Legislature and worked out those details amongst themselves. I look at this as a strictly home rule request where it was not my role to get involved in the merits of the decision.

The county asked for the authority to raise their taxes. Matter of fact, this is an extender. They raised it, I believe,

two years ago. This simply extends that authority, and it's really up to the local governments, because I strongly believe in home rule. I do not get involved in these decisions relative to local government decision-making.

I hope that addresses the kinds of matters that you're asking.

SENATOR JONES: All right. Thank you, Senator.

ACTING PRESIDENT WRIGHT: Senator Jones.

SENATOR JONES: Yes, it does. On the bill.

ACTING PRESIDENT WRIGHT: Senator Jones, on the bill.

SENATOR JONES: I appreciate Senator Nozzolio explaining that. As many of you know, I voted no on many of the sales tax bills this year mostly because there seemed to be some confusion as to whether or not our role was actually imposing a tax or was, as Senator Nozzolio just stated, merely to follow the wishes through a home rule message of what the

local community wanted.

I totally agree with Senator Nozzolio that this is something that belongs at the local level, that it's their decision, and we really are only accepting what they send us as they do on many other bills, a home rule message. I think maybe even at some time in the future, I know Senator Larkin mentioned that to me that maybe we should be looking at this whole decision process needs to belong to the local government. Perhaps we ought to relook at what our role is, if any, but I, as a result I will vote for this one as well as all the rest of them on the calendar today, and I look forward to doing the same for my own county.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would you recognize Senator Libous.

ACTING PRESIDENT WRIGHT: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Can I call an immediate meeting of the Committee on Mental Health and Developmental Disabilities in Room 332.

ACTING PRESIDENT WRIGHT: There will be an immediate meeting of the Mental Health and Developmental Disabilities Committee in Room 332.

Senator Farley, why do you rise?

SENATOR FARLEY: I'd like to be recorded in the negative on 225.

ACTING PRESIDENT WRIGHT: Without objection, Senator Farley recorded in the negative on Calendar Number 225.

Senator Hoffmann, why do you

rise?

SENATOR HOFFMANN: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 833.

ACTING PRESIDENT WRIGHT: Without objection, Senator Hoffmann recorded in the negative on Calendar 833.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Please call up Calendar Number 197.

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

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.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would you please go back to regular order on the calendar.

THE SECRETARY: Calendar Number 940, by member of the Assembly Matusow, Assembly Print 6345A, an act to amend the Alcoholic Beverage Control Law, in relation to authorizing farm winery licensees.

SENATOR GOLD: Hold on.

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

982, by Senator Farley, Senate Print Number 26A, an act to amend the Banking Law, in relation to enabling mortgage brokers to make Federal Housing Administration loans.

ACTING PRESIDENT WRIGHT: Read the last section.

SENATOR PATERSON: Hold on a minute. Explanation.

ACTING PRESIDENT WRIGHT: Explanation has been requested by Senator Gold, Senator Farley.

SENATOR FARLEY: Stachowski.

ACTING PRESIDENT WRIGHT: Senator Stachowski requested it.

SENATOR FARLEY: He didn't lay aside this bill at all. He's got a phone call out there.

Let me just say that this is a bill that the realtors are very interested in, that New York State is one of the only two states in the nation in which mortgage brokers cannot originate an FHA loan and be FHA loan correspondents.

The problem here is a conflict between the state and the FHA requirements. New York does not allow a broker to make loans. However, this conflict with the FHA requirement, the brokers must close loans in their own name. The FHA has been unwilling to revise its program to accommodate New York State's law. Therefore, brokers are basically not able to offer FH products -- FHA products to their customers.

This bill in particular should provide consumers with additional financial options and enable consumers to benefit from the advantages of an FHA loan. An FHA loan is especially beneficial for first time buyers, minorities, low income borrowers, and so forth. The FHA loan usually has more flexible credit standards and terms. They require a lower down payment and they're more lenient in allowing gifts to be used for down payment.

SENATOR TULLY: Very liberal.

SENATOR FARLEY: Well, this is a bill that really helps promote first time buyers, and so forth. It's one that brings us

in conformity with the rest of the nation, and so forth. I don't -- there's no known opposition that I know of, but I offer the bill to you, Senator Stachowski.

SENATOR STACHOWSKI: Explanation satisfactory.

ACTING PRESIDENT WRIGHT: Thank you, Senator.

Senator DiCarlo, why do you rise?

SENATOR DiCARLO: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar 225.

ACTING PRESIDENT WRIGHT: Without objection, the Senator is recorded in the negative on Calendar 225.

On the bill, read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th 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: Calendar Number 987, by Senator Farley, Senate Print 4580A, an act to amend the Banking Law and others, in relation to limited liability investment companies.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT WRIGHT: Explanation is requested by Senator Stachowski.

SENATOR FARLEY: Going to get him.

This bill would allow investment companies to form and operate themselves as limited liability investment companies instead of as corporations. This option would only apply to those investment companies which do not accept or maintain credit balances or deposits in the United States, cannot engage in any business activity in the United States except as incident to the international and foreign business operation and they conduct business in

compliance with the Banking Law.

A limited liability investment company would be subject to virtually all the provisions of the Banking Law which currently apply to corporate foreign investment companies. It would also be subject to all the requirements of the limited liability company law. The Superintendent of Banks is provided with express authority to make rules and regulations to govern limited liability investment companies.

Now, this bill would authorize the limited liability company structure for those Article 12 investment companies which are -- serve as holding companies for foreign banking operations.

Let me see if I can summarize some of this quickly for you, because it's a little mundane.

O.K. I'm trying to summarize this. I've got more than you want to know. These entities are currently subject to both foreign and domestic tax liabilities. This

essentially results in double taxation on earnings. However, if the holding companies can organize themselves as limited liability companies, they will be taxed under federal law as a partnership.

This would enable these New York firms to credit the foreign tax against their federal tax like any other partnership. In other words, it puts our New York-based companies -- gives them a little bit of an advantage or equalization or level playing field on the federal income tax.

ACTING PRESIDENT WRIGHT: Senator Stachowski.

SENATOR STACHOWSKI: If Senator Farley would yield to just one question?

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

SENATOR STACHOWSKI: In the case of the current banking chairman, if one of these companies would have to be regulated, he would probably excuse himself seeing as he came from a company of this nature?

SENATOR FARLEY: The current banking chairman would excuse himself?

SENATOR STACHOWSKI: Superintendent, excuse me, the current Banking Superintendent, if he had to make a decision as you stated earlier, he would be in charge of overseeing this.

SENATOR FARLEY: Yes, he would.

SENATOR STACHOWSKI: So then who would be in charge?

SENATOR FARLEY: The acting deputy.

SENATOR STACHOWSKI: That was the question.

SENATOR FARLEY: The acting deputy. Very good question.

ACTING PRESIDENT WRIGHT: Senator Solomon.

SENATOR SOLOMON: Mr. President, would Senator Farley yield?

ACTING PRESIDENT WRIGHT: Senator Farley, will you yield?

SENATOR FARLEY: Yes.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR SOLOMON: Senator Farley, in view of the fact that this has an impact on the tax structure, your memorandum has fiscal -

SENATOR FARLEY: No, it does not. It has no effect on our tax structure, ours.

SENATOR SOLOMON: Well, let me finish the question. The memorandum has fiscal impact as minimal, and I'm trying to find out what this "minimal" means in terms of our tax structure if it has minimal impact as stated in the memorandum.

SENATOR FARLEY: The formation - this formation at most will only have a minimal impact on New York's tax revenues. In reality, it may prove to have a beneficial impact. The type of entities affected by this bill are basically holding companies for foreign banking operations. As such, they do not have New York source income. Therefore, they generally pay only the minimum corporate franchise tax of

$325.

It should be noted that there are currently only three investment companies in this state which are eligible for this and only one of these even appears to be interested in pursuing this option. The loss of the minimal, that's 300 bucks, amount of revenue would be partially offset by any application filing fees that we required under our law.

In addition, the potential reduction in federal taxes may result in increased distribution to members which could result in potential revenue increases to our state income taxes. So I think it's a net positive.

ACTING PRESIDENT WRIGHT: Senator Solomon.

SENATOR SOLOMON: Well, Senator, what you just said was more than a mouthful. Someone as simple as -- from my simple area that I come from.

SENATOR FARLEY: There's nothing simple about you, Senator Solomon, I'm well

aware of that.

SENATOR SOLOMON: O.K. Senator, if I may, in terms of what I thought I heard you just say is that they would now pay the alternative minimum tax, corporate tax, and I'm just curious if you could tell me what this one company that shows particular interest in this legislation currently pays.

SENATOR FARLEY: Now, they would be taxed as a partnership so that it would be taxed -- their personal income will be taxed at the rate of what is it, 8.75, whatever our maximum is. Those guys are usually at the maximum.

SENATOR SOLOMON: It's 7-point -

SENATOR FARLEY: They'll be taxed as a partnership now and so, therefore, their personal income tax will be taxed. They'll be taxed through their personal income tax.

SENATOR SOLOMON: What do they currently pay, to the best of your knowledge?

SENATOR FARLEY: $325.

SENATOR SOLOMON: That's what

they pay now, or that's what they would pay after the passage of this bill.

SENATOR FARLEY: That's what they pay now.

SENATOR SOLOMON: O.K. That's what's confusing. Thank you.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 14. 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.

Senator DeFrancisco, that completes the calendar. Would you prefer to return to the bills that were laid aside?

SENATOR DeFRANCISCO: Would you please take up Calendar Number 241?

ACTING PRESIDENT WRIGHT: Excuse me, Senator. May we recognize Senator Espada?

SENATOR DeFRANCISCO: Yes, you may.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Espada on a resolution.

SENATOR ESPADA: Thank you, Mr. President.

Certainly want to thank the entire leadership of this house for the opportunity to speak on the resolution that has passed this house earlier. It has to do with the All Stars Talent Network who are seated up in our gallery. We certainly welcome them.

They are representatives of one of the best and most successful anti-violence programs that this nation has to offer. They take anger, frustration, stress from young people in our inner city communities and turn it upside down on its ugly head and give it a beautiful shining face. They performed 500 shows in 11 years throughout this nation with no funding from governmental sources, solely supported by contributions of people in our community.

And so we take this opportunity to congratulate them, to commend them and to point out that the old African adage that it takes an entire village to raise a child is most apropos and they're living proof that it can happen, and we certainly congratulate you for all your efforts.

Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Thank you, Senator Espada. You will note that the resolution was previously passed. We welcome all of these young individuals to the Senate chambers today and our opportunity to recognize and congratulate them on their efforts.

Thank you very much and enjoy your day in the Capitol.

(Applause)

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, I would ask unanimous consent to be recorded in the negative on Calendar 128.

ACTING PRESIDENT WRIGHT: Without objection, Senator DiCarlo will be recorded in

the negative on Calendar Number 128.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, with unanimous consent, I'd like to be recorded in the negative on Calendar 225 and 933.

ACTING PRESIDENT WRIGHT: Without objection, Senator Maziarz is recorded in the negative on Calendar -- excuse me. There were two numbers, Senator.

SENATOR MAZIARZ: 225 and 933.

ACTING PRESIDENT WRIGHT: 133?

SENATOR MAZIARZ: 933.

ACTING PRESIDENT WRIGHT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I would request unanimous consent to be recorded in the negative on 228 and 125.

ACTING PRESIDENT WRIGHT: Without objection, Senator DeFrancisco in the negative on 228 and 125.

SENATOR DeFRANCISCO: Now, could you call up Calendar 241.

ACTING PRESIDENT WRIGHT:

Secretary will read.

THE SECRETARY: On page 7, Calendar Number 241, by Senator Volker, Senate Print 2445, an act to amend the Civil Practice Law and Rules, in relation to limitations on certain actions.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT WRIGHT: Explanation is requested by Senator Paterson.

Senator Volker.

SENATOR VOLKER: Senator Paterson, you want me to explain?

Mr. President, this is a bill that has been in the process of being worked on for many, many years. In fact, there's several members of this chamber who have introduced similar legislation over the years and have been in and reported out of my committee at one time or another.

It is a -- in effect, a bill that a number of professional groups have come together on and agreed to, and that's the legis lation that is presently before us.

What it would provide is for a change in the -- basically a change in the statute of limitations for actions brought against engineers, architects, surveyors or construction contractors.

Presently, the -- there are two statutes primarily involved. One, of course, is the contract statute, statute of limitations which is six years, and the negligence statute or the tort statute which is three years after the injury occurs or somebody becomes aware of it.

What this bill would do is say that, in an action for personal injury or wrongful debt or property damage arising out of a defect in design, planning, supervision or construction, that the action against -- against an engineer, architect, surveyor or contractor, that the action must be brought within seven years except if the action or the injury occurs during the seventh year, then there is a one-year extension.

Let me just say that that is not

based on just conjecture. The -- the -- there have been studies that have been done, actions involving these kinds of claims, and the study showed that about 85 percent of the claims that arise in this area come in the first seven years and then a small percentage occurs in the next year because of those claims that were discovered in that year, and that's how you get the seven years and one additional year.

In addition to that, the bill would require a certificate of merit in such actions, and what this does is mirror the present law, the malpractice law involving doctors, dentists, I believe and podiatrists if I'm not mistaken. So that's what this bill basically does.

ACTING PRESIDENT WRIGHT: Recognize Senator Paterson.

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

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT WRIGHT: Senator

Volker, would you yield? Senator yields.

SENATOR PATERSON: Senator, there are a number of issues that are raised by this type of legislation. The initial one would be the definition of a statute of repose as compared to the statute of limitations.

In the statute of repose, what we're really doing is setting a time period by which we will allow for suits to be brought and that period being seven years, whereas the regular statute of limitations in tort liability, with which we're more familiar, that the clock starts running at the point of injury.

So suppose we have an incident where we have designed a building and certain parts of the building are not used for a period of time, because let's say they've been vacant and haven't been sold, and at the point that this area starts to be rented out now we start to see where the defect is, the negligence or even malfeasance of duty on the part of the architect or the engineer.

What I'm hoping is that I've cited you an example where there is a wrongdoing but there is no real way to measure it because the statute of limitations has expired before not only the injury is actually occurring but before even the incident has taken place.

SENATOR VOLKER: Senator, let me just say that, in accordance even with this statute -- hold on a second.

ACTING PRESIDENT WRIGHT: Excuse me a second.

Senator DeFrancisco.

SENATOR DeFRANCISCO: There will be an immediate meeting of the Finance Committee in the Capitol, Room 332; immediate meeting of the Finance Committee, Room 332.

ACTING PRESIDENT WRIGHT: Immediate meeting of the Finance Committee in Room 332.

Senator Volker.

SENATOR VOLKER: Yeah. The situation that you talk about, Senator, which there's an old saying about -- well, there's a

couple of old sayings. One talks about tough situations in the law. Would probably be an interesting situation should this eventually, as it will by the way, this will eventually become law. I think the liability issue is such a powerful issue that the cost of construction in the building trades is going to get so out of hand in the next few years that I would predict to you that a statute similar to this is going to become law within a few years. Trial lawyers and so forth aside, it's going to happen. I don't think there's any question the country is headed in that direction, but I think the incidents or the problem that you describe is one that probably will be litigated should this legislation pass as to whether it would be covered under -- under the so-called statute of repose or statute of limitations.

I think the issue here is that you have to have some sort of finality on these cases and that waiting 20 to 30 to 40 years and still being able to be sued in these matters does not serve in the long term a public purpose

and, very honestly, it may serve a purpose for certain individuals but insurance rates which are based on probabilities have just kicked the costs almost out of control, and I think the answer, Senator, is that that kind of situation, I suppose, could occur and, as I say, it probably might be a situation where somebody could attempt to challenge the statute, but I think the possibility of such a thing, if you know the way modern designs are done, inspections and all the rest of the things that we deal with in our society today, you might have an action against somebody else rather than the building designer for not detecting it, in any case, so I think the answer to that is that it probably wouldn't -- probably wouldn't apply.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: Through you, you said earlier that a number of our other

colleagues have looked at this legislation. Were they able to document that it is unaffordable for architects and engineers and the like, to be engaging in the construction of buildings right now? I know what you said before about suits arising 20 and 30 years later, but there is kind of an expectation that, when a building is erected, that it's going to last for a number of years.

SENATOR VOLKER: I'm sorry, Senator, I guess I was -- I missed what you said, I'm sorry.

SENATOR PATERSON: I'm sorry.

ACTING PRESIDENT WRIGHT: Senator Paterson, if you would repeat the question for Senator Volker, please.

SENATOR VOLKER: I didn't hear your question.

SENATOR PATERSON: Let me repeat the question for you, Senator.

I'm asking if the architects and engineers have documented that there has been such an increase in their insurance premiums

that they would need special protection at this point as the doctors raised about ten years ago based on the fact that they are -- it's unaffordable for them to engage in their work?

SENATOR VOLKER: Senator, I don't think it's necessarily unaffordable for them to engage in their work, but what the problem is that these people are so necessary to the kinds of things that are done here, that it has dramatically raised the cost of the architects and engineers, and so forth, handling these kinds of things and, as a result, what it does is, although obviously you're going to have to have these people because in many cases the law mandates that you must have architects and engineers to handle this sort of thing, the problem is that it has dramatically, and I think that has pretty clearly been shown over the last few years and there's been -- certainly there's been people that say well, if you really look at it, 4- or 500 percent increase in insurance rates is really not that enormous given the rate increases in other areas; but the truth is that

there has been a dramatic increase in the cost of projects built into it because of the issue of liability, and that, I think, is virtually irrefutable.

I think there are people that would say, Well, that's something that's come over a period of years, and that's true. It's come over a period of 10 to 15 years and the last couple years, by the way, as we begin to debate these issues of liability insurance companies have not been raising their rates as dramatically, although as one vice-president of an insurance company told me, one of the ways in which some of these issues are being resolved is many companies are saying, We just won't cover those kinds of things.

I mean, you take municipal liability, a number of the companies have just got out of the coverage because they say it's just not worth it. So I think the answer is, Senator, that -- and it's pretty well documented not that these people, not that architects and engineers are not going to be available. It's

not even that issue of professional engineers, it's an issue of the long-term cost to society and the cost to every individual that this liability issue is doing to all of the people of the state of New York.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: I understand the concern that we -- that the professions have on this particular issue. What I'm saying is that seven years is a very short time when you're talking about such projects as erecting a building, to actually know that the building has been constructed without some major defect arising from a malfeasance of duty or from some negligence.

If Senator Volker would continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT WRIGHT: Senator continues to yield.

SENATOR PATERSON: Senator, the Legislature is calling for a certificate of

merit enabling the plaintiff to bring an action in court. In previous pieces of legislation, the only time I can think of off the top of my head, when we've had a certificate of merit are in medical malpractice cases.

Here we have a number of records. We have documentation; we have specific facts that can be compared with the present case to arrive -- to arrive at a decision as to whether or not a court case is merited. I don't know that we necessarily have that in the construction area or in the specialized profession of engineering that there is really a way necessarily that another profession, you feel, can come in and say yes, based on this criteria, we can actually bring a lawsuit, and since it's so rare that we actually allow this to happen only in medical cases which are highly documented and highly specialized and which bring with it a great degree of detail that can be traced and perused later by the professionals, my question to you is whether or not, or actually why would we want to seek this

remedy in this legislation where we don't really have it as a matter of purpose in our law in other areas?

SENATOR VOLKER: Senator, you're right about the certificate of merit being used in medical malpractice cases and more dental malpractice, I believe, and podiatrists, and so forth, in that area. The reason that there is a -- the reason we're fighting that, Senator, I think the same sort of issue is involved here and let me just say that, as the statute clearly says, the fact that you can bring the action, it doesn't say that, because you don't have the certificate of merit, that you can't bring the action, but in order to move forward and the reason is because a number of these cases are based on something happens and there is, in effect, what many of the actions move forward in is, Well, somebody had to be negligent here. Somebody had to do something, and we just assume that it's -- it's an architect or an engineer and, at some point down the line, the attorney for the -- as you and I know, the attorney is

going to have to prove something and what we're really doing here is in this certificate of merit is saying that the attorney has to go up front with some sort of professional evidence that the people or the person, the individual being sued, had something to do with the potential negligence.

One of the reasons for that, Senator, is because you know how lawsuits go as well as I do, and that is you bring all sorts of individuals into it, even though they may really have a remote liability, and I think the concept of this certificate of merit is to allow a professional to make some sort -- to provide some sort of judgment up front so that if the action against engineers or -- or architects or whatever does not really pertain to them, that you can actually get them out of the suit early, save the insurance companies the liability claims and not have to really drag a company through years of litigation and, in the end, find out that they really had nothing to do with it in the first place and that, if there was

some negligence, it had to do with somebody else or some other entity or whatever.

I think that is the intent here, and I think the issue is certainly serious enough because of the public nature of this and I don't think the certificate of merit is anything, it's really so -- so onerous since a good -- any good person who is bringing such an action is going to do something, basically bring such a -- such evidence in eventually anyway, but maybe not until the time of the trial.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator Volker.

Mr. President, on the bill.

ACTING PRESIDENT WRIGHT: Senator Paterson, on the bill.

SENATOR PATERSON: I understand what Senator Volker is saying, but there was still a very serious and tragic incident happened in my office a couple of years ago and one of the employees in the building was unable

to work and is still unable to work, on Work men's Compensation and, as a result of that case, I remember suggesting to this individual that because they couldn't really sue the state on this issue, they had to find the manufacturer or somebody that was responsible for that defect and, in a sense, I was probably making a suggestion that may really have been the reason that the engineers and professionals have this problem.

It was a suggestion that, in a sense, you draw everybody into the lawsuit as much as possible and what Senator Volker is trying to do through this legislation is to limit it.

I just think this bill has gone a little bit too far. Seven years is a very short period of time. There are some buildings that you wouldn't even know what the defect is because they haven't even rented the space out in the first seven years, and I think that to some degree what this legislation does is, it really cuts off all of the potential suits and

raises a very high standard for which the suit can be commenced, and that is the accomplishment of the certificate of merit, which is not as easy as I think the sponsor suggests.

I understand that what is trying to be accomplished may be a cap on recovery or something, but there are, in my opinion, some serious questions with this bill.

Thank you.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Abate.

SENATOR ABATE: Would Senator Volker yield to a question?

ACTING PRESIDENT WRIGHT: Senator Volker, will you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR ABATE: The questions I asked were really trying to explore the merits of this bill and to clarify the language of the bill. I came to this chamber really undecided about the language of the bill.

You said earlier, Senator Volker, that no other group gets protection such as this, or someone else said that on the floor. Is there any other legislation that provides similar protection?

SENATOR VOLKER: You're talking about certificate of merit. That's the same thing. The certificate of merit is involved in medical and dental malpractice.

ACTING PRESIDENT WRIGHT: Senator Abate.

SENATOR VOLKER: Because one of the ways, if I might just say it, and the issue -- and I remember it because I was here. I've been here long enough to remember a lot of things, I guess, but I remember as that issue developed, and the issue developed because of some of these various -- these same reasons in fact, the enormous costs and the fact that in the long haul, you were going to have to, in a trial, bring in this kind of proof, and one of the reasons for bringing in the certificate of merit and medical and dental malpractice was to

cut down the numbers of defendants and the cost and, in effect, to exclude some of the liability companies that were dragged through some of these suits maybe for eight or ten years and then find out that they had very little or nothing to do with the actual negligence action, and I think what you're trying to do here is - and the certificate of merit, quite clearly, in the long run could help some of the so-called plaintiffs because they had found out very early where they stand on a number of these kinds of issues.

ACTING PRESIDENT WRIGHT: Senator Abate.

SENATOR ABATE: Maybe I'm missing a point, but I thought this legislation is not mandating a certificate of merit but mandating a statute of repose -

SENATOR VOLKER: That's right. Yes.

SENATOR ABATE: -- which would, in effect, act as a statute of limitation -

SENATOR VOLKER: That's true.

SENATOR ABATE: -- in certain cases prevent an injured tenant or consumer from bringing suit.

SENATOR VOLKER: Correct.

SENATOR ABATE: So I see -- and that's how I'm troubled. I'm sympathetic towards many of these architects and engineers that have to stay in business, and their concern is 30, 40 years down the road, a design of their building, why are they held liable, and the cost of their doing business is prohibitive because of that.

But I guess my problem is -- I'm further concerned -- is there no distinction between negligence and gross negligence here? So if, in fact, nine years have elapsed, and under this current legislation I am a consumer, whether I'm a tenant of the building, either a commercial tenant or a residential tenant, and in fact the design -- or the architect was engaged in gross negligence. We're not even talking about simple negligence. I would, as a consumer, be foreclosed from entering into any

lawsuits.

So while I support the concept, I'm very concerned on how broad this legislation is, so I'm very troubled by it and I'm trying to work out where I should be.

Would you consider down the road separating out gross negligence from this?

SENATOR VOLKER: I don't know how you would do that, Senator. Let me just say is that this is -- this is -- you are smack up against the problem that is always there with statute of limitations.

Remember, in the criminal area, we only exclude one crime from the statute of limitations and that's murder. In many other very serious crimes, we have a statute; and if you can uncover evidence after seven years, you can't bring an action against a person, for instance, for some very serious crimes.

The truth is the same in other civil statutes of limitations; for instance, contracts, which a lot of these cases actually revolve around contract which is a six-year

statute of limitations, keep in mind because contracts -- when they sue, they not only sue for negligence, they also sue on the contract, generally speaking, one way or another, except that they may be barred because of the six-year statute of limitations. So you -

My counsel just points out to me, if you allow gross negligence or allow that to be an exclusion on the statute, you might just as well not have the statute because everyone is going to allege gross negligence; and then the issue at the trial obviously would be, "What is the difference between regular negligence and gross negligence?" and you won't really have done anything.

So I think if you are going to develop a statute of limitations or statute of repose, whatever you want to call it, you have to set some limitation and the way they arrive at that limitation, as I said, was a study of the cases, and about 85 percent of the cases involving lawsuits against architects, engineers, and professional contractors, and so

forth, involve the first seven years of the building's construction and, Senator, I would say to you, as time has gone on, the observation that is done, the inspections that are done on buildings and on bridges, and so forth, has become so much more sophisticated that the possibility of something totally escaping for more than seven years is extremely remote, and it seems to me that we have to set some sort of determination for the common good, and I think that's what this is about.

This is not about architects' and engineers' fees as such. This is about what the public is paying because of the broad liability, and it is a public issue, obviously, of epic proportions. It's being debated in Washington right now, and -- as I think we all know, and it's -- so that's what this is really about.

ACTING PRESIDENT WRIGHT: Senator Abate. Do you continue to yield, Senator Volker?

SENATOR VOLKER: Sure.

ACTING PRESIDENT WRIGHT: Senator

yields.

SENATOR ABATE: Clearly, one of the issues is the consumer, the smaller person on this ladder who may be foreclosed from engaging a lawsuit, but there's another constituent, the individual that owns the building, the real estate owner. What positions have they taken on this bill?

SENATOR VOLKER: Frankly, Senator, we haven't heard from them.

Keep in mind that the owner of the building is in a contract situation, though, so that there is already a six-year statute of limitations in that area, so I guess the answer is that this bill, as such, wouldn't have a major impact on them, except somebody could argue -- I suppose someone could argue it would actually extend the statute of limitations from six to seven years if you really followed this through and technically another year after that. Of course, if it was strictly a contractual kind of thing, it would be barred by six years but, if there was something that

occurred in that seventh year, certainly that owner of that building would try somehow to get covered under this statute, because obviously it would be advantageous to him.

SENATOR ABATE: No further questions.

ACTING PRESIDENT WRIGHT: Senator Solomon.

SENATOR SOLOMON: Mr. President. If Senator Volker will yield?

ACTING PRESIDENT WRIGHT: Senator Volker, will you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR SOLOMON: Senator, do you have any information at hand which indicates what percentage of actions are commenced within seven years -

SENATOR VOLKER: Yes.

SENATOR SOLOMON: -- for architectural malpractice?

SENATOR VOLKER: I think that was

the -- yeah, 87. If you add the extra year, that is seven years and then the extra year, it becomes between 85 and 90 percent. Now, 85 percent is the number that they used of actions that are commenced within seven years and then there is a -- there is a -- if you add the one extra year, it then moves up another two or three percent, so that you're actually talking close to 90 percent of the actions would be covered by the seven-year statute, plus the additional year.

SENATOR SOLOMON: If the additional year is caused by the certificate of merit requirement?

SENATOR VOLKER: If the injury occurs during the seventh year -

SENATOR SOLOMON: You have another year.

SENATOR VOLKER: -- then you have one more year.

SENATOR SOLOMON: From that date of injury. Okay.

ACTING PRESIDENT WRIGHT: Senator

Solomon.

SENATOR SOLOMON: If Senator Volker will yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT WRIGHT: Senator Volker, will you yield to one further question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR SOLOMON: I'm inclined to support this bill. The thing that worries me more than anything else is the certificate of merit. If you could tell me why there was a need or they felt that there was a need for the certificate of merit in this case, I would appreciate that.

SENATOR VOLKER: Well, I think the certificate of merit in the medical malpractice legislation -- by the way, there are certain provisions in the bill that would allow for some latitude in providing a certificate of merit, if it's unable to be obtained or whatever. If you look at the bill, you will see

that there's some limitations there so that you can't have somebody that's -- for one reason or another, it's not possible or unable to do it, it wouldn't stop and exclude somebody from being sued, but the reason for it is, very honestly, the same reason as in medical and dental mal practice and that is that you have a situation here where you have, very often, multiple defendants involved, and very often the professional architect or engineer is not even -- may not even be the source of any kind of negligence at all, and the reason for the certificate of merit is to determine early, based on some real scientific and based on some professional information, whether that individual or those individuals actually have any place in the lawsuit, and it not only obviously makes it easier for the professional engineers and architects, and so forth, but it allows the insurance companies that are obviously involved with those people to exit early from the suit if it's possible.

The other part of the thing is,

as you well know, if it turns out that there isn't any real evidence of their potential involvement, the people who are bringing the suit are going to have that evidence anyway as part of the certificate of merit.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to just a couple of questions?

ACTING PRESIDENT WRIGHT: Senator Volker, will you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR DOLLINGER: Senator, my concern with this bill is the possibility of contractual indemnification from the owner of the building -- or to the owner of the building from the architect. I note in your bill on page 2, it says that "No action for recovery of damages or injury to the person or for wrongful death or for damaged property nor any action for contribution or indemnity for damages sustained

on account of the injury."

My question is this: Does that language void an action brought by the owner against the architect on the basis of a contractual obligation to indemnify which would last more than six years? For example, as you probably know, Senator, when I hire Senator Abate to be my architect and I'm designing a tower, we agree that as part of her responsibilities to me she will indemnify me in the event of Senator Onorato falling through the stairwell, and that could happen 20 years from now, but the contractual obligation to indemnify me still exists.

He brings an action against me as the owner. I say, "You're right. I probably should have maintained it," but I also claim it is a flaw on the part of Senator Abate's design and she has posted a policy with me that's good 20 years into the future.

My question is this: Does my ability to implead or to ask for contribution or indemnification from the architect, which is a

contractual obligation, is that voided by this statute?

SENATOR VOLKER: No. First of all, I represent Senator Onorato, but on page 2 -

SENATOR DOLLINGER: We won't pay those exorbitant fees, Senator.

SENATOR VOLKER: On page 2 -- now that we're getting paid, at least we're getting something for this.

Page 2, Section 3, "The limitations prescribed by this section shall not apply to actions brought: (1) in contractual or professional privity with the engineer, architect, surveyor," and so forth, and it goes on in that section, and that's why that section is there, so that just the scenario that you just suggested would not occur if this bill would become law.

SENATOR DOLLINGER: So the owners of property can protect the eventual injured user as well as their own liability by contractual indemnification from the -

SENATOR VOLKER: Exactly.

SENATOR DOLLINGER: Okay. I think that's critical, at least from my understanding, because that would both give the owner the possibility of obtaining a longer term coverage as well as providing additional protection for the eventual user who might be hurt.

My second question is -

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: I brought this up in committee, and I just want -

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

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR DOLLINGER: Thank you, Mr. President.

SENATOR ONORATO: Before you go on to the next question, do I get paid?

SENATOR VOLKER: Whichever one of

us represents you, I'm sure you'll get paid.

ACTING PRESIDENT WRIGHT: Senator Onorato, we resolved that question earlier.

Senator Volker.

SENATOR DOLLINGER: ... plaintiff, Senator Volker. We found another one.

My concern with the certificate of merit is, what happens -- and, again, if you can just address this in the bill on the record, perhaps even just for the purposes of establishing some kind of statutory history. What happens to the lawyer who gets the case and says, "I need documents from the defendant, from the punitive defendant, either from the architect or from the owner in order to be able to give them to my expert so that my expert will render the certificate of merit opinion necessary to bring the action?" Just, if you could, describe for me under the bill how you address that specific problem.

SENATOR VOLKER: That's why we put it on page 3 -- and as my counsel points out to me, it's also current law. But we added in

-- and I think it's 3, "The attorney was unable to obtain the consultation required in this subdivision, because the attorney had made three separate good faith attempts with three separate physicians and as architects or professional engineers."

In other words, we have a -- and if you look at that whole section, it relates to the need for the certificate of merit but allows the attorney to have some way so that if he is unable to obtain it, even though he attempts to, that the attorney would not be barred from continuing with the action.

SENATOR DOLLINGER: Just so I understand that, Mr. President, if I can clarify that with Senator Volker?

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT WRIGHT: The Senator yields.

SENATOR DOLLINGER: The scenario that I just described; that is, I can't get from

the defendant the documents and records necessary to get my architect or engineer to evaluate the work of Senator Abate, or whoever the architect or engineer is, if I can show that I made a good faith attempt to get the defendant -- not just any other party, but the defendant -- to give me the documents necessary to file the -- prepare the certificate of merit, under those circumstances, I would, in essence, have a waiver from this provision to provide it prior to the litigation and would have a sufficient opportunity to get discovery from the defendants in order to determine the merits of going forward.

SENATOR VOLKER: Absolutely. That's on page 4 of the bill, the last page of the bill. That talks about the attorney makes a claim under paragraph 3, and the attorney was unable to obtain the required consultation with the architect or professional engineer. The court may, upon request of the defendant made prior to compliance by the plaintiff through provisions, and so forth, require the attorney

to divulge to the court the names, and so forth, refusing such consultation.

In other words, what the language does in this bill is that if the attorney is un able to comply with the certificate of merit be cause of either the -- being unable to get the professionals involved to give him the informa tion he needs or he can't deal with the defense attorney -- or the -- I mean the -- yes, the defense attorney, then we have a way in this bill that you would not exclude the possibility of the action because you couldn't get the certificate of merit.

SENATOR DOLLINGER: Mr. President, just on the bill.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: Those are really the two major concerns I have with this bill. I appreciate Senator Volker's answer. It seems to me that if you got contractual indemnity that this bill does not affect the right of an owner to obtain contractual

indemnity for a thousand years, if necessary. That principle will protect the eventual user, will also provide protection from the owner and, as I hear Senator Volker explaining the certificate of merit, we have also provided that in the event he doesn't get documents from a reluctant defendant or a noncooperative defendant, be it architect or owner, the plaintiff will nonetheless have the ability to file the action without the certificate of merit and then have a period of time in which, based on court disclosure, disclosure of documents and disclosure of evidence, that the plaintiff will have an opportunity to then obtain the certificate, file it with the court and then the action can go forward.

I think that that kind of pretrial, extensive discovery up front is, at least from my point of view, good legal practice and that lawyers ought to be evaluating cases trying to get as much information as possible prior to the case, both for their own good because they don't want to put a lot of fees

into a contingent fee case that may not produce a result, but this seems to be a balancing between the two of those.

I have to admit this is a close question for me. I don't like the concept of cutting off people's ability to recover but, frankly, under the circumstances, this seems to me to be a reasoned step. It's a close call for me. I'm probably going to vote in favor of it.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: Results.

THE SECRETARY: Those recorded in the negative on Calendar 241 are Senators Abate, Connor, Paterson, Smith and Waldon. Ayes 53, nays 5.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Kuhl, what's your pleasure?

SENATOR KUHL: Yes, Mr. President. Would you call up Calendar 702, please.

ACTING PRESIDENT WRIGHT: Calendar 702. Secretary will read.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: This bill was laid aside by Senator Gold. Can we hold it just a moment? He is in the Finance Committee.

ACTING PRESIDENT WRIGHT: Senator Kuhl.

SENATOR KUHL: Mr. President. Would you lay that bill aside awaiting Senator Gold's returning to the chamber, and could you call up Calendar Number 922, please.

ACTING PRESIDENT WRIGHT: Okay. The bill is laid aside.

Calendar 922. The Secretary will read.

THE SECRETARY: On page 27, Calendar Number 922, by Senator Cook, Senate Print 2964, an act to amend the Tax Law, in relation to imposing a sales and compensating use tax.

ACTING PRESIDENT WRIGHT: Senator Waldon has requested an explanation.

Senator Cook.

SENATOR COOK: Mr. President. This bill simply provides that items sold within prison commissaries would be sales taxable as are items sold any place else in the state.

SENATOR WALDON: Would the Senator yield to a question or two?

SENATOR COOK: Sure.

ACTING PRESIDENT WRIGHT: Senator Cook will yield.

SENATOR WALDON: Senator, are you saying that there is no sales tax now on these items?

SENATOR COOK: That's correct.

SENATOR WALDON: And if I may continue, Mr. President?

ACTING PRESIDENT WRIGHT: You may.

SENATOR WALDON: Are you also saying that the cost of each item would go up by the amount of the tax per item?

SENATOR COOK: Yes, Senator.

SENATOR WALDON: I don't want to -- if I may continue, Mr. President?

ACTING PRESIDENT WRIGHT: You may, Senator Waldon.

SENATOR WALDON: I don't want to appear inane, but do you have any idea -- and ignorant. Do you have any idea how much each prisoner makes per day while in correctional facilities of the State of New York?

SENATOR COOK: Mr. President, I'm not sure that's relevant. I don't think we charge sales tax in stores depending upon what the income is of the people who are buying the items. I think it's taxable because it's taxable.

SENATOR WALDON: That wasn't - if I may continue, Mr. President? That wasn't the question.

ACTING PRESIDENT WRIGHT: Senator Waldon.

SENATOR COOK: I guess, Mr. President, my question is I don't know what the relevance of the question is to the issue at hand.

SENATOR WALDON: Are you saying -- Mr. President, if I may continue?

ACTING PRESIDENT WRIGHT: Proceed, Senator Waldon.

SENATOR WALDON: Are you saying, Senator, that despite your perception of the relevance of the question that I've asked, you refuse to ask it because I asked it?

SENATOR COOK: Well, no, Senator, no. The point is that I don't know. I suppose it varies on what the particular prisoner does. I assume there are some prisoners who work rather regularly, for example, in the kitchen and may receive income on an ongoing basis or

maybe other people do maintenance jobs and don't work quite as many hours and their income varies.

The point is that, if you are buying something in a store, nobody in the store asks you what your income is. They tell you this is the price on the item, and this is the sales tax on it. So I just don't understand the relevance.

SENATOR WALDON: If I may continue, Mr. President. Will the Senator continue to yield?

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

SENATOR COOK: Sure.

ACTING PRESIDENT WRIGHT: The Senator yields. Senator Waldon.

SENATOR WALDON: The learned Senator from Delaware County, can you tell us how much this would increase the coffers of the various counties in which these -

SENATOR COOK: Senator, I think the number we have in total is -- I'm sorry.

The State's share is estimated at $640,000. Counties, for the most part, collect a slightly smaller sales tax than does the state. So my guess is that the gross amount of this tax collected by both the state and the counties would be probably a million dollars.

ACTING PRESIDENT WRIGHT: Senator Waldon.

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

Thank you, Senator.

ACTING PRESIDENT WRIGHT: There is a local fiscal impact note at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect 30 days after it shall have become a law.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

SENATOR COOK: Mr. President, may I explain my vote?

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Cook to explain his vote.

SENATOR COOK: Mr. President. With apologies to Senator Waldon, I do find I have a local fiscal impact note. The local impact is estimated at $480,000.

With that, I cast my vote in the affirmative.

ACTING PRESIDENT WRIGHT: Senator Cook is recorded in the affirmative.

Results.

THE SECRETARY: Ayes 56, nays 2, Senators Espada and Waldon recorded in the negative.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Kuhl, what's your pleasure? We'll stand at ease for a few minutes? No.

SENATOR KUHL: Any housekeeping at the desk to be taken care of? Why don't we take that up right now.

ACTING PRESIDENT WRIGHT: Senator

Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Stafford, Mr. President, I wish to call up his bill, Print Number 4217, which was recalled from the Assembly and which is now at the desk.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: Calendar Number 1032, by Senator Stafford, Senate Print 4217, an act authorizing the Town of Dannemora, Clinton County, to discontinue use as parklands.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is before the house.

Senator Farley.

SENATOR FARLEY: Mr. President, I now offer the following amendments to the bill.

ACTING PRESIDENT WRIGHT: Amendments received.

Senator Paterson.

SENATOR PATERSON: Mr. President, may we open the roll on Calendars Number 728 and 1269 to allow Senator Waldon to vote? I'm sorry, Mr. President. We haven't done Calendar 1269 yet.

ACTING PRESIDENT WRIGHT: Senator, I'm informed at the desk that neither one is on the active list or passed at this point in time yet.

SENATOR PATERSON: We haven't brought them up yet.

ACTING PRESIDENT WRIGHT: That is correct.

SENATOR PATERSON: I'm sorry, Mr. President.

(Whereupon, at 1:15 p.m., the Senate was briefly at ease.)

ACTING PRESIDENT WRIGHT: The Senate will come to order.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. There has been placed on the list of every member -- member's desk -- excuse me, on the desk of every member, a list, what's called an active list. It's a supplemental active list to the one which we're very, very close to completing, and what I would like to do is to have you take up the second active list for the day on a noncontroversial call.

So if you could have the Secretary begin the active list for Calendar Number 689, that would be fine.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: On page 17, Calendar 689, by Senator Trunzo, Senate Print 3577A, an act to amend the Civil Service Law, in relation to providing for binding arbitration.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1063, by Senator Maziarz.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1097, by Senator Tully.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside, please.

THE SECRETARY: Calendar Number 1131, by Senator Maziarz, Senate Print 4435B, an act to amend the Vehicle and Traffic Law, in

relation to fees received by county clerks.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1170, by Senator Nozzolio, Senate Print 5017A, an act to amend the Correction Law, in relation to providing notification to law enforcement officials.

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 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1187.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1259, by Senator Saland, Senate Print 4746A, an act in relation to authorizing the city of Beacon, county of Dutchess, to opt out of the provisions of Chapter 602.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1261, by Senator Holland, Senate Print 932, an act to amend the Mental Hygiene Law, in relation to the placement of state-owned community residences.

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 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1262, by Senator Kuhl.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: The bill is laid aside.

THE SECRETARY: Calendar Number 1265, by Senator Kuhl, Senate Print 5293, an act to amend the Vehicle and Traffic Law, in relation to permitting the use of certain racks.

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 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1266, by Senator LaValle.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1269, by Senator Holland, Senate Print 2044, an act to amend the Social Services Law, in relation to recovery of certain medical assistance expenses.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number

1270, by Senator Velella, Senate Print 2586, an act to amend Chapter 576 of the Laws of 1975, relating to authorizing the Commissioner of Education.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1271, by Senator Santiago -

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

THE SECRETARY: -- Senate Print 3306, an act authorizing the City of New York to reconvey its interest in certain real property acquired by in rem tax foreclosure in the borough of Brooklyn.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1273, by Senator Kuhl, Senate Print 3831, an act providing for Thomas A. Cassidy credit for past -

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1274, by Senator Hannon, Senate Print 3866, an act to amend the Education Law, in relation to experimental alternative institutional support programs.

ACTING PRESIDENT WRIGHT: There is a local fiscal impact note at the desk.

Read the last section.

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

ACTING PRESIDENT WRIGHT: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1275, by Senator Kuhl, Senate Print 3868, an act to require the New York State and local employees retirement system to accept retirement applications.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1277, by Senator Maltese, Senate Print 3910, an act to amend the Tax Law, in relation to exempting certain parts, tools, supplies and services relating to tangible personal property.

ACTING PRESIDENT WRIGHT: There is a local fiscal impact note at the desk.

Read the last section.

THE SECRETARY: Section 9. This

act shall take effect immediately.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1279, by Senator Seward, Senate Print 4568, an act to amend the Civil Service Law, in relation to granting residents of the city of Ithaca in the town of Ithaca a preference in appointment.

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 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number

1280, by Senator Libous, Senate Print 4630, an act to amend the Mental Hygiene Law, in relation to limiting the use of state funds for payment of compensation to certain officers and employees of providers of services.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1282, by Member of the Assembly Brennan, substituted earlier today, Assembly Print 2788, an act to amend the Mental Hygiene Law, in relation to the employees of the Mental Hygiene Legal Service.

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 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1284, by Member of the Assembly Dinowitz, substituted earlier today, Assembly Print 5975, an act to amend the Mental Hygiene Law, in relation to service as president of boards of visitors of hospitals and schools.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: 1285, by Senator Hannon, Senate Print 5026A, an act to amend the Executive Law, in relation to enacting the engineers' and architects' Good Samaritan Act.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1286, by Senator Saland, Senate Print 5106A, an act to amend the Social Services Law and the Education Law, in relation to the protection of pupils in public school settings from abuse and maltreatment.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1288, by Senator Maltese, Senate Print 5273, an act to amend the Vehicle and Traffic Law, in relation to parking violations and red light camera violations.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1289, by Senator Cook, Senate Print 5282, an act to provide for retirement service credit in the New York State and local police and fire retirement system for Richard C. Paolino.

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

Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 1290, by Senator Rath, Senate Print 5359, an act to amend the Civil Practice Law and Rules and

the Executive Law, in relation to extending the statute of limitations on actions by a victim.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 1291, by member of the Assembly Kaufman, substituted earlier today, Assembly Print 3411, an act authorizing the city of New York to reconvey its interest in certain real property acquired by in rem tax foreclosure in the borough of the Bronx.

ACTING PRESIDENT WRIGHT: There is 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 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Kuhl, that completes the reading of the noncontroversial calendar.

SENATOR SEWARD: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Seward.

SENATOR SEWARD: I would ask unanimous consent to be recorded in the negative on two bills we passed earlier today, Calendar Number 225 and Calendar Number 806.

SENATOR KUHL: No objection.

ACTING PRESIDENT WRIGHT: Without objection, Senator Seward will be recorded in the negative on Calendar Number 225 and Calendar Number 806.

ACTING PRESIDENT WRIGHT: Senator Holland.

SENATOR HOLLAND: Mr. President, with unanimous consent, could I be recorded in the negative on 125 and 806?

ACTING PRESIDENT WRIGHT: Without objection, Senator Holland is recorded in the negative on Calendar 125 and 806.

Senator Saland.

SENATOR SALAND: Mr. President, I would like to place a sponsor's star on Calendar 1259, Senate 4746A.

ACTING PRESIDENT WRIGHT: Sponsor's star will be placed on Calendar Number 1259.

Senator Rath.

SENATOR RATH: Yes, Mr. President. Without objection, I would like to be recorded in the negative on Calendar 689.

ACTING PRESIDENT WRIGHT: Without objection, Senator Rath will be recorded in the negative on Calendar Number 689.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, could I have unanimous consent of the house to be recorded in the negative on Calendar Number 831?

ACTING PRESIDENT WRIGHT: Without objection, Senator Dollinger will be recorded in the negative on Calendar Number 831.

Senator Kuhl.

SENATOR KUHL: Mr. President,

could you call up Calendar Number 1063, please.

ACTING PRESIDENT WRIGHT: Calendar Number 1063. Secretary will read.

THE SECRETARY: Calendar Number 1063, by Senator Maziarz, Senate Print 4018A.

SENATOR SMITH: Explanation.

ACTING PRESIDENT WRIGHT: Senator Maziarz, an explanation has been requested by Senator Smith.

SENATOR MAZIARZ: Yes, Mr. President. The county of Orleans, I believe it was three years ago, asked this body, and this body approved, to implement an extra one percent in their sales tax, bringing their sales tax to 8 percent.

They estimate -- the county legislature estimates that they have been able through the imposition of this additional one percent sales tax to hold down the property taxes by approximately 25 percent in the County of Orleans.

There was a unanimous -- I want to stress "unanimous," Mr. President -

resolution passed by the Orleans County Legislature asking me to bring this resolution before this body.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 1262, please.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: Calendar Number 1262, by Senator Kuhl, Senate Print 5087A, an act to amend the Retirement and Social Security Law, in relation to authorizing the Keuka Lake Watershed Improvement Cooperative.

SENATOR SMITH: Explanation, please.

ACTING PRESIDENT WRIGHT: Senator Smith has requested an explanation.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. This is a local bill. It is being requested by seven municipal governments.

Several years ago, about five, Keuka Lake, which is one of the Finger Lakes - it's shaped like the thumb and the first finger, the Y in your hand -- became -- and the residents surrounding the lake became extremely concerned about the long-term quality of the water. They were running into problems with runoff from the hills, soil erosion, from septic tanks that were not working, and potentially the downgrading of the quality of the water in the lake which would affect things like fishing, recreational use, swimming, and most of the residents around the lake actually use the water as drinking water.

And while they may have systems

like ultraviolet systems and other kinds of filtration systems to purify it, certainly, if the quality of the water becomes degraded, then essentially there is a tremendous economic loss and personal usage loss of the Lake.

These seven municipalities, which are the towns of the two counties and a couple of villages, decided that there was the need for a cooperative effort to essentially establish rules and regulations for people who live around the water body itself and also for people who were in what's called the Keuka Lake watershed. What these communities decided to do was to form an entity to try to control the environment as it relates to this body of water.

So they formed an organization called the -- or, what is commonly referred to as KWIC, or the Keuka Lake Watershed Improvement Cooperative, and they unanimously entered into an agreement that would start to establish a methodology by which they would administer certain types of regulations that would control the watershed.

What they have done at this point is, each municipality has, voluntarily through their own municipal board, established resources, finances, money, to hire a small staff in the form of one watershed inspector. They decided to, rather than take on every issue of decision with the environment at one time, they would approach it on a piecemeal basis and start with septic system control at first.

So they hired a watershed inspector who, in fact, goes around and approves applications, where there's new construction goes in and looks at the plans, approves them or disapproves them, and then follows up on the actual implementation. Where there are reports of, say, sewage being directly dumped into the water, this watershed inspector investigates and, in fact, will follow up with enforcement of the rules and regulations that are in place.

A problem has surfaced in that an individual can not participate in the New York State Retirement System unless they are employed by a municipality. This proposal would allow

for the employee of this cooperative group of seven municipalities to be included in the New York State retirement system, and that's what the bill is all about.

ACTING PRESIDENT WRIGHT: Read the last section.

Senator Smith.

SENATOR SMITH: Yes. Thank you for that explanation.

Can I ask one question, Mr. President?

ACTING PRESIDENT WRIGHT: Senator Kuhl, do you yield?

SENATOR KUHL: Be happy to.

ACTING PRESIDENT WRIGHT: Senator Kuhl yields.

SENATOR SMITH: Senator, could you tell me if there is any fiscal implication for the state?

SENATOR KUHL: Not that I'm aware of. Not that I'm aware of.

SENATOR SMITH: Another question please, would you?

ACTING PRESIDENT WRIGHT: Senator Smith.

SENATOR KUHL: Be happy to yield.

SENATOR SMITH: Thank you. Could you tell me, would the counties bear the expense of KWIC?

SENATOR KUHL: Not the counties alone, Senator. There are villages. There's the village of Penn Yan, the village of Hammondsport, the county of Yates, the county of Steuben, and there are several towns that surround or are involved in the watershed who, cooperatively, based on their population contribute to the pot of KWIC, and so that they cooperatively share in the cost and they would be cooperatively and jointly contributing to the retirement system on behalf of or the responsibility of the employer.

SENATOR SMITH: Once again, thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Senator Stachowski.

SENATOR STACHOWSKI: If Senator

Kuhl will yield?

ACTING PRESIDENT WRIGHT: Senator Kuhl, will you yield?

SENATOR KUHL: Happy to yield.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR STACHOWSKI: I'm sorry I got here late, and I don't know if you covered any of this, but I had a couple questions yesterday in Rules on this particular bill, and one of the questions was -- and maybe you covered it in your explanation. Like I said, I'm sorry. I just came in from Finance.

There was -- in the bill, I thought I read where people were going to go retroactively all the way back to Tier I, where if they were never state employees and anyone who currently just comes into the state retirement system enters at the current tier, and I believe in that bill, people go into Tier I, Tier II, Tier III and Tier IV. Why wouldn't all these people automatically be in Tier IV since they weren't in the retirement system

until this bill will pass?

SENATOR KUHL: Senator Stachowski, I didn't cover that in my explanation, but there is currently one employee of Keuka Lake Watershed Improvement Cooperative or Commission, and that individual has prior experience in the New York State Retirement System and was a Tier I employee.

So the bill is meant to continue that person with the same benefits that they were in their previous employment, and it's not aimed at any other employee.

ACTING PRESIDENT WRIGHT: Senator Stachowski.

SENATOR STACHOWSKI: If Senator Kuhl will continue to yield?

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

SENATOR KUHL: Be happy to.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR STACHOWSKI: Then the other part of that would be that the rest of the

people that will go in will go in as Tier IV members; is that correct?

SENATOR KUHL: Whatever the tier is at the time of their entry, yes, Senator.

SENATOR STACHOWSKI: Thank you.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: Two quick questions, if the sponsor will yield?

ACTING PRESIDENT WRIGHT: Senator Kuhl, will you yield?

SENATOR KUHL: Yes, be happy to.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR DOLLINGER: Is the agreement to support KWIC an intermunicipal agreement? Is it a signed contract between all the communities?

SENATOR KUHL: That's correct, Senator.

SENATOR DOLLINGER: Okay, and again, through you, Mr. President, just one other question.

What other state laws would apply to this individual, the Civil Service rules and regulations? Is there any -- we're going to put them in the retirement system, but he or she is sort of out there working for an independent agency? Are they governed by other state rules? Is KWIC's future hiring, if they need more people, done pursuant to the Civil Service Law, or is it just an independent agency without complying with those?

SENATOR KUHL: It's really an independent entity, if you will, Senator, that was created as a result of the intermunicipal agreement of the municipalities involved. As far as I know, Civil Service is not a requirement in this particular case. Certainly there are other laws that apply to the towns in their operative participation, but nothing that I know that relates to individual employees.

SENATOR DOLLINGER: Mr. President, I think this is a good idea.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: I think it's a good community cooperative effort. My concern is more about what happens in the future, but we'll deal with that as it comes up.

SENATOR KUHL: Read the last section.

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 58.

ACTING PRESIDENT WRIGHT: The bill is passed.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Gold.

SENATOR GOLD: Yes, Mr. President. I was at a committee meeting, and with unanimous consent, could I be recorded in the negative on Calendar 241?

ACTING PRESIDENT WRIGHT: Without objection, Senator Gold will be recorded in the negative on Calendar Number 241.

Senator Kuhl.

SENATOR KUHL: Mr. President, would you call up Calendar Number 728, by Senator Levy, please.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: Calendar Number 728, by Senator Levy, Senate Print 973C, an act to amend the Vehicle and Traffic Law, in relation to operation of a motor vehicle by persons under the age of 21.

SENATOR PATERSON: Explanation.

SENATOR LEVY: Yes, Senator.

ACTING PRESIDENT WRIGHT: Senator Levy.

SENATOR LEVY: Senator Paterson, this is the .02 zero-tolerance legislation for operators of motor vehicles under the age of 21, and it provides for administrative suspension for operating a motor vehicle after having

consumed alcohol. It is very similar to the bill that we passed last year overwhelmingly in this chamber and, as I'm sure you know, it is illegal for young people under the age of 21 in this state to be consuming alcohol.

Twenty-seven other states plus the District of Columbia have enacted laws similar to this bill, and our neighbors in New Jersey and Massachusetts have such laws, and there are bills on the desks of the Governors of Connecticut and Rhode Island to enact similar legislation to this bill.

Now, let me just point out, and then I'll be happy to yield to your questions, Senator, that under-age operators comprise 5 percent of New York State's drivers. They are involved in 100 percent greater percentage of fatal alcohol-related accidents in the state of New York. 11 percent of those fatalities involve drivers under 21 who have consumed alcoholic beverages.

What this bill would do, Senator, is, from a concept standpoint, really extend the

concept underlying last year's prompt suspension law to operators of motor vehicles under the age of 21 who have a BAC of between .02 and .07.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Gold.

SENATOR GOLD: Yes. Senator Levy said he was happy to yield to Senator Paterson. I just want the record to indicate that no one in the chamber right now is happier than Senator Onorato.

ACTING PRESIDENT WRIGHT: Thank you, Senator Gold.

Senator Paterson.

SENATOR PATERSON: If Senator Levy would happily yield for a question?

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

SENATOR LEVY: Certainly.

ACTING PRESIDENT WRIGHT: Senator Levy.

SENATOR PATERSON: Senator Levy, your bill defines the redress for those who are found with blood alcohol levels of .02 to .07 and, of course, the legal limit is 1.0, and so that just begs the obvious question, what is going to happen with those individuals who test from .07 to 1.0 -- to .1? I'm sorry.

SENATOR LEVY: Senator, as you know, in New York State, .07 or over is driving while your ability is impaired, .10 and above is driving while intoxicated. Those are both alcohol -- both alcohol-related offenses.

What this bill will do between .02 and .07, because young people under 21 according to the law are not to be imbibing alcohol, will provide for an administrative suspension of their operating privilege if they are determined to have a BAC of between .02 and .07.

SENATOR PATERSON: Okay. Actually, you've answered the question, Senator Levy. If you would yield for another question?

SENATOR LEVY: Yes, certainly.

ACTING PRESIDENT WRIGHT: Senator

Levy, will you continue to yield?

Senator yields.

SENATOR PATERSON: Is it possible that younger people who might be taking cough medicine or use mouthwash or something else that really would not even alert them to the fact that there is some alcohol content, that that might raise the blood alcohol level to .02, which is really rather low, and, therefore, subject some younger people who are not trying to drive while intoxicated or even drive while drinking to suspension of their licenses? In other words, is .02, in a sense, too low a threshold, whereby it might be achieved through some other source than an alcoholic beverage?

SENATOR LEVY: Senator Paterson, other states have gone forward with a zero BAC. The concern that you raise, because the chemical test to detect BAC can detect BAC of .02 and above, that is the reason we have used the .02 standard in this bill, to eliminate the concern that you have raised unlike other states that go with a zero BAC.

SENATOR PATERSON: And finally, Senator Levy, am I correct that you said earlier that although younger people constitute 5 percent of the driving while intoxicated incidents that occur in New York State, that it is -- in other words, they are 5 percent of that number of drivers, that they actually are involved in double the number of accidents?

SENATOR LEVY: They are involved in 11 percent of the fatal auto crashes in this state where alcohol has been involved in those crashes, or greater than 100 percent greater than the percentage they represent of total New York State drivers.

SENATOR PATERSON: Well, I think that pretty much establishes the strong need for this legislation. I thank the Senator for answering my questions.

ACTING PRESIDENT WRIGHT: Senator Marchi.

SENATOR MARCHI: I find myself in a rather curious position, because anything that Senator Levy has on his agenda I'm in full

support, and especially measures that he has introduced on DWI and so many other approaches that have materially reduced the incidence of fatalities on the highways.

But we're back to the 18 and the 21. I have never believed in the 21-year-old threshold, regardless of statistics, because when we were keeping statistics and comparing the record of New York State as against other states, the record uniformly, in my experience, showed that New York had a better record. There were those who were going into licensed premises, weren't crossing some sort of a macho threshold to prove their manhood by drinking somewhere. It was something that took place under more normal circumstances.

I remember being a Commander at sea with seamen and approaching any one of a number of ports on both the Atlantic and the Pacific where the casualties were frightful in terms of drinking too much, and all with the exception of New York. I didn't have that problem in New York. If the seamen went ashore,

they were more likely to come back sober than they were any other states.

What it does, I believe -- and this does not dispute the fact that the youngsters do have a higher incidence of alcohol -- have a higher incidence of fatalities on the highways, and this is true irrespective of whatever law is in vogue -- is that it breeds a sense of cynicism.

The average youngster throughout the United States with their false IDs, and it's not even a question of trying to enforce, the subterfuges and the circumventions are rank from the Atlantic to the Pacific. I don't think this engenders any confidence, any belief that this builds up a respect for law among young people. This is a law which so many of them take great pride, and they become cynical about the law. I don't know whether that cynicism is attached to other things that we do, but I believe that it certainly is not a good character builder.

Yes, even the law that the Senator has proposed would make a great deal of

sense, I guess, if it were applied to everybody, but this simply does not meet the test in my book.

I remember writing a letter to the Catholic Weekly, who praised Governor Cuomo for signing the 21-year drinking age bill, and I wrote a letter to the Catholic Weekly, and I said that I didn't think the founder of my religion when he performed his miracle at the marriage feast of Cana also checked the ID cards of those who were attending the wedding. It's sobriety that counts, and for far too long I believe that people in our country feel that there is something naughty about drinking, and they also feel that there is something wrong if you don't drink.

The mature attitude would be you drink if you'd like to within reason or you don't drink at all. But if you don't drink -- I don't know, how many of you remember the old movies? I haven't been to the movies in years, but someone would walk up to the -- it could be Gary Cooper or one of the stars of the time, and

he would order a glass of milk. Everybody would turn around and look at him, and then somebody would shove him, and he would pull his guns out and shoot all the bulbs out. That's the mentality, that he couldn't go up and ask for a glass of milk, where you can in many countries ask for a glass of milk and nobody will look down their noses if you do that. So it's not quite right not to drink and it's not quite right to drink.

Sobriety is the ultimate test, and I don't think that legislation of this nature helps it. I say this with greatest deference and apologies to my friend Senator Levy, because he has done so much in this field and so much of it has really showed the country, really, how to approach this problem in a positive way, in a constructive way, but this is one point where I disagree.

ACTING PRESIDENT WRIGHT: Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President. I'm going to vote no on this bill,

and I feel I have to explain the reason why. It's not because I don't believe in punishing people for illegal acts. It's not because I'm soft on DWI. As a matter of fact, this week we're going to be hopefully passing my Deadly Driver Reform Act again this year, which would be the toughest DWI, unlicensed, unregistered driver bill in the country.

I agree with Senator Marchi to a great extent. If we were passing legislation that affected all of society equally, I might be supportive. If I were here a number of years ago when they passed the 21 drinking age, I think I would have voted no. I don't think we should be passing laws against individuals and groups in this state. I think we should be passing laws that impact on everybody equally. Somebody who is 20 years old and goes home to their parents or their grandparents and has Sunday dinner and a glass of wine, I don't think it's right that two hours later when they are on the road they lose their license.

I think we go a little bit too

far in this state. We should be tough on those who flaunt the law, tough on those who are truly a danger in society, but I think when you go too far you minimize those crimes that are truly heinous. We should be keeping those drunks off the road forever, for good, but somebody who goes out after having a glass of wine with their parents or their grandparents on a Sunday afternoon, an hour and a half, two hours later, for this to be treated in this manner, I think, is just not the right thing to do. Let's be tough on those who are truly a danger to society but let's not single out a small group of individuals many of whom are very responsive and responsible in society even if they happen to be between the ages of 18 and 21.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Hoffmann.

SENATOR HOFFMANN: I listened with great interest to Senator Marchi's comments on the box in the other room, and it brought back to my memory a debate that we had quite a few years ago in this chamber when this state

raised the drinking age to 21.

At that time, Senator Marchi and I were among those who voted in opposition to raising the drinking age to 21 and, in fact, the Senior Senator from Staten Island and I attempted to have the state of New York enjoin the South Dakota lawsuit because South Dakota was the only state in the nation that was at that time challenging the federal government's blackmail, the blackmail of every state in the nation to raise the drinking age in order to received continued federal highway assistance, two totally unrelated issues that had been linked by a federal regulation, not legislation but a regulation that forced 50 states in the nation to change their laws relative to behavior by people in the age group of 18 to 21.

It troubled me then and it troubles me now that we somehow single out people in that age group as less worthy citizens and we make an assumption that they are incapable of exercising adult responsibility when, in fact, they have done nothing by their

own actions to indicate that. They have done nothing as a group of people to indicate that they are irresponsible drinkers, period; and they have certainly done nothing to indicate by their behavior that they are irresponsible to operate motor vehicles when having consumed a tiny portion of alcohol through -- unbelievable as it may sound -- even mouthwash consumption in normal oral hygiene activity or through the consumption of a cough syrup that contains alcohol. Both of these could actually trigger a test which would put a person out of compliance with the law should this law pass.

I continue to be appalled that as a state and as a nation we allowed our entire category of young people in the 18- to 21-year age category to be deemed unworthy to consume alcoholic beverages in the first place, and now to further create this rather minuscule prohibition that would allow them to be arrested and subjected to criminal penalties that no other category of New York State citizens would face, I think would be a terrible travesty of

justice, so I will vote no, and I will urge my colleagues to vote no as well.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I rise to speak in favor of this bill. I've listened intently to Senator Hoffmann and Senator DiCarlo and Senator Marchi, and I understand that the policy debate about when we prohibit the consumption of alcohol, whether it's 18 or 21 or whatever age we create, involves a certain arbitrary quality and, frankly, oftentimes involves setting limits for the state's exercise of its authority and its power.

But the one thing we have done, without question, is we have banned the consumption of alcohol by those -- the purchase of alcohol by those under age 21. In doing that, we sent a message to a generation unlike the one that was sent to me.

I agree with Senator Hoffmann there may be even some consistency in changing

it from generation to generation. But, nonetheless, a prior Legislature, not one that I participated in, said that if you buy or purchase alcohol under age 21 you are breaking the law, and if you are served alcohol under the age 21 outside the context of the family, which I think is still an exception, you are breaking the law.

What this bill does is this simply says that you can't afford the single irresponsible act of an individual between 18 and 21, not the irresponsible act of consuming alcohol -- some of them may choose to do that - but driving an automobile while doing it. We can't tolerate one instance of that irresponsibility.

The memo from RID that talks about the two high school seniors and football players from Saratoga County who died in a crash after celebrating their team's victory -

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

SENATOR DeFRANCISCO: Would

Senator Dollinger yield to a question?

SENATOR DOLLINGER: I'd be glad to, Mr. President.

ACTING PRESIDENT WRIGHT: Senator will yield.

SENATOR DeFRANCISCO: Senator Dollinger, is it any less irresponsible for a person aged 65 to get behind a wheel after having drank one or two glasses of alcohol?

SENATOR DOLLINGER: It is irresponsible for them to get behind the wheel, that is correct.

SENATOR DeFRANCISCO: So do you support amending this bill to include 65-year olds? Well, let's put voting age people, other than the limits we have now 18 to 21.

SENATOR DOLLINGER: I'm not sure I understand the question.

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

SENATOR DOLLINGER: I'll continue to yield. I just don't -

ACTING PRESIDENT WRIGHT: Senator

DeFrancisco.

SENATOR DeFRANCISCO: Do you support amending this bill to include all voting age people whether you are 18 to 21 or 65 or 45, that they also would have their licenses taken away if found with .02 percent alcohol?

SENATOR DOLLINGER: Mr. President, my personal preference would be I wouldn't have any problem with that, no.

SENATOR DeFRANCISCO: Thank you.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: My personal view, my view about that age group between 18 to 21, those who are barred by law from consuming alcohol, I think we can draw a more rigid line for them and impose a more rigid penalty because of the uncontroverted evidence that in that age group their conduct, their irresponsible conduct has more disastrous consequences.

I think all we're doing is taking our law, making it conform to what we know is the practical reality, which is, under 21 you

can't drink, by law, but yet, if you do and if you're caught driving an automobile, you are going to pay a more severe penalty. I think that sends a message to our kids, one of mine who is about to enter that age group, that driving while drinking is absolutely, totally, completely irresponsible, not something that should start between 18 and 21 and continue beyond 21. It shouldn't start at all.

I think we can send that message. We do that by this statute. I urge its approval.

ACTING PRESIDENT WRIGHT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. I'm going to vote against this bill for many of the reasons that were discussed earlier. It just bothers me that you have a situation where those individuals who have no representation in their age group on this body, those between 18 and 21, get the brunt of some of the social problems.

If we ever carved out a class of individuals and said that only as to these class

of individuals we are going to apply a certain law and those class of individuals were any class other than 18- to 21-year-old children, young adults, we would have the most vigorous debate that this chamber has ever seen, and to say that the 18- to 21-year-old person is considered to be less responsible, that's a broad generalization, that we would never even consider speaking about any other group in those terms.

There are responsible people in every group and irresponsible people in every group. Individuals may be at home having a glass of wine or something with dinner with the approval of their parents and to suggest that we have a standard of .02 -- which I'm not even sure if that's the standard within which there's going to be a legitimate test because there's a standard deviation where these tests have an error to them, whether or not that even fits in with that standard deviation to make it a legitimate test.

So, for each of these reasons, I

feel that I have to vote against this bill, and no doubt somebody out there somewhere is going to say I'm not tough on DWI. But if you want to be tough on DWI, you got to be tough on every body, not just one small class of individuals who have that same broad section of irrespons ible or responsible people in them, and I would urge others to vote in the same way.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Sears.

SENATOR SEARS: Thank you very much, Mr. President. I rise on this bill because I'm not quite sure I understand what we're doing here.

You know, in May, around May the 8th, we celebrated 50 years of the end of World War II in Europe, and here in a month or so, in August I believe it is -- I don't know the exact date -- we will celebrate 50 years of the end of the war in Japan; and if you have read the papers and you have read what's happened back in those years, when we had the Memorial Day celebration just a few short weeks ago, and it

come out in the newspapers again to remind the people of this country that a lot of those people that were killed over there in Europe at Normandy, Iwo Jima, you name it, they were 18 and -- between 18- and 21-year-old kids, gave their lives for this country.

Now, on the 50th anniversary of this celebration of all the people that got killed, but, of course, we won the war, now we're going to pass legislation that says if you want to go into the armed services at 18 or 19 and you are accepted and you get caught under the provisions of this law, these are the things that we're going to do to our youngsters to tell them that they are not responsible.

But they were responsible when the time came; and again it could happen, who knows, that these same people of this age might be asked to fight another war, and this is what we're going to impose upon these children.

I urge everybody in this chamber to vote against this terrible legislation, which I feel is a terrible affront to anybody that

ever served in the armed service of this country during the major wars and to anybody who might in the future.

I vote no.

ACTING PRESIDENT WRIGHT: Senator Dollinger.

SENATOR DOLLINGER: I have a question for Senator DeFrancisco, but he is departed. I will waive, Mr. President.

ACTING PRESIDENT WRIGHT: Read the last section.

SENATOR LEVY: To explain my vote, Mr. President.

THE SECRETARY: Section 14. This act shall take effect on the first day of November.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: Chair recognizes Senator Levy to explain his vote.

SENATOR LEVY: Yes, Mr. President. As we all know, in this state young

people from 16 are eligible and, in fact, operate motor vehicles in different parts of this state. In the 27 states that have enacted this law, fatalities involving young people under the age of 21 where they've killed themselves or killed someone else has dropped by one-third, and this group 16 through and including 20 is involved in double, better than double the number of fatalities in comparison to the total number of registered operators of motor vehicles between the ages of 16 and including 20. That is the reason that we're doing this legislation, to save lives and to save serious maiming injuries.

ACTING PRESIDENT WRIGHT: Senator Kuhl to explain your vote.

Senator Dollinger to explain your vote.

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

Senator Levy couldn't have said it better. This will save lives. I also reject Senator DeFrancisco's -- I would have asked him

a question if he was here -- his comparison that we're treating a class of people -- we're assuming that they are irresponsible.

We're not assuming that they are irresponsible. We're not assuming they're an irresponsible class. We're simply saying that if you are 18, 19 years old and you have that glass of wine at home, you better think twice or three times before you get behind the wheel of a car because the blood alcohol content will be much lower. That will send a message that they need to be a little bit more responsible because, as Senator Levy points out, in this age group, this is where most of fatalities occur.

It is simple social science. We've got the facts to support it. This is a good bill. It will save lives in this state; and, frankly, one of the reasons why I'm going to vote for it because my 16-year-old may be one of them.

ACTING PRESIDENT WRIGHT: Senator Dollinger in the affirmative.

Senator DiCarlo to explain his

vote.

SENATOR DiCARLO: Thank you, Mr. President. You know, let's change the laws in this state and say that if we were being honest with ourselves that you did not reach the age of adulthood until 21. Let's change the laws in this state to say that you can't be drafted until you are 21 or enter the armed services. Let's say in the State of New York, you can't be married until you're 21.

Let's be honest with ourselves and let's stop playing games with this and singling out a lot of innocent people who are not breaking the laws, who are not a danger to society. If we did that, if we made this law across the board for all people in the state of New York, not just singling out some people who are not represented in this chamber, I would support it.

If you said you had a blood alcohol level of .02 and that was against the law to drive in this state, then I would support this bill. But it's wrong to say that these

individuals 18 to 21 who can do everything else in the state of New York legally but it's somehow a sin to have a glass of wine on an occasion at home, it's somehow wrong when it's right for everybody else in this state is just bad legislation, and I think we're all kidding ourselves here.

I vote no.

ACTING PRESIDENT WRIGHT: Senator DiCarlo in the negative.

Senator Solomon.

SENATOR SOLOMON: Thank you, Mr. President. To explain my vote.

SENATOR SOLOMON: I originally voted against raising the drinking age to 21 until we had a gun put to our head by the Reagan Administration, which, in fact, said we were going to lose $400 million in state aid unless the state of New York raised the drinking age.

But I want to point out as I did several days ago on a piece of legislation, where I had spoken about the fact that it's interesting that they were going to open liquor

stores on Sundays because of Christmas and New Year's, yet in my community liquor stores are closed in parts of my district every Saturday during the year, yet they're not allowed to open on Sundays, in addition to other Jewish holidays.

In my community, a large part of the population gets married at the age of 18, and they go to weddings of even their brothers or sisters or relatives at the age of 18 or 19. Under this bill, they are not going to be allowed to have a glass of wine at their brother's wedding or their sister's wedding or their relative's wedding and drive home, because if they get stopped, they might fall under the purview of this legislation, and I think what we're doing is we're again discriminating against people. And, yes, there are some statistics that point to, in fact, deaths among this group.

But, again, it's a particular concern for me. Drunk driving is not a particular problem in this community that I'm

talking about; however, they fall under the laws of the state of New York under these specific laws if we enact this piece of legislation, and it's inherently unfair to people between the ages of 18 to 21.

I'm going to vote no.

ACTING PRESIDENT WRIGHT: Senator Solomon recorded in the negative.

Continue the roll.

Senator Paterson, you want to be recognized?

SENATOR PATERSON: If Senator Libous would yield to me for just a second?

ACTING PRESIDENT WRIGHT: Senator Libous yields.

Senator Paterson.

SENATOR PATERSON: We would like to have a slow roll call on this issue.

ACTING PRESIDENT WRIGHT: A request for a slow roll. Are there five? There are five Senator standing.

SENATOR LEVY: Lay the bill aside.

ACTING PRESIDENT WRIGHT: The bill is laid aside at the request of the sponsor.

ACTING PRESIDENT WRIGHT: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Would you call up Calendar Number 1078, by Senator Bruno, please.

ACTING PRESIDENT WRIGHT: Secretary will read.

THE SECRETARY: Calendar Number 1078, by Senator Bruno, Senate Print 3219B, an act to legalize, validate, ratify and confirm certain actions of the city of Saratoga Springs.

ACTING PRESIDENT WRIGHT: We have a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Mr. President, I was out of the chamber earlier today when a vote was taken. I request unanimous consent to be recorded in the negative on Calendar 128.

ACTING PRESIDENT WRIGHT: Without objection, Senator Hoffmann will be recorded in the negative on Calendar 128.

SENATOR HOFFMANN: Thank you.

ACTING PRESIDENT WRIGHT: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Also I would like to have the record reflect that I was out of the chamber yesterday when Calendar Number 1248 was called and had I been present, I would have voted in the negative on that bill.

ACTING PRESIDENT WRIGHT: The record shall so reflect. Senator Kuhl would have voted in the negative on 1248.

Senator Kuhl.

SENATOR KUHL: Mr. President, could you call up Senator Velella's bill, Calendar Number 702, please.

ACTING PRESIDENT WRIGHT: Senator, if you may, I will recognize Senator Montgomery first.

Senator.

SENATOR MONTGOMERY: Thank you, Mr. President. I would like unanimous consent to be in the negative on Calendar 963.

ACTING PRESIDENT WRIGHT: Without objection, Senator Montgomery will be recorded in the negative on Calendar 963.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT WRIGHT: Thank you. Senator Kuhl, we will now proceed.

Secretary will read.

THE SECRETARY: Calendar Number 702, by Senator Velella, Senate Print 3763, an act to amend the Insurance Law, in relation to agent determination reporting requirements.

SENATOR GOLD: Explanation.

ACTING PRESIDENT WRIGHT:

Explanation has been requested by Senator Gold.

Senator Velella.

SENATOR VELELLA: Yes, Senator.

Under the present law when an agent, an insurance agent, is terminated by a company, they must file a report with the state Insurance Department. Some of the matters that would be contained in that report are barring gross negligence on the part of the reporting company, fraud or a -- or fraud would -- would -

Let me start over again. Barring fraud or a gross negligence on the part of the reporting agency to the Insurance Department, we would hold them harmless, the reporting agency, for any comments made in that report.

This is done in several other sections of the law. It was omitted in the section in which insurance agents are terminated by the company so that if they made a statement that ultimately and factually become erroneous in reporting it to the state Insurance Department, unless there was fraud or gross

negligence on their part, they would not be liable for civil liability.

ACTING PRESIDENT WRIGHT: Senator Gold.

SENATOR GOLD: Senator yield to a question?

SENATOR VELELLA: Yes.

ACTING PRESIDENT WRIGHT: Senator Velella, will you yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT WRIGHT: Senator yields.

SENATOR GOLD: Senator, I just wanted to clarify something, because, as you know, there is a memo in support, but there's also a memorandum in opposition and, basically, as I understand what your bill would do, it basically would set up a kind of immunity for the one who makes the report similar to, for example, if you made a report against an attorney and the charges turned out not to be founded, or against other types of professionals with other licensing departments. Isn't that

correct?

SENATOR VELELLA: Or similar to the other provisions we have in the Insurance Law, where other reports are filed with the Insurance Department, and the same provisions apply, yes.

SENATOR GOLD: Well, Senator - Senator, if you will yield to one more question?

SENATOR VELELLA: Sure.

SENATOR GOLD: In trying to justify a yes vote in my mind, it's easier for me to get outside the Insurance Law and look at it from the point of view that we would be treating the agents no differently than other licensed kinds of individuals, where, in order to protect the profession itself, you allow misstatements as long as they are not gross negligence or fraudulent, et cetera, et cetera. That would be no different than the way we treat lawyers, doctors or anybody else; isn't that correct?

SENATOR VELELLA: If that's the

case, Senator. I'm not sure how we treat lawyers and doctors. I'm sure of what we have in the Insurance Law.

But that is the intent so that if a particular statement is erroneous, absent bad faith, fraud, or malice on the part of the person making that statement, they would be exempt.

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 59.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, can we return to reports of standing committees. I believe there is a report from the Finance Committee.

ACTING PRESIDENT WRIGHT: Without objection, reports of standing committees.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Walter G. Hoefer of East Quoque, Director of the Office for the Aging.

ACTING PRESIDENT WRIGHT: Recognize Senator Stafford to move the nomination.

SENATOR STAFFORD: Mr. President, once again, I'm standing today and stating what a tremendous group of nominees appeared before the Senate Finance Committee today, and I am pleased to say that I'm saying it again and, as in the past, we have excellent nominees, and the first is Walter G. Hoefer, Director of the Office for the Aging, who was most impressive as were all the others.

And I now yield to Senator DiCarlo.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President.

As the chairman of the Committee on Aging, I'm pleased to say that we met earlier today and unanimously supported the nominee.

I am pleased to forward the nomination of Walter G. Hoefer of East Quogue, Suffolk County, for the position of Director of the State Office for the Aging.

As chairman of the Senate Aging Committee, I have had the opportunity to meet with Mr. Hoefer and discuss with him his role as an advocate, as a coordinator, and as a forward thinker in looking out for the concerns of the elderly. He's a businessman, a former county assistant administrator and budget officer.

Mr. Hoefer has successfully managed an $8 million budget with the oversight of five human resource services agencies including Aging, Veterans, and Criminal Justice. He also has a background in many other areas having impact on the senior population of this state, expertise which I believe will make

him an effective director of the State Office for the Aging.

I am very proud to put forward his name, and I would ask that you now call upon Senator LaValle.

ACTING PRESIDENT WRIGHT: Chair recognizes Senator LaValle.

SENATOR LAVALLE: Thank you, Senator DiCarlo.

Mr. President, colleagues, it really gives me great pleasure to rise today to speak on behalf of the nominee Walter Hoefer from East Quogue.

First, let me say, as I think each of you know, that there is probably no greater or important constituency than our senior population, and so I think Governor Pataki has named a nominee that I have known for the last 19 years, who is very, very bright, articulate, is very caring, and I think is a good communicator.

For the director of the aging commission -- for Office for the Aging, I can

think of no greater skill than one who can communicate with that population, understands the legislative process, understands the issues that we have to deal with, and I can assure you will be communicating and dealing and inter acting with the -- certainly the Governor's Office and members of the Legislature in trying to deal with the population that is so near and dear to all of us.

So I am confident that Walter will meet his responsibilities as energetically as he has met all of those endeavors that he has been involved with back in Suffolk County. He will use his sizeable intellect in sorting out the issues and how to address those issues in working with all those individuals who have expertise, and I am confident that together, working together, that we will solve many of the problems and issues that deal with the aging population, and I think Walter showed today in the Finance -- in the Aging Committee that he is able to deal with issues and balance the needs of the constituency within the fiscal realities,

and so it's, indeed, a pleasure to speak on his behalf and I might add as a footnote, I think it is the first nominee to come before this body that would be from Peconic County, if there was such an entity, in the east end of the great county of Suffolk.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Farley on the nomination.

SENATOR FARLEY: Thank you, Mr. President. I rise to support Walter Hoefer as director of the Office for the Aging.

If I've had an interest in anything, it's been in aging legislation over the years. I was the first chairman of the Aging Committee and served there for eight years. I find it one of the most rewarding and important areas that we work in in this chamber, and I certainly feel that this young man is an outstanding candidate.

Senator LaValle, who has been my classmate and came into the Senate with me, spoke so highly of this nominee that it is with enthusiasm that I support him for director, and

I compliment the Governor on this excellent choice.

ACTING PRESIDENT KUHL: The question is on the nomination of Walter G. Hoefer of East Quogue to become the director of the Office for the Aging.

All in those favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

We're very pleased to have Walter Hoefer in the chamber with us, to your left, my right.

Director, congratulations. Good luck in your job.

(Applause.)

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Thomas A. Maul of Schenectady, Commissioner of Mental Retardation

and Developmental Disabilities.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: Commissioner Maul appeared before our committee again. He appeared about a year and a half ago, was unanimously approved, and again today. He's been doing a very, very fine job and, as all the nominees, all have difficult jobs.

And I yield to Senator Libous, the Senator from Binghamton.

ACTING PRESIDENT KUHL: Chair recognizes Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President, and thank you, Senator Stafford.

Mr. President. Tom Maul has served with distinction as the Commissioner of OMRDD since 1993 and has been renominated to that position today by Governor George Pataki.

Under Tom Maul's leadership, OMRDD has become one of the most efficient and effective agencies in the State of New York.

OMRDD has improved the quality of care for thousands of persons with mental retardation and developmental disabilities by bringing them back into contact with friends, family members and their communities.

In addition to revitalization of the service and the philosophy of this agency, Commissioner Maul has also been responsible for instituting measures that have saved our state taxpayers million dollars.

I can go on and on and tell you about the accomplishments of Tom Maul, and I can read them from a list that is quite lengthy, but I want to tell you how I know Tom Maul and how I am so pleased that Governor Pataki has renominated him.

You know, until you actually work with a family who has a child or a relative with a mental or physical disability, you really do not know what type of lifestyle that they have to go through, you don't know the kind of sometimes difficult situations they go through in trying to find help and relief for their

loved one who is mentally retarded or who is physically disabled.

You know, I said this on the floor about a week ago. Those of us who get up every morning and we just come to work, we kind of take things for granted. We don't often just pause to think about people with mental or physical disabilities who maybe can't get up as easy as we can or just walk into this chamber on their own.

Tom Maul -- I have seen him display the kind of warmth and sincerity that a Commissioner needs to do in going out into the community and taking sometimes very hostile environments, where the citizens of our state sometimes don't often understand the kinds of programs we may be putting into the community, and at the end of that meeting, after Tom Maul spends time in speaking to both the citizens and the parents, it's funny how all of a sudden that project works, that project becomes a reality, because this man has just a keen ability to pull all types of people together.

And, Mr. President, that's the kind of person we needs to continue in OMRDD as the Commissioner, because it is a very sensitive area. It is an area that requires an individual of very strong leadership, and one that can pull all types of people together so that those people with mental retardation and physical disabilities can live as normal a life as you and I.

Mr. President, it is indeed an honor and a privilege to move the nomination of Tom Maul for Commissioner of this office.

ACTING PRESIDENT KUHL: Chair recognizes Senator Farley on the nomination.

SENATOR FARLEY: Thank you, Mr. President. It is a pleasure for me to get up and move the nomination of Thomas Maul, my constituent and neighbor in Schenectady and somebody who has had 30 years of superb public service.

My friend and seat mate and neighbor here, Tom Libous, has spoken so highly of this man and the job that he's done for the

people of the state of New York, particularly those with disabilities. He has won awards and served his profession as well as anybody that I think that has ever come before us.

It is with a great deal of pleasure and honor that I move his nomination, and I urge the support of Thomas Maul to continue in a job that he has so superbly done over the years.

ACTING PRESIDENT KUHL: Senator Spano on the nomination.

SENATOR SPANO: Thank you, Mr. President. It's my pleasure to join with my colleagues in seconding the nomination of Tom Maul.

When he was first appointed just a little over a year ago by the previous governor, he was confirmed by the members of this Senate in just about 24 hours, because we recognized that he is someone who has served for close to three decades in OMRDD, has been involved in that agency from the days when we had the rigid institution-like settings of

Willowbrook, has seen the dismantling of those type of facilities, and has been a part of that agency and has been a part of the change of building the community-based system of care all across this state; most notably, working in making sure that items like the Medicaid waiver, which are so important, have been secured to give us the maximum flexibility in spending the dollars that we have.

So he is a person who is held in high esteem by the advocates, by the people we serve, by the members of this house, and it's my pleasure, Mr. President, to join in the second of the nomination of Tom Maul.

ACTING PRESIDENT KUHL: Senator Stachowski on the nomination.

SENATOR STACHOWSKI: I also rise to second the nomination of Tom Maul.

It's been a pleasure since he's been the head of the Department to work with him on the different issues, and I only wish that some of the people who work for him in the field had the same cooperative attitude and sense of

how to deal with the community that he has.

I think that the fact that this Governor's appointing Tom Maul after he was just appointed by the other governor speaks for itself as far as his qualifications go. I would be remiss if I didn't get up and second anybody who is as big a fan of the Buffalo Bills as Tom Maul, so, obviously, the man has great taste and good judgment also.

ACTING PRESIDENT KUHL: Senator Larkin on the nomination.

SENATOR LARKIN: Thank you, Mr. President. I don't want to rehash what's been said here, but, you know, Tom Maul is the type of an individual that when you call him up, he doesn't wait five days or six days to call you back. He not only calls you back, but he has the party that you have been dealing with in a conference call.

He is very responsive. We have had many incidents that have arisen in our district in the last four years, and I can tell you that Tom has personally put himself into the

middle of the project to insure that the individuals that are going to be benefited by it and those in the surrounding communities receive a fair treatment, and his concern has always been for that individual less fortunate than some of us, and I tell you that we're very fortunate in this state to have someone like Tom Maul, and I am honored to second it.

ACTING PRESIDENT KUHL: The question is -- excuse me. Senator Holland on the nomination.

SENATOR HOLLAND: Mr. President. I'm happy to second the nomination of Tom Maul also. In the number of years I have known Tom, I know he is very competent, does an absolutely great job, and I echo what Senator Larkin says. He is always available. He always returns your call. He always works with you, and not only do I know that but the groups in Rockland County he supports, such as the ARC and Venture, know that as well, and they support him and have been supporting him all along.

It is my pleasure to second your

nomination, Thomas.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

(There was no response.)

Hearing none, the question is on the nomination of Thomas A. Maul of Schenectady, New York, to become the Commissioner of Mental Retardation and Developmental Disabilities.

All in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

Commissioner Maul is joining us here in the chamber.

Commissioner, congratulations and good luck in your job.

(Applause.)

Secretary will read.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator

Leichter, why do you rise?

SENATOR LEICHTER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar 241.

ACTING PRESIDENT KUHL: Without objection and hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 241.

Senator Leichter.

SENATOR LEICHTER: Mr. President, could I also ask the record to reflect that yesterday, on Calendar 1250, I was out of the chamber when this bill passed on a fast roll call. If I had been here, I would have asked to be recorded in the negative.

ACTING PRESIDENT KUHL: Senator Leichter, the record will reflect that you were not in the chamber yesterday when the roll call was called on Calendar Number 1250 but, had you been here, you would have voted in the negative.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the

following nomination: Jean Somers Miller of Albany, Commissioner of Alcoholism and Substance Abuse Services.

ACTING PRESIDENT KUHL: Senator Stafford, on the nomination.

SENATOR STAFFORD: Thank you, Mr. President.

Jean Somers Miller appeared before us today, and I'm sure that she, as her predecessors have done, add a great deal of life into many, many years. In this day and age when we're very interested in adding years onto life -- and I'm not against that at all. In fact, I have been an advocate. But on the other hand, Commissioner Miller will be dealing with individuals who will be receiving that life they have lost.

Commissioner Miller has been counsel to the Division of-- what's the name of it? -- Alcoholism and Substance Abuse.

Ever since F.D.R., you get confused with all these names and letters so you have to make sure.

But on a serious note, this division, I'm sure, will do a great deal under Commissioner Miller as it has in the past. She is well educated and, as she mentioned, she in later years decided to go to school, and I think that's to be complimented. She, obviously, has a law agree being a counsel.

But I would finally say that in a very, very complex field it's always refreshing for someone to say, "I will get you the answer," because there are many times -- and it's important that we know how to get the answer, and she has proven that she does.

And, with that, I yield to the Senator from the north, Senator Wright.

SENATOR WRIGHT: I thank my colleague from the North Country.

ACTING PRESIDENT KUHL: Chair recognizes Senator Wright on the nomination.

SENATOR WRIGHT: Mr. President, I'm pleased to rise as chair of the Senate Committee on Alcoholism and Substance Abuse in support of the nomination of Jean Miller as

Commissioner.

New York State boasts one of the largest and most advanced treatment systems within the nation. New York State is currently going through a consolidation of the alcohol and substance abuse fields and will be moving ahead on the issues of consolidating licensure, consolidating credentials.

In this budget that we adopted upon the recommendation of the Governor and yesterday we passed legislation in this house establishing the need for a study on the effectiveness of the treatment programs that will be conducted over a multi-year period and, equally important, within this budget and supported by the Governor and this house, we're establishing an intensive treatment program at the Willard facility that is very unique and may serve well as a national model in terms of the coordination of the alcohol treatment agency, Corrections and Parole.

For all of those reasons, the position of Commissioner is one of challenge in

the next upcoming years and, as a result, we need to bring to that agency someone who has the experience and the background of having worked in that agency. In Jean Miller the Governor has found an individual. Jean has served as counsel within the agency, has served as chief counsel. She has also served as the Deputy Executive Commissioner and since January of this year, upon the designation of the Governor, has been serving as the Acting Commissioner.

I think you can all see that on the basis of that kind of background and experience, she is eminently qualified to serve in the role of Commissioner. I might also point out for those of you who have had the opportunity to review Jean's resume that she also spent some time working as a staff member of this house also, and so she brings that background to her position also, an awareness of the legislative process, if you will.

I have had the occasion to work with Jean, both as counsel and most recently in her capacity as Acting Commissioner. She has

been extremely responsive to our concerns and needs. As a result, I want to extend my congratulations. I think Jean -- and I look forward to her leadership and guidance - exemplifies the bipartisan and professional nature of the nominees that Governor Pataki has recommended.

I'm very pleased to move the nomination of Jean Miller for Commissioner of Alcohol and Substance Abuse Services.

Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Libous on the nomination.

SENATOR LIBOUS: Thank you, Mr. President. I, too, rise to second the nomination of Jean Miller.

My colleague and chairman of the Alcoholism and Drug Abuse Committee, Senator Wright, talked about Jean Miller's qualifica tions and the kinds of things that it will take to lead this agency over the coming years, but Jean Miller said in the Finance Committee that she came to the agency in 1989 and I, too, came

to the Senate that year and became chairman of this committee, and I can tell you that I had the pleasure of working with her as counsel and crafting a number of different things, including the famous consolidation or merger of the two agencies that at times got a little hectic from the different people and the different groups that we worked with. We also worked together in crafting what we call the famous accountability measures and bills to help correct some of the flaws in the system at that time.

So, Mr. President, I think that the Governor, once again, as mentioned earlier, has picked an outstanding nominee to lead this agency, and I just want to stand here and say that I second this nomination.

ACTING PRESIDENT KUHL: Chair recognizes Senator Volker on the nomination.

SENATOR VOLKER: Mr. President, I also want to second the nomination of Jean Somers Miller.

As Senator Padavan and I were just discussing here, Senator Padavan was a long

time chairman of Mental Hygiene through the '70s and the '80s, into the early '80s, and I was his -- the chairman of the Subcommittee on Alcoholism until the subcommittee was, of course, abolished when the new full committee took over, and I have always had an immense interest in the alcohol and drug area, and I know of Jean's work in furthering the battle against alcohol and drugs, and I would especially like to thank her -- and Senator Wright, rightfully, mentioned the issue of the Willard -- former Willard Psychiatric Center, that now is going to become the center of alcohol and drug treatment for inmates in this state, and I would like to, as I did in the committee when she was sent to the floor, thank her for the work that she did during the negotiations with the Senate, the Assembly, and the Governor on dealing with the Willard issue, on the sentencing issue, and Jean and her staff was extremely helpful.

This is a delicate matter, and one I think is -- as Senator Wright said, that

hopefully will set a standard for the country in dealing with drug and alcohol addicted inmates.

So my congratulations to the Governor for making such a fine appointment.

I wish you the best of luck, and I know that you will do the job in the same efficient manner that you have done in the past. Good luck.

ACTING PRESIDENT KUHL: Senator Oppenheimer on the nomination.

SENATOR OPPENHEIMER: Much has been said of Jean Miller's competence and capability in this position to which she is being -- for which she is being nominated.

I would just like to mention another facet, which is Jean is a very hard worker, a very sincere human being who devotes herself to her programs and her projects with 100 percent effort and, in addition, I know her as a friend for many years, and she is a woman who is sincere, rounded and a person who is trustworthy and a very fine human being, and I'm proud to be here to support her nomination.

ACTING PRESIDENT KUHL: The question is on the nomination of Jean Somers Miller to become the Commissioner of Alcoholism and Substance Abuse Services.

All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

We're very pleased to have Jean Somers Miller with us in the chamber.

Congratulations, Jean. Good luck in your job.

(Applause.)

SENATOR STAVISKY: Mr. President.

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

SENATOR STAVISKY: Without objection, may I be recorded in the negative on Calendar Number 241.

ACTING PRESIDENT KUHL: Without

objection. Hearing no objection, Senator Stavisky will be recorded in the negative on Calendar Number 241.

The Secretary -- the Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: James W. McMahon of Ballston Lake, Superintendent of State Police.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Stafford on the nomination.

SENATOR STAFFORD: Mr. President, it's a pleasure to yield to the Majority Leader who will move the confirmation of Superintendent McMahon who has done a tremendous job. He appeared before our committee for the second time.

I yield to Senator Bruno.

ACTING PRESIDENT KUHL: Senator Bruno, on the nomination.

SENATOR BRUNO: Thank you very much, Senator Stafford.

Mr. President, my colleagues, it

is an honor for me to stand in support of this nomination of a gentleman who is as qualified as the Superintendent before us.

He has served in the previous administration. He is a true professional. He puts the needs of the people ahead of his personal needs. He is really representative of the people, the 4,000 State Police, the people that help him be effective in serving the public and the people in New York State.

He brings credit to the force, I think to the Governor that has the wisdom to move this appointment and he brings credit to his family and to himself and to all of the people of New York State that he truly represents.

So it's my privilege to rise in support of Superintendent McMahon.

ACTING PRESIDENT KUHL: Senator Nozzolio on the nomination.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my colleagues, I

certainly wish to echo the comments of our Majority Leader, Senator Bruno, in praising the qualifications of Superintendent James McMahon.

This is the second opportunity I have had to serve on the Crime and Corrections Committee when the Superintendent has come before us, and in each case, I can tell you that that vote is cast with a great deal of pride because of the Superintendent's grasp of his duty, the responsibility he shows to the people of this state and his overall leadership demeanor that I know is appreciated, not only by members of the Legislature, but by the troops who are out there serving the public day in and day out placing their lives on the line because I know in talking with many of them, they are thrilled and have been thrilled with the leadership Superintendent McMahon has shown during these short 14 months of his tenure. They know he is a man who has been with them and is by all accounts in all of the greatest respect a trooper's trooper.

I'm very pleased to second the

nomination and urge my colleagues to support this fine nominee and congratulate the Governor for his choice of professionalism in the New York State Police.

ACTING PRESIDENT KUHL: Senator Hoffmann on the nomination.

SENATOR HOFFMANN: Thank you, Mr. President.

I have had the pleasure over the last 11 years of serving on the Crime and Corrections Committee to come to know this Superintendent and previous superintendents and to have developed a working relationship on behalf of my constituents, and one of the things that is immediately apparent for any of us who have had dealings with Superintendent McMahon is that he has a true earnest interest in maintaining a close relationship with local law enforcement agencies. He is responsive to their concerns. He recognizes the various command officers across the state, greets them with warmth, understands the problems they face, and he has done a great deal to move the State

Police forward as an assist mechanism for local law enforcement.

It is this spirit of cooperation that we should be fostering at the state level in all aspects of government and we can be proud of the leadership by Superintendent McMahon in bringing this type of cooperation through the State Police.

One of the more difficult problems that the Superintendent has had to face in his relatively short tenure is dealing with an unfortunate persecution complex that some members of the media have lodged against the State Police. We might like to forget about it, but it has become a source of ongoing concern and suspicion in -- in some media outlets in the state that there have been problems within the past in the State Police due to only a couple of individuals, but yet virtually everything the State Police do today -- the State Police as an entity does today can be greeted with some suspicion by people who would like to make it their issue to find some wrongdoing, and yet

Superintendent McMahon has handled this with remarkable aplomb. He has been totally guileless, willing to speak candidly, openly, to answer questions. He clearly has nothing to hide and he is willing to show the utmost respect for the men and women within the ranks of the State Police and to very calmly and sensibly explain the operations of the State Police to those who are willing to listen.

So I continue to be very proud of the job that he has done. He is truly a leader. If leading by example is what we should aspire to in law enforcement, then he stands as an excellent example of what every law enforcement official should be today. So I'm pleased also to support the nomination of Superintendent McMahon for continued tenure as Superintendent of the State Police.

ACTING PRESIDENT KUHL: Senator Larkin on the nomination.

SENATOR LARKIN: Mr. President, I proudly rise to second the nomination of James McMahon as Superintendent of State Police.

My association with the Superintendent goes back to the time he was his own lieutenant in Monroe, New York, which is now my district and at the time I was a town supervisor with a very small police department and not very well trained. I went to see Jim McMahon and I said I had a problem. He didn't try to figure out how to get around it. He said, Let's sit down. Let's discuss it. We sat around and reorganized the police department which is now considered one of the best in the counties, and all the officials that have dealt with him, whether they be from the military at West Point where he had tremendous responsibil ities, and the Secret Service that are stationed at Stewart, their comments were always of the highest order.

He's a team player. He wants to cooperate. He wants to assist. He wants law enforcement to be the most respected that it can be. In my area, they tell me, Jim McMahon is a trooper's trooper.

I'm very proud to stand here and

second the nomination of an individual extremely qualified by his training and his experience and commitment to the public safety of the people of the state of New York.

ACTING PRESIDENT KUHL: Senator Volker on the nomination.

SENATOR VOLKER: Mr. President, it's certainly all been said, I guess, but I want to give my endorsement of Jim who I have known for many, many years.

In the administration of the previous superintendent, Jim was sort of the nuts and bolts and, as has been mentioned, I think by Senator Hoffmann, one of the things that Jim was asked to do by Tom Constantine was to go out and try to get better relationships with local departments, and having come from a local department in the -- in days gone by, there was a lot of problems with not only local departments, but even more so with sheriff's departments and as Jim McMahon knows well, one of the areas where there's been a problem is my own area of Buffalo where the sheriff's

department and State Police sometimes, shall we say, disagreed a little bit, but Jim was one of the people who was dispatched to various places to try to iron out problems and to try to rationally come up with solutions to law enforcement problems. Probably was more successful than anybody I know of because he was so well respected by not only the State Police themselves, but also by the other law enforcement officers who realized immediately that he was a person who was more interested in the integrity of the job and in solving problems than he was in showing his own importance.

There's no question that he is considered to be a trooper's trooper. I have always said that -- and I guess having come from a family -- my father once told me the story that he and Malcolm Wilson went to the then Governor Thomas E. Dewey and said to the Governor during a fiscal crisis when the administration was in the process of cutting the State Police and limiting their salaries, and my father said to Tom Dewey, "Look, either pay them

or disband them and you're not going to disband them, so you might just as well pay them" and, of course, he did and the State Police as the saying goes, the rest is history.

Probably the finest law enforcement organization, I believe, in the country, certainly the finest State Police organization, and we're proud -- I am proud to say that I know Jim McMahon as my friend and that I know him as an excellent Superintendent. The Governor couldn't have picked a better gentleman than Jim McMahon, and I wish you the best of luck in the future, Jim.

ACTING PRESIDENT KUHL: Senator Farley on the nomination.

SENATOR FARLEY: Thank you, Mr. President.

I rise to support the nomination of Jim McMahon from Saratoga County and Ballston Lake, even though I have the town of Ballston - Senator Bruno and I share that county, whose constituent he is, he's Senator Bruno's, but he's very close to being mine.

Not only that, I have heard several times and it's hard to -- I don't want to replow the ground that's been said about him, but he's a trooper's trooper. I think I've heard three or four Senators say that.

He is admired and respected by his men and I think that's -- and his women that serve in the -- one of the finest police forces in the United States. I think it's a credit to Jim McMahon that not only was he unanimously confirmed in the other administration, but he's a reappointment because of the job that he's done.

He's an outstanding Superintendent. He's a credit to the New York State Police. He's been a career man who's had a distinguished career and he's also a decent person and a great family man with three children, and it's with enthusiasm that I support his nomination.

ACTING PRESIDENT KUHL: Senator Dollinger on the nomination.

SENATOR DOLLINGER: Mr.

President, I rise to second this nomination.

Before he was either involved in a dispute between Senator Farley and Senator Bruno over whose constituent he was, Jim McMahon was born in the city of Rochester and raised in the city of Rochester in a little neighborhood called Bull's Head which is in the north part of the 19th ward in the city of Rochester, and he picked up his early education in the 19th Ward, and I think it was a good one.

I would also point out that he is probably among the half dozen most, in my judgment anyway, celebrated graduates of Monroe Community College, which is our community college in Monroe County.

His resume, as Senator Nozzolio suggests, is the height of professionalism, rising from a trooper -- starting off as a trooper and becoming the Superintendent. He's been a role model for people in the State Police. He's been a role model of public servants and he will continue to be a strong role model for my community in his continued

growth and development as the Superintendent of the State Police.

So my congratulations go out to him, and I wish him well in his tenure.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

(There was no response.)

Hearing none, the question is on the nomination of James W. McMahon of Ballston Lake to be the Superintendent of State Police. All those in favor of the nomination signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Superintendent is with us in the chamber. Congratulations, Superintendent. I thought there would be more people speaking, but I forgot that the 65-mile-an-hour speed limit had been raised -- it had been raised to 65.

Congratulations.

(Applause.)

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: John L. Buono of Castleton, Director of the Facilities Development Corporation and member of the New York State Medical Care Facilities Finance Agency.

ACTING PRESIDENT KUHL: The question is on the confirmation of John L. Buono to be member -- a member of the state Medical Care Facilities Finance Agency and also Director of the Facilities Development Corporation. All those in favor of the nomination signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to the controversial calendar.

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

THE SECRETARY: Calendar Number 1097, by Senator Tully, Senate Print 3848, an act to amend the Environmental Conservation Law and State Finance Law, in relation to enacting the Voluntary Remediation Act of 1995.

SENATOR OPPENHEIMER: Explanation, please.

ACTING PRESIDENT KUHL: Senator Tully, an explanation of Calendar Number 11... excuse me, 1097 has been asked for by Senator Oppenheimer.

SENATOR TULLY: Yes, Mr. President. This legislation amends the Environmental Conservation Law by adding a new Title 14 to Article 27. It establishes a voluntary remediation program within the Department of Environmental Conservation.

SENATOR OPPENHEIMER: Would the

Senator please yield for a question?

ACTING PRESIDENT KUHL: Senator Tully, do you yield to Senator Oppenheimer?

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR OPPENHEIMER: I don't understand, Senator Tully, why this is necessary, because the DEC already has the legal authority to enter into agreements with private parties for the -- for remediation of these inactive hazardous waste sites, so I'm questioning what's the need for this? Doesn't it already exist, the opportunity for DEC to do this?

SENATOR TULLY: Mr. President, this deals particularly with sites that do not pose an imminent danger to the public health or the environment and only they can take part in this remediation program. Presently, 20 other states have implemented this type of legisla tion, voluntary cleanup programs, including

Massachusetts, Connecticut, New Jersey, Indiana and Ohio.

SENATOR OPPENHEIMER: Thank you, Senator.

I'm still not certain why -- why it's necessary, because I believe it is also - it's already possible under the DEC's legal authority, but let me ask you another question.

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

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR OPPENHEIMER: Why should someone who has contaminated their property be held exempt from all future liability as long as they participate in this voluntary cleanup program?

SENATOR TULLY: This basically applies, Mr. President, to situations dealing with "brownfield" type operations where there might have been an industrial area previously

used with contamination and subsequently there is a new owner who had nothing to do with the original contamination and this is to provide and allow them to participate voluntarily in the cleanup.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I believe it is a lesser standard and that is not being addressed.

Let me ask it another way. Why should known polluters who voluntarily clean up their property be held to the lesser standard of cleanup than other polluters who are being forced to comply with the laws?

SENATOR TULLY: That's a good question, Mr. President. If they were the polluters, I could understand the gravamen behind the question, but since these are people who have acquired it subsequent to whatever alleged pollution took place, they are being given this opportunity.

To respond further back to your

original question, the covenant not to sue does not apply to future liability to a condition or to the extent of a continue that was present on the site but not known to the department at the time the certificate of completion was issued.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: This voluntary -- if the Senator would yield for another question, please.

SENATOR TULLY: Yes, Mr. President.

SENATOR OPPENHEIMER: A voluntary remediation program that circumvents existing hazardous waste cleanup programs, to my way of thinking, the program permits a lesser standard. Do you have any strong or quantifiable evidence that the state or the federal Superfund program has been an insurmountable obstacle to the development of "brownfield" sites?

SENATOR TULLY: Well, currently, state law, Mr. President, does nothing to encourage voluntary cleanups of contaminated

property from financial assistance to limiting liability for cleanups, and I think the fact remains that each and every one of us in our own communities are aware of sites that deserve cleanup and, in many cases, the funding is not readily available to take care of that cleanup. I think the fact that this legislation provides for voluntary cleanup, it provides a financial mechanism which allocates a quarter of a million dollars from the 1986 Environmental Quality Bond Act to DEC to start up the program is a refreshing opportunity to preserve our environment.

SENATOR OPPENHEIMER: Thank you, Senator Tully.

On the bill.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I think most everyone would agree that the cleanup in New York State of these contaminated sites has moved much too slowly and, therefore, I think many of us would agree that we should try and

expedite them.

I think the problem with this bill -- and I think that's why it has rated a big three chimney stacks, which is about as bad as you can get, is because of the way that it has been chosen in this bill to lessen the requirements for improving the quality of these sites. It has lessened the environmental protections on these sites and there are ways that this could have been accomplished.

Voluntary compliance could have been accomplished through other means, perhaps through a tax break, perhaps through some economic development source of funds. The fact is that this bill chooses to do it through lessening the protections of the environment and I think it's unfortunate that these voluntary cleanups will be held to a much lower standard and -

ACTING PRESIDENT KUHL: Excuse us, Senator Oppenheimer.

I want to thank you and Senator Connor and the entire Senate Minority for making

sure that a short stick is never present at the podium again. We will control this chamber (Laughter). There was a little giggling going on in this chamber. I want to get some things in order in this chamber. Please excuse the interruption.

SENATOR OPPENHEIMER: I'm not going to make any comment on lengths of things anymore, but I must say that looks more like a croquet mallet than it does like a -- okay. Where was I?

I think we are rewarding the polluters who now only have to remediate the waste site at a much lower level and I think it does harm to our environment, to our ecosystems and what if, Lord forbid, the property use changes from being commercial to being residential, in which case, the cleanup -- the earlier cleanup will have been totally inadequate.

We support the idea that DEC produce a voluntary -- voluntary cleanup bill that will provide a degree of consistency and

certainty that is beneficial. It would enable some new cleanup money to come into the equation which is essential. However, to diminish the protection of human beings and of the environment is atrocious and, therefore, we feel this bill is very harmful and should be rejected.

I will be voting no.

ACTING PRESIDENT KUHL: Senator Espada.

SENATOR ESPADA: Would the sponsor yield to a question?

ACTING PRESIDENT KUHL: Senator Tully, do you yield to Senator Espada?

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ESPADA: Thank you, Senator Tully.

The bill on page 7, line 50 speaks to -- speaks to reasonable cost that would be reimbursed to DEC for said cleanup, and

my question is why that kind of discretionary standard versus the more actual cost method of reimbursing DEC?

SENATOR TULLY: Yes, Mr. President. It's not really discretionary. If you'll go further to page 8 of the bill and get to line 46, "establishing the voluntary remediation fund", you'll see that this program requires that the owner/operator or prospective operator in participating must include a preliminary environmental assessment, and when they enter into this agreement, part and parcel of it is that it will be funded by this voluntary remediation fund.

SENATOR ESPADA: The -- if I may, Mr. President, the public involvement in this voluntary program, could you explain what provision has been made for -- for public involvement and while we're on public involvement, a related matter of notice to the public, if you would, please?

SENATOR TULLY: The Department is required to publish a notice requesting comments

on any proposed remedial plan in the Environmental Notice Bulletin, and this gives the Department authority to hold a public meeting if it finds that the comments received raise substantive and significant issues relating to the adequacy of the proposed remedial plan.

Basically, Senator Espada, the thrust behind this legislation is the fact that there are many, many small towns in our state that are losing jobs and population and when we lose our competitive edge, so does the rest of our state, and this is due, in no small part, to the abandonment of previously used commercial and industrial property which may contain environmental contamination.

SENATOR ESPADA: Mr. President, if we could continue for one more question.

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

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: The

Senator continues to yield.

SENATOR ESPADA: Senator Tully, we're certainly cognizant and very appreciative of your comments with respect to smaller towns, but large inner city communities with industrial sites, particularly my own. I represent an area that has 40 waste stations, an incinerator, medical waste plant, and I can go on.

The issue of lessening or lowering of standards is of tremendous concern, because this bill would set up a standard that relies on the pre-release conditions on relations -- on the proposed use rather than some objective standards that take in nearby uses, like, i.e., residential communities, so the concern here is that if we rely on the standards inherent in this bill, that they will, in fact, be, if not a lessening of standards, certainly we will ignore nearby uses and, in particular, residential neighborhoods.

SENATOR TULLY: Thank you, Senator Espada, and that's a good question. The use is recorded in the land reference initially,

and if the use changes, the standard changes as well.

SENATOR ESPADA: Thank you, Senator, for his responses.

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

Senator Leichter.

SENATOR LEICHTER: Senator Tully, would you please yield?

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

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: It's remarkable, Mr. President, when this bill originally initiated, this was no opposition memo from EPL. There were only memos in support from the Business Council and the Conference of Mayors, but one little three smoke tack memo, remarkable how it peaks the curiosity of some people this this chamber, and I would be

delighted to respond to Senator Leichter.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, my curiosity, indeed, increases the more I look at the bill, and that's why I rise to ask you a question and maybe you can satisfy my curiosity.

On page 7, Section -- Section 9, beginning on line 24, what is the intent and what is the meaning of that provision as you read it?

SENATOR TULLY: That's a very interesting question. So far, Senator Leichter, this legislative intent question is always fascinating. I'm trying to get to the bottom of it for you. If you'll bear with me for a moment.

SENATOR LEICHTER: Maybe I can sharpen my -- my question, if that would help or I could wait until -

SENATOR TULLY: If you would sharpen your question, that would be even

better. You'll probably sharpen the wits of those surrounding me.

SENATOR LEICHTER: As I read this, an affected person who implements a voluntary remedial program and who's subject to a covenant not to sue, is he, in a sense, immunized then for claims that could be brought for damages that have occurred as a consequence of some act of pollution, of creating this hazardous site that that person would otherwise be responsible for?

SENATOR TULLY: Mr. President, the covenant not to sue does not require the future liability for a condition or the extent of a condition that was present on the site but not known to the Department at the time the certificate of completion was issued, lest the burden is on the affected party to ensue - ensure that all contamination on the site is discovered and included in the plan.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Senator, it

may well be, as I read the consequence of a - the covenant not to sue that we're giving protection to the affected person for claims, not by the Department. I have no problem if the Department or the state of New York says, "Listen, you voluntarily clean this up according to a plan we approved, we're not going to go after you. We're not going to sue you." But you seem to go beyond that. You seem to be taking away the rights of third persons, of you and me, to sue for damages that have occurred or to seek contribution and, frankly, that troubles me.

SENATOR TULLY: I understand your concern, Senator Leichter, and I might indicate to you that you're fully familiar with the provision in law that everyone has the right to alienate their property, and if the property has been examined, if an existing condition has been corrected through voluntary remediation and if the Department issues to the affected party a certificate of completion and a covenant not to sue, both of these are definitely transferable

when you alienate the property and that's as it should be.

SENATOR LEICHTER: But the - Senator, if you could continue to yield.

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

SENATOR TULLY: I do, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: What I'm concerned about is that now this tortfeasor may, as I read this, under some circumstances at least may be shielded from being sued for the wrongs that he did.

SENATOR TULLY: No, no. I think there is a misunderstanding there, Senator Leichter. If some new incident arises to create a new contamination, that person is not shielded. In many cases, the individual who is getting the certificate of completion from the DEC and the covenant not to sue was not in any way involved in the first instance in the

creation of the problem. They were someone who acquired the property unknowingly and didn't know that this condition existed. Now they volunteer to clean it up so they can utilize the property, develop some type of commercial commerce, develop some jobs, and after they clean it up, they now get the covenant not to sue and the certificate of completion and I think that's exactly what the bill is about.

SENATOR LEICHTER: Excuse me. If you'll continue to yield, Senator.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR TULLY: I do, Mr. President.

SENATOR LEICHTER: Senator, I understand your sympathy to the person who's an innocent party, he's acquired this property, but as you define "affected person," that could also be the polluter. I mean, you failed to distinguish between the affected -- you could have used language "affected person who is responsible for the condition" or "affected

person who acquires the land or was not responsible", but you give the tortfeasor the same protection, and that's the problem that I have.

SENATOR TULLY: The tortfeasor, Mr. President, would have no protection whatsoever unless they clean the property up, unless they got the certificate of completion from the DEC, meaning if they have complied with all the requirements that exist under the laws of this state as they relate to the DEC.

SENATOR LEICHTER: Well, let me ask you the specific question.

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

SENATOR TULLY: Yes.

ACTING PRESIDENT KUHL: The Senator continues -

SENATOR TULLY: I might say, Senator Leichter, that the suit is only barred for contribution from other responsible parties because the affected party has paid his share - his or her share in cleaning the contamination

up.

SENATOR LEICHTER: Well, let me -- let me see if I can phrase a -- an example of what concerns me. You have an affected party, and that affected party was a tortfeasor, now enters into a remedial program, completes the remedial program and gets a certificate, that is a covenant not to sue, however that's called.

Somebody now brings an action because either their person or their property was injured, and that person sues another tortfeasor or alleged tortfeasor. That alleged -- other alleged tortfeasor now tries to bring in the affected party.

As I read this bill, that cannot be done because you cannot have contribution.

SENATOR TULLY: That is not so, Mr. President, as I indicated earlier, that the covenant not to sue does not apply to future liability for a condition present on the site but not known to the Department at the time the certificate of the completion was issued. If

they issue a certificate of completion and they say that this job has been cleaned up and there's no longer any problem, then the burden is on the affected party to ensure all contamination on the site is discovered and included in the plan.

SENATOR LEICHTER: Mr. President -- Senator Tully, I'm dealing with a condition that was known to the Department. Let's say some hazardous material was put in there, but a person whose condition or whose injury didn't manifest itself until after the implementation of the plan, so it's a pre-existing condition; it's not a future liability. I understand future liability, but this was a pre-existing condition. The Department knew that this hazardous material was in there, but this particular person, let's say it was asbestos or something, it took seven or eight years for the condition to manifest itself, now he wants to sue the affected person or he wants -- or he wants to sue the affected person of somebody else or he sues somebody else and that third

party wants to bring in the affected person, but you seem to be shielding the affected person that, in my example, the affected person is the tortfeasor. Should we give that sort of protection?

SENATOR TULLY: Yes, Mr. President. This is -- this legislation, in no way is to release him from liability from the injured party. The ban on contribution only applies once he's cleaned up so far that the other responsible party pays without contribution from the volunteer.

SENATOR LEICHTER: Well, Senator, just one other question on another section, if you would continue to yield, please.

If you would look at number 7, this would seem to shield the affected party while he's implementing a voluntary remedial program. Nobody can sue him to compel that he do any action other than as provided in the plan of remediation. Even another governmental agency couldn't sue him; is that correct?

SENATOR TULLY: That's correct,

Mr. President.

SENATOR LEICHTER: Here too, Senator -- I just want to ask you. Are we giving -

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

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

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, are we giving protection to the affected person that really goes beyond a reasonable incentive to get him to do this cleanup voluntarily?

SENATOR TULLY: Mr. President, I can see the argument being made if it were not true that 20 other states have implemented voluntary cleanup programs just as this one. There's been no indication from the legislation that's been activated in these states that there are any of the problems that you're referring to.

SENATOR LEICHTER: Senator, I may

just ask you on this particular point, do remedial -- voluntary remediation is one thing. I think we all agree that that's something that should be done and, in fact, the Department presently has the power to enter into a voluntary remediation plan. In those 20 states, do they all have the same provisions that you and I have just been discussing?

SENATOR TULLY: Most of the 20 states do, I'm advised by counsel, Senator Leichter.

SENATOR LEICHTER: Thank you very much, Senator Tully.

SENATOR TULLY: You're welcome.

SENATOR LEICHTER: I have no problem with an effort to try to get more voluntary remediation, and obviously to get something to somebody to do voluntary remediation, you got to give up something. It's a compromise, and I can see having some inducement, having the Department give up certain rights protecting the affected person, even if it's the tortfeasor, from certain action

that the state would take.

What I'm concerned about in this particular bill is that we give a degree of protection, of immunization, to the affected person and the affected person is not, as Senator Tully first says, always an innocent party who acquired the land. It may well be the tortfeasor. It may be the person who dumped those chemicals on the land who failed to abide by proper environmental standards. Now while he does the clean-up, nobody can sue him for remediation.

Secondly, he -- as I read this, he may not be sued for contribution by somebody else who's alleged to be a tortfeasor for pre-existing conditions. I just think that we're giving away too much. That's my problem with this particular bill. You say 20 states have it, but you acknowledge that at least not all of them have these far-reaching provisions.

I think it's a question, have we struck a good deal? And I would say that we bend over too far. I want to get voluntary

remediation, but I don't want to give up as much as this bill gives up.

And, therefore, I agree with Senator Oppenheimer, that it's not a wise bill and I'm going to vote against it.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Tully would just yield for one question.

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Tully, a number of these -- a number of these areas lie in heavily minority districts and under privileged areas. With a standard such as voluntary remediation, do you think that we may risk the possibility of individuals who don't live in the afflicted area in a sense polluting the area, sort of quasi-environmental racism, so to speak, and really bringing a great deal of

harm on those particular premises that the polluter may not reside or may not feel that the polluter has -- the individual has any real connection with the population that lives there?

SENATOR TULLY: Thank you, Senator Paterson.

The point to be remembered with respect to this legislation, I think, is that only sites which do not pose an imminent danger to the public health or the environment can take part in the first instance in the voluntary remediation program.

SENATOR PATERSON: Thank you, Senator.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce

the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 1097 are Senators Abate, Connor, Espada, Jones, Leibell, Leichter, Markowitz, Onorato, Oppenheimer, Paterson, Stachowski and Stavisky. Ayes 48, nays 12.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Leichter, why do you rise?

SENATOR LEICHTER: I ask for unanimous consent to be voted in the negative on Calendar 929, please.

ACTING PRESIDENT KUHL: Without objection, Senator Leichter will be recorded in the negative on Calendar Number 929.

Senator Gold, I see you motioning. Would you want the same request?

SENATOR GOLD: 1097.

ACTING PRESIDENT KUHL: Without objection, Senator Gold will be recorded in the negative on Calendar Number 1097.

The Chair recognizes Senator

Wright.

SENATOR WRIGHT: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 225, Senate 90... 975-B.

ACTING PRESIDENT KUHL: Without objection, Senator Wright will be recorded in the negative on Calendar Number 225.

The Secretary will continue to call the controversial calendar.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Hoblock, an explanation of Calendar Number 1187 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR HOBLOCK: Mr. President, this bill amends the Criminal Procedure Law and the Penal Law and extends the definition of

juvenile offender for the violation of certain crimes to include 12- and 13-year-olds.

Right now, the definition of a juvenile offender for certain crimes are persons 14 or 15 years old who are found criminally responsible. This extends the certain crimes to juveniles that are 12 and 13 as well as 14 and 15.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would yield.

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

SENATOR HOBLOCK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you, Senator.

I don't see any great desire on the part of the Law Enforcement Council to pass this legislation. I was wondering, Senator Hoblock, if could you tell us who was actually

advocating to include 12- and 13-year-olds under the juvenile status?

SENATOR HOBLOCK: This proposal, Senator Paterson, came from the chief administrator of the courts upon the recommendations of an advisory committee on criminal law and procedure following a study they did on the use -- on the possession and use of firearms among juveniles.

SENATOR PATERSON: One thing, Mr. President, that I would like to point out is that I prefer this type of legislation a lot more to the ones that we've seen earlier where we kind of unilaterally started changing particular laws to include, in some cases, 12-year-olds and 12- and 13-year-olds, but if the sponsor would yield to another question.

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

SENATOR PATERSON: In this particular bill, the firearms section of the bill, isn't that separate from what the rest of

the law would allow in terms of the reclassification of juvenile offender status to 12- and 13-year-olds?

SENATOR HOBLOCK: I'm not sure if I understand your question, Senator Paterson, but what it does do is that it amends the definition of juvenile offender, then adds a number of sections of the Penal Law for which those 12- or 13-year-olds will be held criminally responsible.

SENATOR PATERSON: I guess what I'm really asking, Senator, is the status going to be uniform?

SENATOR HOBLOCK: Status uniform?

SENATOR PATERSON: In other words, are 12- and 13-year-olds going to be classified this way for all offenses?

SENATOR HOBLOCK: For those listed in this bill, yes.

SENATOR PATERSON: Right. So what I'm asking you is why do we want to do this in some ways and not in others; In other words,

where we don't have a clear standard what age it is that we're going to start classifying younger persons as juvenile offenders.

SENATOR HOBLOCK: Well, the ages of 12 and 13, adding to 14- and 15-year-olds which is already in the bill was as a result of these studies that were done about the possession and use of firearms in these particular age groups.

I think that we -- I don't know how much studying we need to do, but you pick up newspapers from around this state and you find that, unfortunately, 12- and 13-year-old kids are carrying weapons into the classroom and carrying them on the streets and in other places, and it's unfortunate that this is occurring, but it is occurring, and what we need to do is to give the courts the necessary ability to process these types of cases in this age group.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: But, Senator,

the point I'm trying to make is that 12- and 13-year-olds, even though they are engaging in the vehemently anti-social behavior that you have just described, they are still 12 and 13. In other words, the standard by which we are actually holding them to based on their -- their age is one that, in spite of the fact that there are increases in these types of offenses, what I would like to know is where -- the research does not show that 12- and 13-year-olds are any more mature than they have been in the past. Obviously, pretty much quite to the opposite, and what I'm saying is that we're now opening the door to a panoply of crime that 12- and 13-year-olds can be linked to 14- and 15-year-olds and treated as adults. By the adoption of this legislation, we are going to now treat them as adults, and what I'm saying is does the research demonstrate that they are culpable or have the requisite knowledge that we should be treating them as adults?

SENATOR HOBLOCK: As far as I know, Senator Paterson, they do. You know,

unfortunately as has been pointed out by the chief administrator, that these 12- and 13-year-old kids that used to settle their arguments not too long ago with their fists are now using knives and other types of weapons, and what this legislation does, it talks about criminal possession of a weapon in the third degree, criminal possession of a dangerous weapon in various degrees, the use of a firearm in various degrees. It would seem to me that if a 12- or 13-year-old child is mature enough to know how to use one of these weapons to bring about some criminal action, then they're old enough to be tried for that particular offense.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, the Office of Court Administration did certainly recommend this to be applied to 14- and 15-year-olds. Now, to reach down and include 12- and 13-year-olds -- and again, I would tell you that you are making the case and you are very much defining what the problem is, but what

I'm saying is that a proliferation of these types of violent situations doesn't necessarily establish to me that the individuals involved have the -- the understanding of what they're doing at the level that they should fully be treated as a result.

My question to you then is do you know what DFY or any of the youth agencies feels about this type of legislation?

SENATOR HOBLOCK: No, I really haven't, Senator Paterson, but let me again emphasize that, you know, if they're mature enough and able to handle one of these weapons and bring about some kind of an assault or perhaps even a death, I think that's got to be dealt with and unless you have some suggestions on how we can try to deter these young people from picking up these types of weapons, not only possessing, but using them, instead of carrying on as they used to, we're seeing that that is being down -- brought down into these various age categories. The statistics show that the leading cause of death for teenage blacks has

been the use of these types of weapons. The third leading cause for white teenagers has been the use of these weapons in these age categories.

SENATOR PATERSON: Thank you, Senator.

On the -- Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: Senator Hoblock has defined a very serious problem and I think his initial attempt to address it should be commended.

What he's saying is that this is a problem that's gotten out of hand and he wants to address it, and I think we can all understand the fact that he wants to do that.

What we are saying, though, is that young people, unfortunately, are characters of mimicry. If it's 12- and 13-year-olds today, I guess we wouldn't want it to be 10- and 11-year-olds tomorrow, but the fact that they're

engaging in this kind of behavior, does not necessarily mean that they would be held as culpable as adults. It's standard in our criminal justice system and has always been through the history of the implementation of criminal justice punishment that we have always applied the punishment to the crime and also to the knowledge of the criminal at the time that the crime is committed, and I think that in many situations we have individuals who we are saddling with harsh and inhumane penalties when they really could be dealt with in our correctional facilities.

In answer to Senator Hoblock's question, I don't know that I really have the answer, Senator Hoblock. I really don't know, to be perfectly honest with you, but we do have a new Division for Youth Commissioner, Mr. Johnson. We do have a whole agency that's been set up. I would be very curious to understand what they think about this, what their recommendations are, and I think that that would be something that would be aptly incorporated in

the research that would go into putting this bill forth. We don't want to do anything that is going to harden some younger people who may really be off course and, in a sense, could actually be saved through the correct remediation, and that is the reason that I raise the issue of including 12- and 13-year-olds with the 14- and 15-year-olds who we now treat as adults.

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

SENATOR LEICHTER: Mr. President, I wanted to ask Senator Hoblock to yield, please.

ACTING PRESIDENT KUHL: Senator Leichter, I do have a list.

SENATOR LEICHTER: Oh, I'm sorry.

ACTING PRESIDENT KUHL: Senator Abate is next on the list.

SENATOR ABATE: On the bill.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: First, would Senator Hoblock yield to a question?

ACTING PRESIDENT KUHL: Senator Hoblock, do you yield to Senator Abate?

SENATOR HOBLOCK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: What was your rationale for combining -- I mean, there are two major initiatives here. One is expanding the list of felonies that relate to 14- and 15-year-olds. Now we have arson and robberies and everything else, included in that list, felony possession of weapons and the use of those weapons; that's one issue. And then you took on another very major issue is including the 12- and 13-year-olds in that eligibility group. Why did you do that together? Why did you see it was necessary to do that?

SENATOR HOBLOCK: Well, originally, the bill -- because now it's an "A" print, the original bill had the first scenario as you described adding to the 14- and

15-year-olds. The "A" print added the 12 and 13 which was an attempt to conform with Senator Larkin's legislation that we spoke about I believe yesterday.

SENATOR ABATE: Aren't you - would you continue to yield?

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

SENATOR HOBLOCK: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: I understand and there's been a lot of discussion and debate around particularly 14- and 15-year-olds and expanding that category. There's been some debate and discussion because of the rise in the use of weapons, it may be appropriate to include those additional charges, but there hasn't been a lot of debate and hearing -- and particularly when we're looking at reforming the entire juvenile justice system, aren't you in effect saying let's put the 12- and 13-year-olds, now treat them as adults because there's no

possibility of reforming how DFY operates their facilities; there's no place now for juveniles in Family Court? Aren't you, in one fell swoop, saying reform isn't doing any good, so let's push all these 12- and 13-year-olds into DOCS, into the adult system? Let's treat them as adults because there's no hope to rehabilitate them in Family Court.

SENATOR HOBLOCK: First of all, Senator, I'm not sure about the mandate. We're talking about here the definition of a juvenile offender. Obviously, they've got to be determined to be a juvenile offender to begin with, but it would seem to me if a 12- or 13-year-old child today -- and let's -- I think we can agree that there are a number of them that are very sophisticated at 12 or 13, particularly in criminal activity and there's a lot of 12- or 13-year-olds that obviously are not, but those that are and choose to violate these particular provisions of law and, if found guilty as a juvenile offender, then perhaps that's what we ought to be doing.

I mean, it's unfortunate but, yes, they are becoming much more mature at an earlier age today, and I think that not only - I don't think we need to sit down and need to have a study and go through a number of hearings and testimonies and all of that. I think we witness it day in and day out, and just to say that we're going to take every 12- or 13-year-old under this piece of legislation is not absolutely true. What we are going to do is take those sophisticated 12- or 13-year-olds that choose to commit these particular offenses and are found to be juvenile offenders that, yes, they will be treated accordingly.

SENATOR ABATE: Is the rationale -

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

SENATOR HOBLOCK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: Thank you, Senator.

Is the rationale for including the 12- and 13-year-olds because you do not feel the sentences are long enough in Family Court? These individuals could get 18 months even beyond that up to 21. Do you feel that the sentences are not sufficient and, therefore, you want them prosecuted as adults so they can spend longer periods of time incarcerated? Is that the philosophy behind the changes?

SENATOR HOBLOCK: That's part of it, Senator. I think, again, if they act like an adult, they ought to be treated like an adult in this particular arena in criminal activity, yes, and perhaps -- perhaps they could be given that additional assistance if we have them longer than what they should be there.

SENATOR ABATE: Thank you, Senator.

On the bill.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: I would be less troubled by this legislation if the two issues

were separated out, If what we had before us was the inclusion of felony possession of weapon charges for 14- and 15-year-olds, but this bill goes well beyond that and now is including 12 and 13-year-olds to be eligible as adult juvenile offenders, and the problem that I have is at a time when we have a statewide debate around the need for juvenile justice reform, we are now single-handedly taking a very critical piece from that debate.

I think we as the Senate - because I think this is a very serious issue - should not deal with juvenile justice reform piecemeal. This should be done comprehensively, and I would like this issue to be dealt with and discussed in connection with other issues. Should we be fingerprinting adult -- I'm sorry. Should we be fingerprinting juvenile felons? Should we be looking at the sentence length in the Division For Youth facilities? Is 18 months enough or should we be asking if 18 months is sufficient, why are young kids only doing only six months? Maybe we should be looking at what

happens in Family Court and the Division For Youth facilities before we transfer the 12- and 13-year-olds into the adult system. We should be looking and discussing supervision after release from a facility. Speedy trial issues, treatment issues, rehabilitation issues, resources in the Family Court, resources in probation, drug treatment. There are a lot of issues that need to be dealt with on a law enforcement end, prevention end and treatment end before we separate out and do in a very, I think haphazard manner, an issue so important as juvenile justice reform.

Again, if it were dealing with the existing category of 14- and 15-year-olds, I think that's a reasonable debate and discussion, and I think a lot of the members across the aisle, both sides of the aisle would support that. I think this legislation goes too far and we need to look at this issue comprehensively.

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

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Yes. Would Senator Hoblock yield?

ACTING PRESIDENT KUHL: Senator Hoblock, do you yield to a question?

SENATOR HOBLOCK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Yes, Senator. I must say, I think that Senator Abate makes a lot of sense and I am concerned, frankly, that you would subject 12- or 13-year-olds to being treated in the Criminal Court, but I'm surprised at your memo which says the chief administrator of the courts was the one who made -- who made this request, and I'm not -- first of all, I'm not sure the title, whom you refer to. Are you saying this is an OCA bill?

SENATOR HOBLOCK: That's correct.

SENATOR LEICHTER: This bill was proposed by the Office of Court Administration? Because I don't see their memo here.

SENATOR HOBLOCK: Yes, that's correct.

SENATOR LEICHTER: That this came up from Judge Milonas? I just haven't seen any proposal of this sort ever before by -- by OCA. I would -- I certainly accept your word, if you say that's what it is. It just surprises me coming in this form and, frankly, I'm also surprised that OCA would make a recommendation of this sort.

SENATOR HOBLOCK: I don't have a letter, Senator Leichter, with me or any kind of a cover memo, but that's -- that's the -- that's the genesis of this.

SENATOR LEICHTER: Okay. Mr. President, just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I would just, frankly, be dismayed if we give up on 12- or 13-year-olds to the extent of saying that they're mature enough to be treated in the Criminal Courts. Senator Hoblock certainly

addresses a very serious problem. I don't think there's anybody here who is saying that the rising tide of violence among very young people isn't a serious problem or doesn't have to be dealt with, but it seems to me to deal with it in the context of the Criminal Court when this society and most other societies have recognized what I think is indisputable that there are such things as children who are not held to the same level and standard of conduct and maturity as people who are older who, at least in their upper teens or have reached the age of maturity, and to think that in some way by dealing with this problem through the criminal courts that we're going to be able to resolve it, to my mind, frankly, is mind boggling and that's why I was very surprised that OCA would come up and say this is the way to deal with crimes among the very young.

I just don't think it is. I don't think we can give up on these young people and think that by treating them as we treat - as we treat mature people and holding them

responsible under the Criminal Law is a way to deal with this problem.

I think we're just going to make the problem worse. I think we need to bring resources. We need to bring effort to help to deal with these young people, but certainly you're not going to find that in the Criminal Courts or I think that this is just not the answer to the problem that we have.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill?

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I wonder if the sponsor would yield for a couple of questions of clarification.

ACTING PRESIDENT KUHL: Senator Hoblock, do you yield to Senator Montgomery?

SENATOR HOBLOCK: Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Thank you.

Senator Hoblock, does this mean then that the 12- and 13-year-olds would be housed with adults; is that what happens?

SENATOR HOBLOCK: Senator Montgomery, the memo in support of this legislation says juvenile weapon offenses could still be initiated in Family Court, and even if charges were initially brought into Criminal Court, juvenile offender actions could still be removed to Family Court and then the disposition, sentencing as an adult in those types of facilities will occur in Family Court as opposed to Criminal Court.

SENATOR MONTGOMERY: So the case could still be brought to the Family Court?

SENATOR HOBLOCK: The case would probably be brought initially in Criminal Court but could be removed to Family Court.

SENATOR MONTGOMERY: I see. But where does the young person end up?

SENATOR HOBLOCK: I'm sorry?

SENATOR MONTGOMERY: Where does the young person end up?

SENATOR HOBLOCK: That would obviously depend on what court they're in and the decision of the judge.

SENATOR MONTGOMERY: So if the court proceeds in Criminal Court, they could theoretically end up in DOCS as -- as an adult criminal?

SENATOR HOBLOCK: They would no doubt be lined up in some juvenile detention facility.

SENATOR MONTGOMERY: All right. Senator Hoblock, if you would continue to yield.

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

SENATOR MONTGOMERY: It is my - my impression that one of the reasons that 12-year-olds end up being involved in criminal activity is that they're like little mules, if you know what I mean, and so, therefore, they are acting on behalf of or in concert with some -- some adult or some older person who would be subject to the law. For that reason or -- let

me just ask if there is any law which criminalizes any person or business that has a young child participating in crime on their behalf including a business that sells weapons, would they -- would they be in any way liable if a young person happens to get one of these weapons, these machine guns and -

SENATOR HOBLOCK: Not under this legislation, Senator Montgomery.

SENATOR MONTGOMERY: Are there any legislation in this state? Do we have any such law that says that if a person or if any weapon is sold and ends up in the hands of a 12-year-old that that business is going to be held liable for the use of that weapon?

SENATOR HOBLOCK: No more than what's under current law, which I understand would be contributing to the delinquency of a minor or something like that, but I don't know of any particular law that specifically deals with giving or selling a weapon.

SENATOR MONTGOMERY: That ends up in the hands of a 12-year-old.

SENATOR HOBLOCK: That's correct. Now, as you may recall, Senator Montgomery, we tried to increase the offenses for the sale of drugs -

SENATOR MONTGOMERY: Yes, I'm aware of that.

SENATOR HOBLOCK: -- to minors on certain properties in the last couple of weeks that a lot of people had objection to and I would not be adverse to legislation penalizing those that take that drastic step by putting weapons into the hands of our young people.

SENATOR MONTGOMERY: Okay. Thank you.

Mr. President, on the bill briefly.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Obviously, this bill is very troublesome and I don't have in front of me the figures and I don't know if anyone in the room has at the moment, but it seems to me that while we are withdrawing

support in the way of funding from prevention, from youth programs, we do not have in the state of New York, to my knowledge at this time, a program or a funding stream that is directed to fund programs for youth, and we do not have a funding stream that is targeted at developing youth facilities throughout the state for youth recreational purposes, while at the same time -- and we do not have strong anti-gun control legislation. We don't have on the books as Senator Hoblock has just indicated any law that says if you sell a weapon and that weapon ends up in the hands of a 12-year-old, you will be held liable for a crime. We don't have such a law as that. And at the same time, we have various streams of funding going into the criminal justice system, 200 -- $250 million, I believe it is, that we have just passed in our budget to buy two prisons from New York City, and we spend about $8 million every 24 hours on DOCS and I see trailers, tractor -- I see trailers up and down the highway transporting prisoners and prisoners -- the items that

prisoners manufacture and we have plenty of activity around the prison system. Almost 70,000 people in the prison system, and here we are today saying that we have no answers for 12-year-olds. They're not even teenagers. They are not even yet teenagers. We have no answers in this state for 12-year-olds except we're going to put them in the DOCS system, that we're already bankrupting ourselves on continuing to expand. It's exploding.

We cannot -- Senator Hoblock - Mr. President, we cannot afford to continue along these lines. We will not have anything except a huge, huge DOCS system consuming huge amounts of money, and a major percentage of our state budget going into this system and we won't have a higher education system that is premiere in this country and we won't have a premiere health system and, you know, we won't have much else in New York State to boast about except our premiere DOCS system.

So this is very troublesome. I -- I know that I'm talking to myself. I feel

like I'm singing in the wind like the birds on the highway that I pass up, but I feel compelled to say it. This, to me, is just like a conspiracy and I'm not one to believe in conspiracy theories, but it is the closest thing that I have seen to be a conspiracy to essentially railroad as many young people as we can, and we know who is in the DOCS. We know who's there. It's African-American and Latino primarily males, and we're just going to continue to run them in there and run them through there and cycle them through there and I don't know, but it does not sound to me like a humanitarian approach to our future or our society.

So, Mr. President, I really -- I feel so strongly about this. This is the wrong thing to do. It is not -- it does not deter crime because we're not talking about the source of crime. We are just talking about doing something very heinous with the little victims who have already started off on the wrong track and we're saying, there's nothing that we can

do. We are not trying to intercede. We are just going to throw you in with the rest of the people who already have been in the system.

So I oppose it and I hope that some of my colleagues will be against this awful piece of legislation.

Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Volker.

SENATOR VOLKER: Mr. President, I would try to contain myself a little bit. I get a little irritated and I know that, Senator Montgomery, you mean very well. I listened to the debate earlier today on assault weapons and I did not speak because I felt that it was really a political issue and it wasn't a good time to get into it.

We have the toughest gun laws in the United States of America, in this state. Don't let anybody kid you with all of this nonsense. It isn't assault weapons that kill people, by the way, it is other weapons that are the main source of it and, by the way, Senator,

you probably didn't have the opportunity because I was here many years ago and I talked to this little gentleman that you talked about who, at 12 years old, had killed about a dozen people. He admitted when he was 14 he killed 14 people. The person involved was the subject of a major inquiry in 1978 and what brought on some of the juvenile statutes in this state. I can assure you some of the 12-year-olds that I met way back when and that are around today are far more dangerous than many of the people that have been in our DOCS system for 20 or 30 years. It is a scary situation.

But, Senator, you mentioned, we don't have any youth facilities. We have them all over the state, Senator. We spent millions and millions of dollars on youth facilities. In our budget that we just passed, there's still millions of dollars for youth facilities and for youth funding.

Senator, we spend about 30 times as much on education in this state, something to that effect as we spend on the Corrections

Department. That's the way it should be. I'm talking about overall funding, the state of New York and local governments. The only reason I mention that is we also, by the way, spend a huge amount more on social services, mental hygiene, and so forth. Yes, some of the funding has been cut, but there's absolutely no comparison between the amount of money that we spend on education, on welfare, on all those kinds of things. Prisons really represent a comparatively miniscule amount, much too big, but a comparatively miniscule amount.

Now, what Senator Hoblock is talking about here is dealing with an aspect of the criminal justice system which is in the school and with guns that has become a particular problem, and we have tried all sorts of things to deal with this kind of thing, and this doesn't say, by the way, these people are going to the DOCS system. It does not criminalize. It puts them in the juvenile offender status, which is a different kind of status. The problem is that we have tried all

sorts of things.

Senator Abate, you talked about it comprehensively. We have been looking comprehensively at this issue for a long, long time and there's just varying philosophies on how we deal with it, but slowly but surely the state is moving toward tougher penalties and a more firm stance for younger people because, unfortunately, the amount of young people who are committing crimes in this state, serious crimes, has become somewhat alarming. So we are very concerned about it; but, Senator Montgomery, to say -- and I know your frustration because I know the kind of district you have -- to say that we haven't tried all sorts of programs and -- to deal with these kinds of things is really I don't think quite accurate and let me point out, we just had a study done of the youth facilities in this state and I think you know that it did not come out very well, to the point where we are seriously looking at shifting the secured facilities under the aegis of DOCS because, frankly, it appeared

that they were being managed much, much better and we were able to get a much better result from the DOCS facilities.

Now, that -

ACTING PRESIDENT KUHL: Senator Montgomery -- excuse me.

SENATOR VOLKER: -- is being reviewed. Now we have a new commissioner and all of that, that's fine, but I must remind you, these are not necessarily the little ones. These are pretty tough people in many cases, and you can't blame it on -- just on society because many of the kids that come from single-parent families turn out very well. They come from difficult families, but some don't. Some of these kids, by the way, are wealthy kids. They're not necessarily poor kids.

ACTING PRESIDENT KUHL: Excuse me. Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Would Senator Volker yield for just one -

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR MONTGOMERY: Senator Volker, when I say "youth facilities", I'm talking about youth cultural centers, centers where youth can go and have cultural and recreational and other kinds of activities. Are those -- did we just spend millions of dollars on constructing centers like that?

SENATOR VOLKER: Now, what you're talking about is we have built in the past youth facilities all over the state as I think you're aware, but what you're saying is that there was a -- the huge funding stream set up here a couple years ago and, as I understand it in this budget, that funding stream has been -- has been frozen, that's true, but what I'm saying to you is that there's been millions of dollars and still continues to be spent on the youth in the budget that just passed and we have already provided an enormous amount of funding over the years to try to deal with the issue of youths, and what I'm pointing out is that you can't say that we haven't made an attempt to deal with

that.

It's like saying in a state -- in the city of New York where for a long period you couldn't even get a gun because they weren't issuing licenses for guns, to say that somehow we haven't been tough on the gun issue, it's absolutely not true. That's all I'm saying and I understand your concern. We have a concern, I think all of us do, but I think the one thing that you should -- it seems to be careful of is -- is that these are not necessarily kids. Despite the fact that they may be young in age, some of them are extremely dangerous people, and when we deal with these people and -- we had better deal with them with a healthy respect because, unfortunately, there are people that, whether they're white or black or whatever they are, and I can say people there's upstate and downstate, all over the place, that I think we have to deal with in a different manner than we have in the past.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I just wanted to see if Senator Volker would yield. I wanted to ask him another question related to -

ACTING PRESIDENT KUHL: Senator Volker, do you yield to Senator Montgomery again?

SENATOR MONTGOMERY: Senator Volker, the -- there was a hearing in Westchester County, I think, held by Senator Oppenheimer, and one of the people who was very much involved in after school programs - there's an organization of after school programs -- reported that there are some 600,000 children who have no place to go after school in the state. Did we expand the funding for after school programs in this state which, by the way, after school programs take children in up until the age of 12 in this state. Did we expand that funding this year?

SENATOR VOLKER: Frankly, I don't believe we did.

SENATOR MONTGOMERY: We didn't.

SENATOR VOLKER: But I don't know where that number of 600,000 after school children, in fact, came from. Frankly, I never saw that number, but I'm sure there are some kids who don't have regular after school programs. When you and I were younger, I don't think we had any programs either. We just found programs for ourselves, I guess, but it may well be true that, I guess under the modern circumstance, we're probably going to have to look maybe for additional funding in many ways which some cities are doing, but I don't think there was an expansion of those programs, but there are already programs statewide that -- I don't know where that 600,000 figure would come from, but I suppose there are a lot of kids that don't have after school programs, but that doesn't mean that we can necessarily justify the fact that some of the kids and not others are committing very serious crimes and I think that's what Senator Hoblock was trying to deal with.

ACTING PRESIDENT KUHL: Senator

Montgomery.

SENATOR MONTGOMERY: Just briefly, I just want to point out to the Senator and my colleagues that a portion of those children who now have no program to go to after school, they are essentially latch key children, some of those children end up on the streets. Some of them are 10-, 11-, 12-year-olds and they will eventually be swept into this program that Senator Hoblock is proposing, and I just -- the reason I raise this is because the further away we move from the issue of prevention and the issue of support for the family and support for young people at a time when it makes a difference, the more and more difficult it is and the more costly it is to deal with them once they have crossed over into the neverland of criminal behavior and what have you.

So we need to know -- we need to know how much money we're spending on prevention, Senator Volker. We need to know how many children don't have an after school to go to. That should be the obligation. We don't -

we should not only know how many 12-year-olds commit heinous crimes. We should also know how many 10- and 11-year-olds and 8- and 9-year-olds that we can prevent from participating in that kind of behavior and what we should be doing about it. That is our responsibility too, and I hope that we will begin to deal with that because the front end is the most efficient way to deal with young people, not just looking for them on the back end when it's time for them to go into prison, and we all know that they're more likely to go if we do not invest in them up front.

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

SENATOR GOLD: Yeah. I wanted to ask Senator Volker if he would yield to a question.

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

SENATOR GOLD: Senator, I just want to clear the air on something which I don't

understand. There was a remark made earlier by Senator Bruno and since you made reference to it, I want to ask you.

There are a number of times when Senator Maltese, my dear friend from Queens, brings bills to the floor which I don't agree with, he's very sincere about concern issues and in my voting no, I feel a little queasy about it. Will people understand the issue? But I have an opinion and Senator Maltese, who I certainly do respect, has an opinion.

Now, Senator Bruno said earlier today that the Dollinger motion had only one purpose and that was to embarrass Republicans. Will you explain to me how, if a member stands up and votes his or her conscience and explains intellectually how they feel, how is that an embarrassment, Senator?

SENATOR VOLKER: Senator, let me just say to you, we're talking about another bill and what I was talking about -- what Senator Bruno was talking about, the bill was introduced after my committee went out of

business. It was directly to Rules. To my knowledge, it was never requested out of committee. It was only introduced after it was passed by the Assembly by a vote of just barely 76 votes and the Assembly Democratic Committee is now sending letters all over the state trying to drum up support, including to my district, and listing Senator Dollinger, as the discussion was -- the vote on this was going to be today.

Now, I mean, Senator, obviously it has become a political issue. What I think Senator Bruno was saying is that the issue wasn't being brought to the floor; it was an issue of a motion. That's all that was being said.

Whether Senator Dollinger -- and I sincerely believe that he has great feeling for the issue, but the point I think Senator Bruno was trying to make was that as far as this particular motion -- he didn't say that he wasn't sincere as far as the bill, but as far as the particular motion was concerned -- it was a political issue; that's all he was trying to

say -- that was being tried to be made. That's, I think, what he was talking about.

SENATOR GOLD: Thank you, Senator.

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

SENATOR LEICHTER: I want to ask Senator Hoblock to yield, because -

ACTING PRESIDENT KUHL: Senator Hoblock, do you yield?

SENATOR LEICHTER: Senator, I think a clarification is in order. We've checked with OCA. This is not an OCA bill, Senator. I did not believe it was an OCA bill because I don't think OCA would come up with this sort of a proposal. Moreover, Senator, it wasn't on the form that OCA uses. It referred wrongly to the chief administrator of the courts. I don't believe that's the exact title, but in any event, we have checked with OCA, it's not an OCA bill and what I would like -- maybe you have had a chance to check your records. I appreciate that you, like me, are handed things

by counsel, and so on, and sometimes there's errors. I, by no means, mean to imply that this was in any way intentional, and so on, but I think the record ought to be made clear for this chamber that this is not an OCA bill.

SENATOR HOBLOCK: Senator Leichter, after you and I spoke, I did find in my file a previous memo from OCA, because I picked this bill up on OCA stationery setting forth what's in this support memo.

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

ACTING PRESIDENT KUHL: Senator Hoblock, do you continue to yield? The Senator yields.

SENATOR LEICHTER: That's not the bill that's before us.

SENATOR HOBLOCK: Yes, it is.

SENATOR LEICHTER: Well, Senator, I submit to you it is not. Let me ask you about the bill. I have two bills here that were introduced on the same day. One is 5173, your bill dated May 15th, 1995 and the other one is a

bill that is before us, 5173-A, and 5173-A adds 12- and 13-year-olds. That was not in the original bill.

SENATOR HOBLOCK: I think I answered that to Senator Abate's question, that's correct.

SENATOR LEICHTER: Was that done at the request of OCA?

SENATOR HOBLOCK: No it wasn't. I think I stated to Senator Abate that was done to conform with Senator Larkin's legislation which passed by OCA, and I didn't say this, OCA had no objections, but I did answer the question that there are two matters in this legislation and I did mention that there were -- there was an original print and an "A" print, and I did state what they were about, that's correct.

SENATOR LEICHTER: Senator, but that's not the issue. The issue is whether the "A" print which is before us is an OCA bill. OCA advises me that it is not.

SENATOR HOBLOCK: I think I said that, Senator Leichter.

SENATOR LEICHTER: No, you said the opposite. You said exactly the opposite.

ACTING PRESIDENT KUHL: Gentlemen, if you could, Senator Leichter, are you asking Senator Hoblock to yield?

SENATOR LEICHTER: Yes. Senator, will you yield?

ACTING PRESIDENT KUHL: Senator Hoblock -- excuse me, Senator Leichter. I have a big weapon up here this time.

Senator Hoblock, do you continue to yield?

SENATOR HOBLOCK: Yes, I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, you distinctly said on a number of occasions that the bill before us was an OCA bill. All I'm trying to establish is that it is not an OCA bill. If you say, "You're right, Leichter, it's not an OCA bill", I'm satisfied.

SENATOR HOBLOCK: Senator Leichter, perhaps you and I aren't communicating

correctly. I don't know if you listened to my answers to Senator Abate's questions about how we got to the "A" print. When we got talking about the juvenile offense or the offenses added to the definition of "juvenile", that's when it was said it's an OCA bill. Perhaps you and I weren't communicating correctly. I'm telling you again what it was I said before. Now, if you choose not to accept that, I can't help it. I'm just telling you what I said.

SENATOR LEICHTER: Senator, after you had your discussion with Senator Abate - and maybe I should have listened more closely - but I got up and I asked you whether this was an OCA bill because, frankly, it didn't have the form of an OCA bill. I know Judge Milonas. I didn't think he would put forward this sort of a proposal that I find, frankly, appalling and since it wasn't in the form in which bills generally come from -- to us from OCA, I asked you on the floor whether the bill before us was an OCA bill. Your answer was yes.

SENATOR HOBLOCK: I probably did

answer that in connection with those questions and I apologize if I misled you, Senator Leichter, and I apologize that the "A" print that you did not understand when I answered the question of how that came about.

SENATOR LEICHTER: Okay. Senator -

SENATOR HOBLOCK: I think it was clear -- I think it was clear the 12- or 13-year-olds was added as a result of trying to conform with Senator Larkin's legislation.

SENATOR LEICHTER: Fine. Senator, you owe me absolutely no apology.

SENATOR HOBLOCK: I'm not apologizing, Senator Leichter. I'm just saying there was a miscommunication, okay?

SENATOR LEICHTER: Okay. Senator, I just want to make sure that my colleagues are clear, as I am clear now and as I believe you've made clear, that the bill we have before us is not an OCA bill, and I think that's significant and important, and if anybody was in any way influenced in their consideration of

this bill, whether this came from OCA, they ought to be very clear and ought to understand it is not an OCA bill.

That's -- having established this, I am satisfied and having the floor, I just want to say a couple of other things about the bill and I thank you, Senator Hoblock.

ACTING PRESIDENT KUHL: Senator Leichter on the bill.

SENATOR LEICHTER: Because I think this is a radical departure from the way we have tried to deal in our society with young people and, frankly, I think it's almost a savage response, if you will, to what is undoubtedly a very serious problem and I don't think, Senator Volker, that Senator Montgomery in any way said that it wasn't a problem.

On the contrary, it's a very serious problem, one that all of us, not only as New York State legislators, as Americans, have to be very concerned about as I refer to the rising tide of crime and particularly the growing violence where kids used to fight with

their fists; they now pull out knives and guns, and so on, and there are 12-year-olds, Senator Volker, you're absolutely correct, that are extremely dangerous, that action has to be taken to separate them from society, but whether you do that through the Criminal Court and treat these people as adults, that's what we object to, because we don't feel that's the way to do it, and I think Senator Montgomery made, I thought, a very persuasive, to my mind, an indisputable point that what we need to do is to keep children from becoming violent, and I would hope that everybody would agree and then that's where our resources should be put in.

I don't know. I think if I stay here long enough -- I hope I don't, but if I stay here much longer, I wouldn't be surprised if the Republicans put forward the Islamic code and we're going to have bills here soon calling for cutting off peoples' hands and gouging out their eyes. Really, you're going for the sort of savagery that, frankly, I find appalling to say a 12- or 13-year-old is going to be treated

like an adult and be subject in the Criminal Court to the processes and the penalties of a mature person, I think is -- is a terrible abdication of what has been, I think, a moral standard that we have had in this state and in this country.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. Would Senator Hoblock yield to two more questions?

ACTING PRESIDENT KUHL: Senator Hoblock, do you yield to Senator Abate?

SENATOR ABATE: Since I don't believe this will be the end of this debate today, there are a couple of other issues that maybe you can help us with. Are there any other states that now currently prosecute 12- and 13-year-olds and what are those states' experiences?

SENATOR HOBLOCK: I'm not aware.

SENATOR ABATE: To my knowledge, I'm not aware of any other state.

SENATOR HOBLOCK: Could very well

be.

SENATOR ABATE: If you learn of that experience, it would be very helpful if you could share that. So we might be the first state if we -- if this law was passed, we might become the first state to prosecute 12- and 13-year-olds.

Let me -- the second question is -- so I understand, I asked you the question previously -- is what was the rationale for moving the 12- and 13-year-olds from Family Court into Criminal Court and I asked the question, is it because the sentences are too lenient in Family Court?

SENATOR HOBLOCK: That's part of the reason and it was also, as I stated earlier, to conform with the legislation we had talked about, introduced and debated by Senator Larkin, and also I was responding -- it's coincidental that on the day that this 5173-A is dated is the same date of a local newspaper article talking about weapons found in schools in 52 and 57 counties.

SENATOR ABATE: I'm not talking about the weapons part. I'm talking about the 12- and 13-year-olds.

SENATOR HOBLOCK: You asked me the question of how I arrived at it and I'm trying to explain to you how I did that. It's from those various sources that the amendment was put in for 12- and 13-year-olds.

SENATOR ABATE: And the second part -

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

SENATOR ABATE: I think we all recognize these young people need to be punished. It's really a question of where they're punished, how they're punished and effectively, so they can change the way they think about themselves and the world about them.

If -- in fact, right now as you're aware, the juvenile offenders can do up to five years. If they are prosecuted as an adult, they could do up to five years. If the

sentences were lengthened as for a JD, a person is prosecuted as a juvenile in Family Court and the sentences were lengthened beyond 18 months to as great as five years, what would be then the rationale to prosecute the 12- and 13-year-olds as adults?

SENATOR HOBLOCK: Senator, I think as I said before, you know, there are lots of things that we can do. I think this juvenile justice area has been discussed. I could remember back 15 years ago when I was in the Assembly it was discussed then too, and we're having basically the same types of debate.

We're now having several years later, we not only have the problem, it's magnified in spite of all the efforts that are being done. I think it has to be accomplished on both ends, a lot of what Senator Montgomery talked about and a lot of what we're talking about. There's got to be a certain amount of deterrence, that there are numbers of sophisticated 12- and 13-year-olds as pointed out in this article and the 14- -- over 14,000

teachers and school staffs that have been subject to violence in the schools, let alone the other victims in the school grounds and elsewhere. We can do -- we can build all of the youth centers and all of the playgrounds and everything else, it's not going to eliminate all of it and we've got to do something about treating these young people who are really not young people.

We talk about these 12- and 13-year-olds as we know 12- and 13-year-olds, and if a 12- or 13-year-old wants to commit an adult crime, has the maturity to do it, then perhaps we ought to start considering treating them as adults for the punishment, and also to worry about the victim, to worry about society a little -- as much as we worry about the offender. That's all I'm saying.

Am I going to stand here and tell you that this is the answer? The problem is going to go away? No. But neither is your answer going to make the problem go away.

SENATOR ABATE: I guess I have

two and a half questions, another half question to follow up.

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

SENATOR ABATE: Do you continue to yield?

SENATOR HOBLOCK: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: I want to put aside the scope of punishment because let's make the assumption that the scope of punishment is the same in Family Court for the serious cases, is the same in Family Court as it is in Criminal Court. Let's say they both could get four years, the person -- the same individual. So my question is, isn't the Family Court which judges are specifically trained to deal with youth, the secured facilities that have been dealing with youth, the youth providers that target youth in that population, probation that works in Family Court are particularly trained. You have a whole system trained around adolescent behavior,

what to do to prevent it, how to treat it, how to provide transition services so when they go back into their families and schools, they can do better.

What about this bill or what about your thinking if the scope of punishment is the same, how can DOCS and Criminal Court be better equipped to deal with this youth when it's not their mission? They don't have the same kind of training; they don't have the same kind of experience. Now, I recognize there needs to be reforms in Family Court and there needs to be better management in DFY facilities, et cetera, but if you can produce that better management, why do you want to take the youth out of a system that was organized around dealing with youth and move them to an adult system when you don't have to?

SENATOR HOBLOCK: Perhaps I could try to answer that -

SENATOR ABATE: Still talking about punishment. We're not saying these kids are babies, let's let them off the hook. We

won't do anything with them. We're saying how do we be effective in punishing these young people? In my assumption, we could be more effective in punishing 12- and 13-year-olds in Family Court.

SENATOR HOBLOCK: I'll try to answer that two ways: One, this legislation does not prohibit the initiation or removal of these cases to Family Court and, number two, the scenario that you describe as to all that's available in Family Court is a perfect world, and I can tell you that in my area, the resources that you describe available in juvenile court or Family Court and perhaps in New York City and only in those courts and not in the Criminal Court is not the case up here.

We have as many of those same resources, if not more, in those criminal courts because we're dealing with the same Probation Department. We're dealing the same Division For Youth individuals and people in that particular arena. They go to Family Court. They go to criminal court, same office. We don't have

perhaps what you have in New York City. I know this, that in this particular area, if not in most areas upstate, those resources are available.

SENATOR ABATE: Thank you very much.

I'm not going to go on the bill other than one comment to say then maybe we should rethink where we put our resources. I have been always an advocate, even though I have been working at the back end of the system in probation and correction that the money should be put into the front end of the system and every dollar spent in Family Court not only saves families, saves lives, saves victims and maybe we should reorder our priorities.

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

THE SECRETARY: Section 5. This act shall take effect 60 days after it shall have become law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT KUHL: We have two, three, four. One more member want a slow roll call? I got four. Are there five members in the chamber requesting a slow roll call? One, two, three, four, five.

Thank you.

The Secretary will call the roll slowly.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

(Affirmative indication.)

THE SECRETARY: Aye.

Senator Connor.

(Negative indication.)

THE SECRETARY: No.

Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

(There was no response.)

Senator Dollinger.

SENATOR DOLLINGER: Yes.

THE SECRETARY: Senator Espada.

ACTING PRESIDENT KUHL: Senator Espada to explain his vote.

SENATOR ESPADA: Thank you, Mr. President.

Very briefly, I had sat back, heard the debate, and I think that Senator Montgomery hit it right on the head. When she didn't get into it necessarily -- she's not a lawyer, neither am I -- issues of punishment, degrees of punishment and what system, but, in fact, she hit the nail on the head when she talked about our priorities as a society.

There is a general glorification of violence which we are all concerned about,

not just in terms of inner city violence but throughout New York State and America. There are these savage inequalities, though, that disturb me very greatly when our colleagues get up and talk as though we have fully invested in prevention when we are fully investing in the kinds of youth opportunity centers and other kinds of necessities that Senator Montgomery talked about. She comes from a very, very poor district, and so do I.

When I look at our budget line by line, I go through it and the message is very clear. Young people are not a priority in the fiscal scheme of things in our budget or in our deliberations. We talked about punishment. We talked about how people should be in jail, a build-up of jails as though we haven't done that for the last ten years, a build-up in our prison capacity in this state that almost doubles all of the build-up throughout America in the last decade. So we have tried that already.

What we haven't tried and what people cannot get away with saying is that we

have actually made young people and children a priority. Children in this state, percentages of children who are poor in this state rivals at or exceeds that of any other state and perhaps another -- any other country on this planet.

So the savage inequalities, the misplaced priorities are an aspect to this whole issue. If we did both at one time, we would find that people on this side of the aisle could be as macho and as tough on kids as you seem to be, but the fact of the matter is that we're not doing both. It's one, be tough, be punitive and no investment in prevention and that is not a level playing field that we can support.

We vote no.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Yes.

THE SECRETARY: Senator Galiber, excused.

Senator Gold.

SENATOR GOLD: No.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

(There was no response.)

Senator Hoblock.

SENATOR HOBLOCK: Mr. President.

ACTING PRESIDENT KUHL: Senator Hoblock to explain his vote.

SENATOR HOBLOCK: Very briefly, Mr. President.

One thing that, as I hear comments, I don't want to convey the impression or if anyone is reading this legislation that it's an attempt to take all 12- or 13-year-olds, regardless of their criminality, no discretion, mandatory that they be put into the criminal justice/criminal court system, but rather this legislation sets up the proviso that, if -- if they are, then this is how they will be

treated. It's not mandatory.

Those 12-, 13-, 14-, 15-year-olds can still be treated in Family Court but not as juvenile offenders.

ACTING PRESIDENT KUHL: Senator Hoblock will be recorded in the affirmative.

The Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: No.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Jones.

(Affirmative indication.)

Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

(There was no response.)

Senator Larkin.

SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
(There was no response.)
Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: To explain my vote.
ACTING PRESIDENT KUHL: Senator

Markowitz to explain his vote.

SENATOR MARKOWITZ: Thank you very much.

First off, I wish my colleague was in the room right now, Senator Volker. He mentioned that we have one of the toughest states in the nation as it relates to gun laws, and that is true for some people who legitimately attempt to gain a license and we do have strict laws because some of those entrepreneurs or other business interests may not have a justifiable reason to want a firearm and the police department of New York City or anywhere else in the state of New York has a right to be strict, but if you want a gun illegally, New York is Dodge City. You could buy a gun in almost any urban area easily, quickly and cheaply. You ask kids in public schools, whether they're in Bay Ridge or even here in Albany, where one could purchase a gun and it's amazing how they know faster than perhaps law enforcement, and that is something that we have to really give an awful lot of

weight to.

The gun companies, manufacturers know the amount of guns that they're selling in the society. Certainly they have to realize that those guns are not all going into the hands of people that are using them legitimately. And so we are a far way, a far, far way in providing real gun control laws in our society.

Now, I bring this back to younger people and this bill that Senator has been - Hoblock has introduced. Senator, I wish that this was the answer. None of us Republicans or Democrats are in favor of 12- and 13-year-olds acting in a violent way and going unpunished, but the bottom line is that before a 12-, 13- or 14-year-old begins to shoot away, they begin to show anti-social behavior before that, and then what is society doing at the time that child begins to show the kind of behavior that will not lead to a conducive life?

What are we doing as a society; and that is the problem, my fellow colleagues. We are not doing nearly enough at all to try to

prevent that younger person from beginning a life that will surely lead to violence, not only for the victims which we're all concerned about but also the person who has committed the crime; and so I would love to vote on a bill as I have in many other instances in cracking down on violent offenders. For sure, all of us feel that way and our votes demonstrate that, but until I'm convinced, Senator, that we're providing enough assistance and that our school system, our mental health facilities, our school-based programs, our criminal justice system, our youth groups are able to have the resources necessary to identify those young people that have begun to show anti-social behavior and try to prevent it from coming to this point where you want to pass this legislation, I don't think we're doing our society any justice.

ACTING PRESIDENT KUHL: How do you vote?

SENATOR MARKOWITZ: I vote no.

ACTING PRESIDENT KUHL: Senator

Markowitz will be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Mendez.

ACTING PRESIDENT KUHL: Senator Mendez to explain her vote.

SENATOR MENDEZ: To explain my vote.

I am voting in the negative. The assumption behind this bill is that practically all 12- and 13-year-olds are incorrigible, that practically all 12- and 13-year-olds are carrying guns. I haven't seen any hard data to that effect.

Yes, our society has been increasingly becoming violent. Nobody has mentioned here today the effect it has on kids, these horrible movies that they sell violence since the very first time the movie starts until it ends. There are a lot of societal factors influencing negative behavior on children. For

one, in our public school system, something has to be done because in the final analysis, kids are not learning. Kids are not learning and we're pouring monies into the school, regardless how much the city of New York is short changed, but the plain fact is that in any school system where 40 percent of kids do not graduate, something is horribly wrong.

I don't think that by being this severe on this group of kids, 12- or 13-year olds, we are resolving the problem. I think that, in fact, we are -- we are simplifying the nature of the problem so, therefore, I vote in the negative.

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

The Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT KUHL: Senator

Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, I just thank you and I -- this is - there is a bill -- there is a bill which would allow ultimately a local school board to override the Regents and allow commercial television in classrooms. This would be the Channel 1 in the classroom. Now, many of us are adamantly opposed to it, but let me just say to Senator Hoblock and my colleagues that Channel 1 would be advertising two minutes, four 30-second spots, every single day in every classroom where there was a television in any district, where this program would be advertising $100 sneakers and everything else that is top of the line for young people to aspire to attain and to possess.

So while we say we want to put 12-year-olds in the criminal court, run them through the criminal court we, at the same time, are saying that we're willing to entertain having -- putting before them -- making it possible to put before them this kind of

advertising, this kind of enticement and this - this kind of suggestion that these are the important things for you to acquire. And how does one acquire these things? You have to have money. You have to have a way of getting money. If your family doesn't have that money, you figure out a way to get it.

So until we are willing to address that part of it and to address the fact that we have the highest murder rate in the world because we have over 200 million guns on the streets, then I'm not comfortable with saying that we want to now send babies into criminal court.

So I remain opposed to this. I think it is immoral, and I hope that my colleagues will reject this motion.

I vote no, Mr. President.

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

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'll explain my vote.

ACTING PRESIDENT KUHL: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Most of you know that I'm normally interested in seeing that punishment be commensurate with crime, so I'm usually fairly strict on that punishment, but I think to attribute the kind of adult punishment to a child 12 and 13 years old only will assure us that we're going to have hardened criminals when they grow up.

I would support increasing the punishment, but I would do it within the juvenile justice arena and not with adults. The

thought of 12-and 13-year-olds in a prison with hardened criminals is a fairly scary thing and frightens me, and I know that we would then produce just more hardened criminals.

I'm going to be voting no.

ACTING PRESIDENT KUHL: Senator Oppenheimer will be voting in the negative.

Secretary will continue to call the roll.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Yes -- no.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

(There was no audible response.)

Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Aye.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Aye.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Solomon.
SENATOR SOLOMON: No.
THE SECRETARY: Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Yes.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: Yes.
THE SECRETARY: Senator Trunzo.
(There was no response.)

Senator Tully.

SENATOR TULLY: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT KUHL: Secretary will call the absentees.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

(There was no response.)

Senator Kruger.

(There was no response.)

Senator Lack.

SENATOR LACK: Yes.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Trunzo.

(There was no response.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 40, nays 15.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SOLOMON: Mr. President.

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

SENATOR SOLOMON: Yes, Mr. President. I'd like unanimous consent to be recorded in the negative on Calendar Number 1097.

ACTING PRESIDENT KUHL: Without objection.

SENATOR MENDEZ: Mr. President.

ACTING PRESIDENT KUHL: Hearing

no objection, Senator Solomon will be recorded in the negative on Calendar 1097.

Senator Mendez, why do you rise?

SENATOR MENDEZ: I also, Mr. President, is requesting unanimous consent to be recorded in the negative in Calendar Number 1097.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Mendez will be recorded in the negative on Calendar Number 1097.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, if I could also have unanimous consent to be recorded in the negative on Calendar Number 1097, I'd appreciate it.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Dollinger will be recorded in the negative on Calendar Number 1097.

Senator Marcellino.

SENATOR MARCELLINO: Mr.

President, we announce a meeting of the Rules Committee at 5:00 p.m., promptly, in Room 332.

ACTING PRESIDENT KUHL: There will be a meeting of the Rules Committee at - in six minutes, at 5:00 p.m., in the Majority Conference Room, Room 332. Rules Committee at 5:00 p.m., Room 332.

Senator Maltese, why do you rise?

SENATOR MALTESE: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 128.

ACTING PRESIDENT KUHL: Without objection, Senator Maltese will be recorded in the negative on Calendar Number 128.

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. I would like to be recorded in the negative on Calendar Number 1097.

ACTING PRESIDENT KUHL: What number was that again, Senator Montgomery?

SENATOR MONTGOMERY: 1097.

ACTING PRESIDENT KUHL: Without

objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 1097.

Senator Nanula.

SENATOR NANULA: Mr. President, I too would like to request unanimous consent to be recorded in the negative on Calendar Number 1097.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Nanula will be recorded in the negative on Calendar Number 1097.

Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: May I have unanimous consent to be recorded in the negative on Calendar Number 241.

ACTING PRESIDENT KUHL: Without objection, Senator DeFrancisco -- and hearing no objection, Senator DeFrancisco will be recorded in the negative on Calendar Number 241.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1266, by Senator LaValle.

SENATOR MARCELLINO: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 1269, by Senator Holland, Senate Print 2044, an act to amend the Social Services Law, in relation to recovery of certain medical assistance expenses.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. Senator Holland, an explanation of Calendar Number 1269 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR HOLLAND: Mr. President, under current law, if there is a personal injury and there is a court case and the individual goes to Medicaid and recovers some funds, if the individual is over 21 years of age, Medicaid or DSS can put a lien against that money and

recover the money. However, if the individual is under 21, right now, what happens is that the attorney sets up a trust or the attorney sets up or puts the money in pain and suffering, and we can not put a lien against the money.

Now, we do not, Senator, want to put a lien against the money and take everything away from the individual. We want the individual to have enough money to -- to -- as necessary, but if there is excess money, we believe a lien should be placed against some of the funds so that the Medicaid or DSS can be reimbursed.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Assured that Senator Holland celebrated his birthday in spite of my persistent questions, I wonder if he would turn today and answer a few more questions.

SENATOR HOLLAND: Sure, yes.

ACTING PRESIDENT KUHL: Senator

says he'll yield, Senator Paterson.

SENATOR PATERSON: Mr. President, my first question for Senator Holland is, Senator, in many respects, I understand what you're trying to accomplish, and it was some thing that you were also seeking in legislation yesterday, and it really is to prevent double dipping, to prevent double recovery in these types of situations. But the courts don't structure the -- the courts don't structure the remediation in the way that I think this bill is suggesting.

It would be very possible under this legislation for us to be taking away what might be slight recovery from the victim, in this case the child. Let me cite an example for you.

Suppose a child is in a car accident and is injured as a result of wrongdoing by a drunk driver, a third party, and at trial the victim wins $100,000 worth of pain and suffering, $100,000 worth of medical expenses and $100,000 worth of perceived wages

from future work.

Now, under your legislation, if the drunk driver can't really afford beyond the 10- to $20,000 insurance policy that they may have already taken out, what you may have is the Department of Social Services putting in the lien against the $10,000 because the individual who caused the accident doesn't have any resources, and now we're going after the slight amount of money that was accrued in insurance to, in a sense, pay back what were the costs of health preservation that the Department of Social Services shelled out in the beginning.

So what I'm saying to you is that I think the bill is somewhat defective and probably needs an amendment. The amendment I would suggest and the amendment that the New York State Trial Lawyers would propose would be one that sets forth that the recovery for medical assistance would be secondary to the original recovery of pain and suffering and perceived future wage losses.

SENATOR HOLLAND: Senator, that's

what's happening today and that's what we're trying to correct. New York State Notebook provides $50,000 to cover medical expenses, I guess you know that, and our intention is not to -- to take excess money. It's only to take excess money away from the young person, not to take enough -- to take more money than the young person will need. I hope that answers your question.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: You have, Senator, but don't you think if the injuries to a young person in an accident were approaching what would be catastrophic injury situations where this person is going to need lifelong care that it really would be, you know, patently unfair for us to be taking any money away from them at that point?

SENATOR HOLLAND: We're not -

SENATOR PATERSON: And under your bill, I'm suggesting that that could happen.

SENATOR HOLLAND: I don't believe

so, Senator. I don't believe so at all, and DSS does not intend to do that. We don't intend to do that. I don't believe that is the case at all, Senator, and the bill is not designed that way.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Well, Senator, even before you just explained to -

ACTING PRESIDENT KUHL: Senator Holland continue to yield? Senator continues to yield, Senator Paterson.

SENATOR PATERSON: Oh, thank you, Mr. President.

Senator, before you even explained that, I perceived that you didn't intend that. What I'm saying is that I just feel that your bill -- I don't think I'm ob jecting at all to your intent. I'm saying that the bill isn't specific enough, and I don't think it would take that much more from what you have already set forth to just address those situations so that we don't leave it open to

interpretation which could inure to the detriment of a child who is injured in a accident.

SENATOR HOLLAND: Maybe I can answer the question differently then. Already in section -- in C.P.L.R. Section 1207 and 1208, an infant -- an infant compromise order must contain the facts of a settlement and the court must approve the order. In reviewing the order, the judge must make sure the infant's financial rights are protected.

This bill does not preclude the court's discretion and that's what we're trying to do, and it's already -- I think the answer to your question is in the C.P.L.R.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, what I'll do is, I will take that information that you've given me that I didn't have before, and I will look into it, but if you are right that would certainly address the situation, but I'm just suggesting from my own understanding of

what we're trying to do with section 104 (b) of the Social Services Law is that it's -- it's not clear enough, but I would not think that you would want to -- to create a situation where the victim of an accident would be suffering further because we took a lien against some of the benefits that would accrue and, you know, relying on that -

SENATOR HOLLAND: The only thing we want to do is stop the attorneys from forcing the money into pain -- the pain and suffering section and protecting them on into a trust fund.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Maybe you could answer this, Senator, and maybe this might clear the whole thing up. We already have a lien law against the medical benefits, as I understand it. What I'm saying is that it seems to me that the legislation as proposed takes a broader approach, in other words, allows us to go further out into that plain of what could be

other recoveries. Do you agree with that?

SENATOR HOLLAND: Say it again. I was listening to two people at once, Senator; I'm sorry.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Tell you what.

SENATOR HOLLAND: I'm sorry.

SENATOR PATERSON: Just looking at a Court of Appeals case, Baker v. Sterling, it allows us to collect -- to recover medical services already in these types of structured settlements that we're talking about, but what I'm saying is, it appears to me that what your legislation is doing is, in a sense over reaching that case and going into what might possibly be other recoveries.

SENATOR HOLLAND: I don't think so. Senator. I don't think so at all. The Baker vs. Sterling, in many cases settlements are structured so that no amount or fraction of the amount of actual medical costs is

appropriated for medical expenses, thus defeating the Medicaid lien, and we're trying to get around that. We're trying to put in statute something that will get us around that.

SENATOR PATERSON: Taking the information that I'm stating right here, Senator, from your memorandum which is, in a sense, somewhat critical of the judge's structuring of these actual settlements and saying that the judges are not structuring these settlements in such a way that we need legislation to accomplish the goal of making sure that the Department of Social Services gets an opportunity to have their money refunded, and so what I'm saying is that just coming from your memo that it -- it seems to me, and you know, I'm certainly hoping to be corrected, but it certainly seems to me that you're -- you're going into that area. In other words, you're trying to broaden it.

SENATOR HOLLAND: I'm sorry. I don't understand the question. You want to try it again, please? What -- what we're trying to

do is clarify. I know Baker vs. Sterling. I know what the court said there, and what's actually happening is, and the court said we could do it but what's actually happening is the lawyers are protecting the money, even an excess amount of money, by putting it in a trust fund and it could be and may be and many times there's no money set aside for any medical expenses at all.

Therefore, the state, the taxpayers are picking up the expenses and that's unfair.

SENATOR PATERSON: All right, Senator. It probably is unfair where the lawyers are doing that. Don't the judges still have the jurisdiction to reject that from the structured settlement?

SENATOR HOLLAND: As we said before, yes, they do and we read you the section of the C.P.L.R., but it's not happening and that's what we're trying to correct in this legislation.

SENATOR PATERSON: And so what

I'm saying, Senator, is that, because we're unhappy with how the judges have ruled in this area, our attempt to actually codify it is - and this is the question that I've caused you some confusion on a moment ago, what I'm saying is because the judges have not responded in the fashion that you feel it would be consistent with what a case -- and basically Sterling - allows, now, what we're doing is we're drawing up a statute, and all I'm saying is that if we would just amend the statute to such an extent to really specify what the protections will be for the younger people, I would just feel a little more comfortable with -- with your legislation.

I don't really have a problem with the end result and, you know, it's kind of like the end resource, the end result in the source rule, which is where you have these double recoveries and in this particular case, I think you're absolutely right but what I'm saying is, I don't want to open the door to individuals, in a sense, being denied recovery

for other issues such as the ones arising from pain and suffering and the ones arising from perceived losses of income because the injured party can't work.

As a result of your legislation, and you have said quite graciously that you don't want to do it either, and all I'm suggesting to you is the way the legislation reads right now, these same judges who made the underacting in such a sense that you feel the necessity to address it in legislation may over react and then draw the lines in such a fashion to deny recovery.

SENATOR HOLLAND: But you see, Senator, I think we have answered that already in mentioning Sections 1207 and 1208 of the C.P.L.R. They are protected, and all we're doing really, understanding 1207 and 1208, is giving DSS some more leverage in collecting some of the excess funds in repayment of the loan for Medicaid after the court case is over.

SENATOR PATERSON: Well, I guess I'll close on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: And I understand what Senator Holland is saying and in some respects, there are two ways to look at this. One is that, when Senator Holland quotes C.P.L.R. 1207 and 1208, we might ask ourselves why do we need to legislate now because we already have -- have put laws on the books that would be directing the judges, and we would have to assume since we've been nominating judges here and we feel that they are individuals that understand the law, that they are trying to be sensitive to the needs of the victim.

On the other hand, I guess it has to be stated to be fair, that perhaps the law is not working and this is the reason that Senator Holland has brought this bill out to try to, in a sense, recodify the law even, if anything, to state and restate the principle to drive the point home to judges.

I think in these situations, we have to be extremely careful because, again, as

I said yesterday, Senator Holland, we're not talking about people who are avoiding the opportunity to work; we're not talking about people who have misused our system of award from the Department of Social Services. We're talking about people who are unfortunately the victims of accidents.

ACTING PRESIDENT KUHL: Secretary will -- excuse me. Senator Stavisky.

SENATOR STAVISKY: Mr. President, on a previous bill, I voted with the sponsor because there are instances where minors, unfortunately, given the opportunity to use weapons, will, in fact, injure or kill other human beings, including minors as well as adults and so, in what appeared to be perhaps in my own thinking an inconsistent vote with the position that I normally take, I voted for the previous bill because that finger on that firearm trigger can do irreparable damages to other people.

This is a different situation. Here is a case where a child who obviously cannot recover and prove that there is a loss of

earnings, who obviously did not ask for the accident to occur, who is injured, tragically injured, permanently injured by a vehicle owned, let us say, by a large corporation and has very limited family resources so that there might be a Medicaid coverage. We are now making that victim, that child who did not ask for the accident to occur, now asking for that victim to be victimized again.

The net effect of this bill, for whatever purpose intended, may be to victimize the victim all over again and may result in legislation to cause injustice to babies, and that is an important consideration. We may be dealing with minors who are the victims and since there is no loss of earnings, that cannot be considered and I believe that if the judges cannot adequately interpret the law, then let us be more careful in the selection of judges by whatever method, election or appointment.

We have an obligation as legislators not to destroy the rights of babies or minors who did not ask for the injury to

occur, but we inadvertently may be causing additional financial strain on that child and that family if there is, in fact, a family.

And so let us not meddle simply to close what appears to be a state budget deficit, that appears to be a state budget deficit in a year when we gave existing tax revenue away to benefit people who are not indigent, to benefit people because we allegedly were trying to help with the trickle-down theory to give money sometimes to affluent individuals.

Let us not make the Department of Social Services bill collectors. Let us not destroy the rights of minors, and let us not victimize the victims all over again. This is a bad bill, a bad precedent, that we should not be pursuing but rather we should be looking for revenue that is legitimately due because there is fraud. These babies have not committed fraud but deserve our protection and our understanding and I hope there will be sufficient votes on both sides of the aisle to demonstrate that we

should not be robbing babies with such legislation.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1269 are Senators Connor, Dollinger, Espada, Gold, Kruger, Montgomery, Nanula, Paterson, Smith, Solomon, Stavisky and Waldon, also Senator Abate. Ayes 47, nays 13.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Kruger, why do you rise?

SENATOR KRUGER: Mr. President, I would ask unanimous consent to be recorded in the negative on Calendar Number 1097.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Kruger will be recorded in the negative on Calendar Number 1097.

Secretary will continue to call the roll.

THE SECRETARY: Calendar Number 1270, by Senator Velella, Senate Print 2586, an act to amend Chapter 576 of the Laws of 1975 relating to authorizing the Commissioner of Education to contract with certain schools.

SENATOR MARCELLINO: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1273, by Senator Kuhl, Senate Print 3831, an act providing to Thomas A. Cassidy credit for past service.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Oh, hold

on.

Senator Gold, why do you rise?

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1275, by Senator Kuhl, Senate Print 3868, an act to require the New York State and local retirement system to accept retirement applications.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1284, by member of the Assembly Dinowitz, Assembly Print 5975, an act to amend the Mental Hygiene Law, in relation to service as president of boards of visitors.

SENATOR MARCELLINO: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1258, by Senator Hannon, Senate Bill 1226-A.

SENATOR MARCELLINO: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 1226, by Senator Hannon or Senator Saland, excuse me. Senate Print 5601A, an act to amend

the Social Services Law and the Education Law, in relation to the protection of pupils.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation of Calendar Number 1286 has been asked for.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill creates a mechanism whereby we will be able to determine who within the ranks of school employees, par ticularly school teachers, school administrators may, in fact, have been guilty of either sexually abusing or physically abusing students within their charge, and what we're doing in this bill is to create a screening mechanism starting off initially by requiring on certification, teacher certification, a screening against the central registry of abuse and neglect to determine if, in fact, there has been any evidence of child abuse.

We are creating a means by which we will be able at long last to have a central

repository, a registry again for those who, in fact, have engaged in acts of abuse against children within a school setting.

What we're doing is creating a mechanism whereby the school administrator would be responsible to report to district attorneys, to law enforcement personnel, where an incident had occurred within a school grounds or within a school program that, in effect, would be lodged with the Department of Education of where, in fact, a conviction had resulted. Where there would be no conviction or there would be an acquittal or a dismissal, that record would be expunged.

We're not dealing here with the types of things such as are found in Article 10 of the Family Court Act which constitute neglect. As I said in my earlier comments, we're talking about abuse, physical abuse and sexual abuse.

We are creating a mechanism which is intended to do away with that rather onerous silent resignation where a teacher or a school

administrator has been charged with some act of abuse against a child within his or her charge and, in fact, remedies what appears to be that person's problem by a so-called "silent resignation" whereby it's agreed that everything be dropped quietly. In return for no charges being lodged, that person gets to go into another school district with no record of this event or incident having occurred, nobody having any knowledge of it, where there they may then again create the same type of gross misconduct on the innocent children with whom they're dealing.

Mr. Speaker, Mr. President, excuse me. This -- this bill certainly com ports well with the bill that Senator Nozzolio passed earlier, I believe perhaps as recently as yesterday in this house, and I think it's a bill whose time has not merely come but is long over due, particularly given some of the terrible accounts we've seen in the media over the course of the past several months, a number of events having occurred out of the city of New York.

ACTING PRESIDENT KUHL: Thank you, Senator Saland. I can understand why my antics today would have probably brought you back some fond memories of having served in the Assembly, but I would remind you that this is the Senate.

SENATOR SALAND: Mr. President, you would have stood with the best of them, sir.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, sir. If now Senator Saland would like to yield for a question.

ACTING PRESIDENT KUHL: Senator, do you yield?

SENATOR SALAND: I yield, sir.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator Saland, the statewide child abuse registry, if I'm correct, does not reveal any information about allegations that have been made against

individuals in their employment in the school system. It has to do with family offenses, is that not correct?

SENATOR SALAND: That's correct.

SENATOR PATERSON: In addition to that, Senator, isn't it true that these offenses were not necessarily sustained but they were later -- they may have been, but they also may include what are merely allegations, is that true?

SENATOR SALAND: That's also true, but I believe our bill has been crafted in such fashion as to make sure that, in fact, there's been a finding in the particular case where those allegations have been made.

SENATOR PATERSON: Because one of the things that worries me, if the Senator continues to yield.

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

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator

yields.

SENATOR PATERSON: Often in a lot of matrimonial actions, particularly custody disputes, what often happens in the contentious atmosphere is that the spouses get, you know, some anonymous person to call up the child abuse hot line and report the other one, and now you've got these allegations against individuals, neither of whom probably have abused the child, but what it does, in my opinion, maybe jeopardizes their future employment because they're now on the child abuse registry.

Isn't that a possibility that that could happen?

SENATOR SALAND: No, that will not happen here, and the key word, I would call your attention on page 2, the second line, is an "indicated child abuse report". The require ment that the report be an indicated report means, in fact, that it has been post investigation and there has been a finding that there was, in fact, an incident that warranted

being maintained on the central registry as distinguished from having been expunged.

ACTING PRESIDENT KUHL: Senator Paterson.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: What I'd like to ask you about is, in case there's a lawsuit against the superintendent and the school district, since the information is turned over to law enforcement, you seem to have protected the superintendent in your legislation. What happens to the school district?

SENATOR SALAND: I'm not quite sure I understand your question. Could you repeat it or rephrase it?

SENATOR PATERSON: In other

words, if the individual who is seeking the employment or if their report is made against an individual and they are now saying that the report is fraudulent and they now sue on their own behalf, the superintendent seems to be covered under your legislation because the superintendent has turned this information over to law enforcement, but you -- I'm getting the impression that the school district itself is culpable or at least is a prospective party in the lawsuit, and I want to know how you protect the school district in this legislation.

SENATOR SALAND: Are you talking within the context of the -- of the pre- -- the pre-certification screen by the Department of Education, or are you talking about the registry where an incident has been reported and logged under this new Article 23-B?

SENATOR PATERSON: Actually, I'm talking about the incident that's logged.

SENATOR SALAND: Well, the only thing that's going to be logged on that -- in that particular registry is an incident that has

resulted in a conviction because, if there is no conviction, it's provided for in this bill that the record be expunged.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, I understand that. Maybe I'm just a little confused and, believe me, after about seven hours here, it is entirely possible that I am, but what I'm really asking is that, if the record is now expunged where, for the benefit of the individual now, the individual seeks to sue civilly because of damage to their reputation and a number of tort actions that they might pursue, what I'm asking you is, who would be liable under the lawsuit?

In other words, the information is erroneous, and now the individual is suing. Who would be jeopardized by the law suit? People do sue when they are -- feel they've been wrongfully accused and they feel the information is fraudulent and I'm just asking you who would have to defend against such a lawsuit, if it was

brought civilly?

SENATOR SALAND: I'm looking for the section. There is a section here that provides for immunity, and I believe it talks in terms -

SENATOR PATERSON: Yes, but Senator, that's what I'm saying before, the immunity, I'm trying to get the section for you. It's a little unfair to just haphazardly ask you about some section of the bill, but what I'm saying to you, the immunity seems very clear from your legislation regarding the superintendent.

Now, I'm asking you about the actual district.

SENATOR SALAND: I would think that the superintendent, acting on behalf of the school district, certainly would be, if in effect real -- a real party in interest and certainly would be -- the school district certainly would be inasmuch as he is the principal agent, something akin to the CEO of a school district, entitled to the very same -

the very same immunity that we've provided for here in the person of the -- of that superintendent.

SENATOR PATERSON: Yes, Mr. President, through you, Senator Stafford, I would agree with that. I would just ask that you take a look at it because some of the educational associations have opposed the bill feeling that they are left open to attack in spite of the fact that once a report is made, they turn the whole case over to law enforce ment and so, you know, if you wouldn't mind just checking to make sure that that's the case, that that was an issue that was actually raised.

Mr. President, it's under section 1135 for Senator -

SENATOR SALAND: I just found it, lines 38 to 42.

SENATOR PATERSON: Finally, Senator -

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: -- if you

would yield to one last question.

ACTING PRESIDENT KUHL: Do you yield to one last question?

SENATOR SALAND: Yes, Senator.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, how do you assess the projected costs to the district as to this administrative procedure?

SENATOR SALAND: Well, I'd assume that the costs would be at best nominal. The forms would be the report to the Department of Education. The number of reported cases, using the city of New York as an example, there are some I believe 3689 cases that were reported last year. I have to assume that we're talking perhaps no more than dozens of cases.

The school district is no more than a conduit for the placing of -- of the - the complaint, the real work associated, the investigative or investigatory work that's being done is going to be done by the law enforcement personnel so it's really no more than -- more

than administrative on the part of the school district.

SENATOR PATERSON: So the -- the law enforcement personnel will man the -- and will attend, I should say, to the telephone calls?

SENATOR SALAND: No, no, no, no, no. What I'm saying is, what the -- excuse me for interrupting you, I'm sorry. I gave you a series of noes and I didn't let you complete your comment or question.

SENATOR PATERSON: No, no, no. Go ahead. I think you understood what I was saying.

SENATOR SALAND: The law enforcement personnel will effectively be determining through both their investigation and, if appropriate, prosecution whether or not this teacher or administrator is in fact going to be found guilty. Once they're found guilty, that gets logged on the registry. It gets logged on the registry because they have to be notified by the -- "they" being the school

district has to be notified by the district attorney that, in fact, this conviction has occurred. Whatever the school district will do will be again primarily ministerial, and so our limited information available to us which comes again primarily out of the experience in the City, we're not talking -- certainly not talking thousands of cases. We're probably not talking hundreds of cases. I think we're talking more something in the nature of dozens of cases, and those types of cases would merely be reported.

It would not take a tremendous amount of personnel or tremendous amount of effort on the part of the school system to do that.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT KUHL: Secretary will read the last section.

Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question?

ACTING PRESIDENT KUHL: Senator

Saland, do you yield to Senator Dollinger?

SENATOR SALAND: Yes, Senator.

ACTING PRESIDENT KUHL: Senator Saland yields.

SENATOR DOLLINGER: Senator, the first question I have is, does this bill apply to abuse only by an employee of the school district against a student in the school, or does -- do these obligations attach if the school district becomes aware of abuse of the child by some other third party that's not an employee of the school district?

SENATOR SALAND: This applies only to school employees.

SENATOR DOLLINGER: Mr. President, through you, if the sponsor will yield.

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

SENATOR SALAND: There would be -- I would assume if the school were -- if an employee was aware of the fact that a child was being abused, they would seek, in an environment

outside of the school district, they would seek to report that to the central registry or to local law enforcement.

This is -- this bill is an effort to deal with the abuse that has occurred from time to time in schools, in different locations throughout this state, and to create a mechanism to not only try and curb that abuse by creating a deterrent, but also to be able to determine and follow those who engage in the abuse by creating a registry so that they can't go from one school district to another there to create or perform similar offenses in another school district.

SENATOR DOLLINGER: Right. Through you, Mr. President, I concur with much of the intent of this bill. I just want to make sure I understand who it applies to and how it works.

Again, if Senator Saland will yield, Mr. President.

ACTING PRESIDENT KUHL: Senator Saland?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: So could you tell me what the current law provides if a school employee determines that a child has been abused outside the school setting? What obligations are there on the school employee now to report to law enforcement?

SENATOR SALAND: I don't believe they're mandated reporting and, again, we are not dealing within the context of this bill with or attempting to deal with anything other than abuse that's occurring within the confines of school grounds or some sanctioned school program or activity which would involve school personnel.

SENATOR DOLLINGER: O.K. Again through you, Mr. President, if Senator Saland will continue to yield.

ACTING PRESIDENT KUHL: Senator Saland, do you continue to yield. Senator

continues to yield.

SENATOR SALAND: All of these things, by the way, if I may just, are beyond the current purview of the hotline reporting system.

SENATOR DOLLINGER: Correct, and I understand this goes -- the hotline reporting system is you report to the hotline and the hot line will try to assist the child or who's ever reporting it, get details, and then get information and get child neglect or child protective services to come to the assistance of the child. That's my understanding of at least what happens in Monroe County.

But my second question is, I note that in the bill there's a provision that deals with penalties for school administrators to make the report to the superintendent and then for the superintendent to make a report to law enforcement. Is -- my question is, is it your intention to create civil liability on the part of the school administrator, the school superintendent and the school district if, for

some reason, that doesn't happen?

SENATOR SALAND: If you're talking about a situation in which, as unfortunately seems to occur today where an individual, in effect, negotiates either himself or herself or through his or her attorney with the school board or the school board's attorney, where the allegations are hanging over his or her head of child abuse or child sexual abuse and the deal is cut for the charges to be dropped because the school does not want the notoriety associated with that particular type of a situation then and that person is permitted to resign and walk away scotfree, then my answer -- then go to the next school district and engage in the same type of mistreatment or mal treatment, my answer to your question is yes.

SENATOR DOLLINGER: Through you, one other -

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Saland continues to yield.

SENATOR DOLLINGER: One -- two other questions. One is, this bill does not require any threshold determination to be made by anyone before it triggers the obligation to report to additional agencies, is that correct? For example, there's no requirement in this bill that the school administrator determine that there's reasonable cause to conclude that child abuse has occurred and there's no requirement that the superintendent of schools conclude that there's reasonable evidence to support a conclusion that the child abuse has occurred. This bill simply says, if the allegation is made, the allegation gets transmitted from school administrator to the superintendent to law enforcement to the commissioner without any threshold determination of the reasonableness of that allegation; is that correct?

SENATOR SALAND: Yes, that is - that's correct, but we're not expecting these people to be either judge or jury in making the

determination. The determination as to whether or not this conduct has been, in fact, engaged in or it's more appropriate that the misconduct will be engaged in, will be determined by law enforcement personnel and where appropriate a court, and there is provision for the record to be expunged where, in fact, that -- there has been a lack of evidence or insufficient evidence to bring in a conviction or a plea.

SENATOR DOLLINGER: But in the meantime, again through you, Mr. President, if the Senator will yield.

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

SENATOR DOLLINGER: Meantime, the accused has all this information passed to all these levels of government without one person ever having decided that there's any reasonable basis or, for that matter, any evidence other than the simple allegation that says this person committed child abuse.

SENATOR SALAND: Well, if we're talking about physical abuse or child sexual

abuse, and that's all we're talking about in this bill, by definition, it would seem to me that a prima facie case could well be made either in the presence of a battered child, in the person of a battered child or in the person of a -- an abused, sexually abused child, and I would assume that it's not the kind of thing that (a) occurs indiscriminately and (b) when it does occur, that the superintendent would certainly, for the very reasons that you've expressed or intimated your concern, that superintendent would not willy-nilly lodge a complaint unless there was some nexus, and again that superintendent is not law enforcement. That superintendent is not a prosecutor.

What this bill says, Mr. or Mrs. or Ms. Superintendent, you will forward that information and you will advise the appropriate authorities and then the appropriate authorities will step in and the appropriate authorities will notify you at the conclusion as to whether or not this has resulted in a plea or conviction.

SENATOR DOLLINGER: Again, Mr. President, just so I clarify. Is -- Senator, I don't see anything in this bill that says there has to be any nexus or any objective evidences or any reasonable evidence other than the actual allegation to support the transfer of this information. That's why, and my concern about this is, here's my concern is that this information, child comes to their gym teacher and says, The assistant gym teacher touched me in an inappropriate place.

Under your bill, that administrator doesn't conduct any investigation, doesn't have to get any other evidence. Under your bill, it says that's an allegation made by the child reported to the superintendent. The superintendent gets the allegation, says, Is it true? Is there any evidence of it? Is there any indication; is there any corroboration?

The superintendent, under this bill, would say, Doesn't matter, I got to call the police. They call the police. The police come out and begin to conduct an investigation.

Meanwhile the commissioner knows, the superintendent knows, the board of education knows; but my question is no one has sat down and said, What evidence do we have to support this other than the allegation of the child?

SENATOR SALAND: Senator, I would suggest to you that, if you're proposing to superimpose some type of pre... prefiling or investigation on the part of the superintendent, you're attempting to impose a burden that we impose nowhere else in the world. We don't require anybody else, under any other facts and circumstances, to pre-clear the filing or lodging of a criminal instrument.

The prosecution -- the prosecution of law enforcement personnel will evaluate and make that decision whether or not to go forward; so if you happen to be in a store and walk into a store and see somebody lying - lying at your feet and identify somebody running away and you call, you're not responsible for doing anything more than responding to what you observed. If that person calls out to you and

says, Mr. Dollinger, you know, John Jones did it, please get to the phone, and you go to the phone and you do it. Law enforcement then has the responsibility of proving beyond a reasonable doubt that that, in fact, is what occurred.

I'm not prepared to say in these circumstances that the perhaps most vulnerable people on the face of this earth, young people in a school setting, in the presence of people to whom they've been told they can repose their trust and confidence, that these young people are going to be further victimized by creating another hurdle in the way of -- of the effort to try and provide them protection.

This provides protection right down to expungement of records, and it also does away with, I think, one of the most treacherous -- or attempts to do away with one of the most treacherous and heinous abuses of the system, which is that so-called "silent resignation".

SENATOR DOLLINGER: You talk about the silent resignation -- if I could, Mr.

President, if Senator Saland would yield to one other question.

ACTING PRESIDENT KUHL: Senator Saland, you yield to one more question from Senator Dollinger?

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

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: In my experience, since I've represented a number of teachers in "silent resignations" accused of abuse, one of the things I've tried to determine is whether the child would be able to withstand cross-examination either in a criminal or civil context as to whether or not they could truth fully testify with enough conviction, for lack of a better term, to obtain either a civil determination that the teacher was incompetent or engaged in inappropriate behavior or for that matter obtain a criminal conviction that would be supported by proof beyond a reasonable doubt.

My personal experience is that this is terribly traumatic for children to have to testify, and my question is, who makes that determination in -- under your bill about whether or not it's worthwhile for the child to have to go to trial and face cross-examination by a defense lawyer, cross-examination by a lawyer under -- who's working on behalf of the defendant, and who decides whether that's appropriate or not?

SENATOR SALAND: Let me suggest to you, at the expense of appearing inappropriate, I would much prefer that someone standing in your shoes not be the one who would do that because I don't feel that you have - whenever I say "you," someone representing the school board really brings to the issue the kind of detached professionalism, and I say that very guardedly, that I think a district attorney would bring to the issue working in conjunction with the interested parties, which assumedly would be the family of the child.

We've endeavored to provide

mechanisms that make that less traumatic through the use of cameras in courtrooms to remove the child, being mindful of the right of confrontation, from that particularly anguishing type of an experience. But I would be reluctant -- and I certainly do not mean this in any way, shape or form as anything personal -- I would be reluctant to recommend that the person who advises people to make -- what decisions to make in those situations, be somebody who is in effect an agent of a school board.

SENATOR DOLLINGER: Again, through you, Mr. President, if the sponsor will continue to yield.

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

SENATOR DOLLINGER: What do you do in that situation if the parent of the child says, "I don't believe my child is telling the truth and I don't want them to testify?"

SENATOR SALAND: The parent is, under this construct, a party to this proceed

ing. You don't get that far unless the parent has made the allegation.

SENATOR DOLLINGER: But doesn't this provide that the child can make the allegation?

SENATOR SALAND: We're -

SENATOR DOLLINGER: I believe on page 3, line 45, it says the child can make the allegation, and it doesn't suggest that the parent can overrule the child or the parent would have any role -

SENATOR SALAND: The bill talks in terms of the child or the child's parent making the allegation, and that would be in section 1126 starting at line 7.

SENATOR DOLLINGER: And, Senator, I apologize. What page?

SENATOR SALAND: Page 3, section 1126, starting at line 27.

SENATOR DOLLINGER: I believe that's in section 1126. In 1128, it talks about allegations.

SENATOR SALAND: 1128 defines

further whenever the allegation has been made by a child.

SENATOR DOLLINGER: Right, but my question is, does the parent have no role in that process if the child makes the allegation? What do you do if the parent says, "I don't think my child is telling the truth? I don't think there's any evidence of abuse at all."

SENATOR SALAND: I would think that that would be something which would be resolved, as would a similar situation in a non-school district setting be resolved -- would be resolved between the parents and the prosecutor. A prosecutor -- if a prosecutor determines that they don't have the ability to establish their case and, if the parents of the child in question are either affording evidence to the contrary or are suggesting for whatever reason that the child is unreliable, I would assume that would be a factor that the district attorney would consider and certainly would not waste resources in a -- in a case in which given the burden of beyond a reasonable doubt, they

had evidence indicating that they couldn't quite make that burden.

SENATOR DOLLINGER: One more question, Mr. President. If all these cases are going to be resolved by the district attorney, what happens if, in the case I just described; that is, the parent doubts the child's word, and we go to the district attorney, the district attorney listens to the parent, concludes that the child is not credible and so the district attorney takes no action, does the school board -- how does the school board discipline that teacher if the district attorney has already said, We're not going to prosecute them? They can't discipline the teacher at all, can they, even if there might be a preponderance of the evidence that suggests they might be guilty?

SENATOR SALAND: The school board is in no way, shape or form, by reason of this bill, in any way, shape or form prevented from doing whatever it is that they would do now. I have no idea what they would do, but there's nothing here that increases that burden or

diminishes that burden.

If, in fact, there's reason to believe that there is a preponderance of evidence indicating that the teacher has engaged in some conduct -- misconduct, but it's not adequate for a district attorney to prove their case beyond a reasonable doubt, I don't know if a 30.20(a) hearing would be appropriate, I really don't have any idea. I really don't possess that kind of expertise, but we've done nothing to change the existing law.

If this law wasn't on the books and someone filed a complaint directly with the district attorney and the district attorney said, scratching their head, "Well, it doesn't seem quite right, but we really can't prove our case, you'd be putting yourselves and a child through a tremendous ordeal with very little likelihood of a conviction, I'm -- I'm afraid this would be too much for you," and the family decides they don't want to pursue it any further, what would a school district do now?

SENATOR DOLLINGER: At that

point, Mr. President, that's, I guess, what my question is. At that point, the school board has no leverage at all to try to impose any discipline at all. The whole reason why the silent resignation has at least resulted in a penalty for a teacher and at least in my district someone leaves after 20 years of teaching in a school district, you know every school superintendent in the community knows that you don't leave a job you've been in 20 years for no reason at all, you left because there was a problem and in most cases, the school superintendents know that that problem exists.

The problem is, the leverage in those negotiations is you leave because we will take you to trial, we'll take you to a 30.20 (a) and we're going to put this child on the stand and have him testify against you. You use the leverage to get the result. It may not be perfect and it may not achieve the goal that you want to achieve which, by the way, Senator, I'll say is a very proper goal. If there is a way to

protect children from child abuse by school officials in this state, we ought to do it, and I support that.

Parts of this bill will achieve that, but my concern is, and I'm not quite sure how I'm going to vote on this, but I'm concerned about the question of whether this bill really gets to that goal. If we put all our eggs in the criminal prosecution basket as this bill suggests we should, we run the risk that, if they decide not to prosecute because we got to prove by that -- beyond a reasonable doubt standard in many cases based on the testimony of the child alone, and I'll just tell you in my experience the most horrid case I dealt with involved 12- and 13-year-old girls who were at high risk categories who had had all kinds of physical and psychological abuse, made an allegation against a teacher. We conducted a two-month investigation. That school district spent $30,000 paying me and other people to interview the witnesses, to find out whether it was true, and I finally made a report to the

school district that said, I think this witness is probably telling the truth, but the stories changed three or four times, and I'm afraid that this child will be subjected to even worse abuse when she has to try to recount it on the stand consistently and hold up to cross-examination.

We ended that case with a silent resignation. It may not have been the right thing to do. It was what we tried to do under the system, and I think this bill has some good parts to it. I think it's got some questionable parts to it. I just don't know whether it gets to that goal. I appreciate you trying to address this, because this is a terrible issue and, frankly, that teacher should never, never teach again. Fortunately, the best of my information he hasn't, and we did everything we could to make sure that he wouldn't, but I'm just not so sure that, given the way this bill is constructed, that it will achieve that goal.

I, frankly, don't know how I'm going to vote, but I wanted you to hear my concerns with it.

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: Will the sponsor yield to a very few questions, and I'll make it brief.

ACTING PRESIDENT KUHL: Will the Senator yield? Senator yields.

SENATOR STAVISKY: Senator Saland, what does your legislation do in creating a procedure for reporting and investigating child abuse by employees in non-public schools?

SENATOR SALAND: This bill does not address the non-public school.

SENATOR STAVISKY: I know it doesn't. Do you think that it should?

SENATOR SALAND: It probably should, but it doesn't.

SENATOR STAVISKY: What would you suggest to cover and protect children in all types of educational institutions?

SENATOR SALAND: I would assume

that it would be appropriate to -- to cover anybody and everybody. Child abuse is child abuse, whether it's in a public or a private school.

SENATOR STAVISKY: Would you favor broadening your bill to include such situations?

SENATOR SALAND: I certainly, when we finish with this leg of it, I certainly will be more than happy to bring back something dealing with private schools as well.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 1st day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR PATERSON: No.

SENATOR MARCELLINO: Mr. President.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Before Senator Paterson rises in abject indignation, may we recognize Senator Santiago, please.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Santiago.

SENATOR SANTIAGO: Mr. President, I'd like to be recognized in the negative on Calendar Number 1269 and 1097, please.

ACTING PRESIDENT KUHL: Without objection, Senator Santiago, and hearing no objection Senator Santiago will be recorded in the negative on Calendars Number 1269 and 1097.

Senator Mendez.

SENATOR MENDEZ: Mr. President, I was out of the chamber in a meeting of the Rules Committee. I would like to be recorded in the

negative on bill number, Calendar Number 1269.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Mendez will be recorded in the negative on Calendar Number 1269.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1290, by Senator Rath, Senate Print 5359, an act to amend the Civil Practice Law and Rules and the Executive Law, in relation to extending the statute of limitations.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill's passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, may we please return to reports of standing committees? I believe there is a report of the Rules Committee at the desk.

ACTING PRESIDENT KUHL: You're correct, Senator Marcellino, there is a report of the Rules Committee at the desk. We'll return to the reports of standing committees. The Secretary will read the Rules report.

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

Senate Print 701, by Senator Padavan, an act to amend the Social Services Law, in relation to ineligibility of lawfully admitted aliens;

1297A, by Senator Lack, an act to amend the Surrogate's Court Procedure Act, in relation to the statute of limitations;

2829, by Senator Skelos, an act to amend the General Obligations Law, in relation to compensation for injury;

3092, by Senator Padavan, an act

to amend the Social Services Law, in relation to the exclusion of illegal aliens;

3093, by Senator Padavan, an act to amend the Social Services Law, in relation to the exclusion of illegal aliens from receiving public assistance and care;

3251, by Senator Paterson, an act to authorize the city of New York to reconvey certain real property;

3520, by Senator DeFrancisco, an act to amend the Social Services Law, in relation to the transportation of certain persons;

3882B, by Senator Rath, an act to amend the Tax Law, in relation to extending the effectiveness of the one percent increase in sales and compensating use tax in Genesee County;

3883, by Senator Rath, an act to amend the Tax Law, in relation to imposing a hotel and motel tax in the county of Genesee;

3908, by Senator Leibell, an act to amend the Local Finance Law, in relation to

contracting indebtedness;

4170, by Senator Cook, an act to amend the Tax Law, in relation to the imposition of additional taxes in the county of Ulster;

4509, by Senator Saland, an act to amend the Not-For-Profit Corporation Law, in relation to eliminating limitations;

4513A, by Senator Seward, an act to amend the Executive Law, in relation to fire prevention and building code standards;

4805, by Senator Maziarz, an act to amend the Public Health Law, in relation to notification of parents;

4811A, by Senator Maziarz, an act to authorize and validate the creation of a volunteer firefighter service award program;

4871A, by Senator Cook, an act to amend the Tax Law, in relation to the rate of sales and compensating use tax;

4902A, by Senator Sears, an act in relation to the calculation of average daily attendance and minimum days of session for an experimental kindergarten program;

4958A, by Senator Skelos, an act to amend the Public Service Law, in relation to the elimination of the mandate for the Public Service Commission;

4960A, by Senator Skelos, an act to amend the Arts and Cultural Affairs Law, in relation to copyrights;

5045, by Senator Velella, an act to amend the Vehicle and Traffic Law, in relation to authorizing a residential parking system;

5172, by Senator Hoblock, an act to amend the Tax Law, in relation to the imposition of sales and use taxes by the county of Albany;

5286A, by Senator Leibell, an act to amend the Private Housing Finance Law, in relation to tax exemption;

5304, by Senator Seward, an act to amend the Tax Law, in relation to extending the expiration of provisions;

5308, by Senator Kuhl, an act to amend the Public Health Law, in relation to

continuing the Agricultural Health and Safety Advisory Board;

5310, by Senator Velella, an act to amend the Workers' Compensation Law, in relation to permitting the State Insurance Fund to enter agreements;

5327, by Senator Sears, an act to amend the Tax Law, in relation to extending the effectiveness of provisions authorizing the county of Oneida to impose an additional one percent of sales and compensating use taxes;

5352, by Senator Stachowski, an act to authorize the city of Buffalo, Erie County, to lease certain park lands;

5366, by Senator Saland, an act to amend the Environmental Conservation Law, in relation to taking of Atlantic menhaden and mullets;

And 4546, by Senator Jones, an act authorizing the town of Irondequoit, Monroe County, to make available to Samuel Soprano, Jr., membership in the optional 20-year retirement plan for firemen and policemen.

All bills reported directly for third reading.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, move to accept the report of the Rules Committee.

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee.

All in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Rules Committee report is accepted.

SENATOR MARCELLINO: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: Yes there is. The Chair would recognize Senator Saland.

SENATOR SALAND: On behalf of Senator Levy, I would move to amend Senate Print 3176A by striking out the amendments made on May

12th and restoring it to its original print 3176.

ACTING PRESIDENT KUHL: Amendments are received and adopted; bill will return to its original print.

Senator Saland.

SENATOR SALAND: Mr. President, on behalf of Senator Libous, on page 46, I offer the following amendments to Calendar Number 663, Senate Print 3929, and ask that the bill retain its place on Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to 363 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there being no further business, I move we adjourn until Wednesday, June 14th, at 10:00 a.m., and please don't break the hammer.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, June 14th, at 10:00 a.m.

(Whereupon at 6:03 p.m., the Senate adjourned.)