ALBANY, NEW YORK

March 5, 1996

3:03 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

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

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 4th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair. The Journal of Sunday, March 3rd, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

I'll ask the Secretary to read.

THE SECRETARY: Senator Hannon, from the Committee on Health, reports the following bills: Senate Print 206, by Senator Holland, an act to amend the Public Health Law, in relation to notification of local Social Services Departments;

468, by Senator Holland, an act to amend the Public Health Law, in relation to providing an immunization schedule for children;

653, by Senator Skelos, an act to amend the Public Health Law, in relation to discovery by police officers;

4442, by Senator Libous, an act to amend the Public Health Law, in relation to requiring consent for visual observation;

4805, by Senator Maziarz, an act to amend the Public Health Law, in relation to notification;

4910, by Senator Velella, an act to amend the Public Health Law, in relation to

limiting the automatic stay upon filing a notice;

5944, by Senator Johnson, an act to amend Chapter 572 of the Laws of 1994.

Senator Spano, from the Committee on Labor, offers up the following bills: Senate Print 1544, by Senator Kuhl, an act to amend the Workers' Compensation Law, in relation to workers' compensation coverage;

1657, by Senator Nozzolio, an act to authorize and direct the Workers' Compensation Board;

1970, by Senator DeFrancisco, an act to amend the Workers' Compensation Law, in relation to licensed boxers;

2709, by Senator Leibell, an act to amend the Labor Law, in relation to additional eligibility requirements;

3974, by Senator Spano, an act to amend the Labor Law, in relation to licenses to possess and sell explosives;

4515, by Senator Spano, an act to amend the Workers' Compensation Law, in relation

to teaching activities of board members;

5341, by Senator Spano, an act to amend the Labor Law, in relation to registration by a manufacturer or contractor.

Senator Volker, from the Committee on Codes, offers up the following bills: Senate Print 1410, by Senator Levy, an act to amend the Penal Law, in relation to the offense of assault in the second degree;

5162, by the Committee on Rules, an act to amend the Penal Law, in relation to harassment of teachers.

Senator Levy, from the Committee on Transportation, offers up the following bills: Senate Print 484, by Senator Maltese, an act to amend the Vehicle and Traffic Law, in relation to requirements concerning limousines;

1382, by Senator Kuhl, an act to amend the Vehicle and Traffic Law, in relation to appropriated reduced speeds;

3153, by Senator Cook, an act to amend the Highway Law, in relation to creating a farm and business transportation program;

3537, by Senator Nozzolio, an act to amend the Vehicle and Traffic Law, in relation to traffic regulations;

4856-C, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to increasing fines.

Senator Present, from the Committee on Commerce, Economic Development and Small Businesses, offers up the following:

Senate Print 669, by Senator Padavan, an act to amend the State Administrative Procedures Act, in relation to denial of a license.

Senator Cook, from the Committee on Education, offers up the following bills:

Senate Print 520, by Senator Skelos, an act to amend the Education Law, in relation to notification;

762-B, by Senator Cook, an act to amend the Education Law and the Family Court Act, in relation to reducing school violence;

2234, by Senator Babbush, an act to amend the Education Law, in relation to obtaining and publishing annually data on

numbers;

4246-A, by Senator Cook, an act to amend the Education Law, in relation to education of certain youth;

4248-A, by Senator Cook, an act to amend the Education Law, in relation to services for incarcerated youth;

4440, by Senator Libous, an act to amend the Education Law, in relation to vocational rehabilitation;

5157, by the Committee on Rules, an act to amend the Education Law, in relation to prompt initiation action against students who disrupt the educational process;

5160, by the Committee on Rules, an act to amend the Education Law, in relation to protection of school employees.

Senator Seward, from the Committee on Energy and Telecommunications, offers up the following bills: Senate Print 4301, by Senator Seward, an act to amend the Public Service Law, in relation to information provided to telephone subscribers;

6141, by Senator Seward, an act to amend the Public Service Law, in relation to annual reports for gas, electric, steam and water corporations;

6142, by Senator Seward, an act to amend the Public Service Law, in relation to the elimination of the mandate for Public Service Commissions.

Senator Holland, from the Committee on Social Services, offers up the following bills: Senate Print 314-A, by Senator Holland, an act to amend the Social Service Law, in relation to providing certain applicants;

2046-B, by Senator Holland, an act to amend the Social Service Law and the Workers' Compensation Law, in relation to liens;

2784, by Senator Saland, an act to amend the Social Service Law, in relation to eligibility for operating certificates;

3520, by Senator DeFrancisco, an act to amend the Social Service Law, in relation to the transportation of certain persons;

5714, by Senator Holland, an act

to amend the Social Service Law, in relation to dependent children on home relief.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are reported directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Mr. President, now that I have been recognized, on page 18, I offer the following amendments to my Calendar Number 332, Senate Print 5170, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 332 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time adopt the Resolution Calendar.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno, that brings us to the calendar.

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

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

THE SECRETARY: Calendar Number 19, by Senator LaValle, Senate Print 1918-A, an act to amend the Education Law and the Public

Officers Law, in relation to the Board of Regents of the University of the state of New York.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 20, by Senator LaValle, Senate Print 2178-A, an act to amend the Education Law, in relation to the Board of Regents of the University of the state of New York.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 248, by Senator Sears, Senate Print 3921-A, an act to amend the Environmental Conservation Law, in relation to increasing civil penalties associated with the unlawful taking of fish and wildlife.

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

THE SECRETARY: Section 3. This act shall take effect on September 1st, 1996.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Johnson, Senate Print 2355, an act to amend the Education Law, in relation to requiring that the State University graduation ceremonies include the Pledge of Allegiance and the National Anthem.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 276, by Senator DiCarlo, Senate Print 499-A, an act to amend the General Obligations Law, in

relation to exoneration of certain police officers.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 279, by Senator Lack, Senate Print 1298, an act to amend the Real Property Law, in relation to allowing the assignment of mortgage in lieu of a certificate of discharge.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 282, by Senator Lack, Senate Print 3775-A, an

act to amend the Family Court Act, in relation to the duty to support recipients of public assistance.

SENATOR BRUNO: Lay it aside for the day.

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

THE SECRETARY: 285, by Senator Lack, Senate Print 6008, an act to amend the Judiciary Law and Chapter 397 of the Laws of 1988, amending the Judiciary Law.

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

THE SECRETARY: Section 3. This act shall take effect April 1st, 1996.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 288, by Senator Kuhl, Senate Print 1546, an act

to amend the Real Property Tax Law, in relation to appointments made to the state Board of Real Property Services.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 292, by Senator Farley, Senate Print 5762, an act in relation to the dissolution of Fire District Number 1 and extension of Fire Districts Number 6 and 9.

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

THE SECRETARY: This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 293, by Senator Lack, Senate Print 5991, an act to amend the County Law, in relation to permitting district attorneys and their assistants to administer oaths.

ACTING PRESIDENT KUHL: The Sec...

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 299, by Senator Cook, Senate Print 562, an act to amend the Highway Law, in relation to the definition of the Southern Tier Expressway.

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

THE SECRETARY: Section 6. This

act shall take effect on the first day of July.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 300, by Senator Present, Senate Print 1414, an act to amend the Vehicle and Traffic Law and the Parks, Recreation and Historic Preservation Law, in relation to the registration of snowmobiles.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

301, by Senator Goodman, Senate Print 1695-A, an act to amend the Transportation Law, in relation to increasing penalties for violating a motor carrier certificate.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 326, by Senator Johnson, Senate Print 3327, an act to amend the Criminal Procedure Law, in relation to requiring certain persons committed to the custody of the sheriff.

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

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the non-controversial calendar.

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

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar, commencing with Calendar Number 19.

THE SECRETARY: Calendar Number 19, by Senator LaValle, Senate Print 1918-A, an act to amend the Education Law and the Public Officers Law, in relation to the Board of Regents of the University of the state of New York.

ACTING PRESIDENT KUHL: Senator LaValle.

SENATOR LAVALLE: Mr. President, on -- on the bill, on Calendar Number 19 -- and I'm also going to speak a little bit about Calendar Number 20 at the -- at the same time.

This very day, statutorily we are charged with the responsibility of either agreeing or not with the Assembly, by resolution, whether we approve of nominees, candidates to -- for a seat on the Board of - Board of Regents. If we do not agree today, then I think as many of the members who have served here know, that we will meet in joint session -- or under the statute it calls for a joint session of the houses to come to some sort of agreement.

I have, as you know -- and the second bill, Calendar Number 20, actually moves the process, the date which we contemplate this whole issue, and it's, indeed, a very, very important issue to select members to the Board of Regents from the month of March to the third Tuesday in May, and that date was chosen in discussion with many people that we would move

it out of the traditional time in which we deal with the state budget.

The selection of members of the Board of Regents, as I have indicated time and time again, is very, very important. These Regents that serve all 16, one from each of the 12 judicial districts and four at-large -- 16 Regents are the policy-making board that have an enormous impact on what takes place in our classrooms in the elementary and secondary sector, what takes place in higher education, approval of master plan amendments, dealing with the professions and professional discipline, dealing with our libraries, the archives, the State Museum, indeed a very, very enormous role in a policy-making board that they serve. So to contemplate this at a time when everyone's focus, everyone's abuzz about the budget really does not serve us or the policymakers well.

The first bill, Calendar Number 19, deals with the issue of the process, the actual process in how we get people into the pipelines so that we will cast a yea or a nay

vote, and that process is disjointed. It's one that is legislatively invented. It depends on who the chairs are at the time or how much they can be involved, depending on their legislative duties, and so this legislation -- the bill that we passed last year, Mr. President, sets up a process, a blue ribbon panel, much in the same way that we select and put into the pipeline candidates, nominees for the Court of Appeals.

So what I am saying is that the time that we select Regents is the wrong time. The process that we select Regents is the wrong process. It needs to be fixed. Once we get the Regents on the board, there has been a disorientation as to what is expected of them; what should they be doing, and so our new commissioner, Commissioner Mills had a study done as to what is wrong with the state Education Department and something about the process, and I think in that report that was done by the Rockefeller Institute, it shows that, indeed, there is so much facing the Board of Regents and that in some cases they may be so

personally involved in micro-managing the system that they have lost sight as to policy.

And so what we attempt to do with this proposal is to try and get the Regents more focused as to what their job is all about, one of policy. Get them focused to -- and the department focused as to defending and get them tied in with us in the Legislature and the Governor's office as to having a debate on the education plan that they must by law submit to this Legislature. But it's like a courier that brings it over here and tosses it on the desk of the Majority Leader and the Speaker and then that's it, and so we need to connect that. We need to connect all of the stakeholders in the judicial district, and we do that by setting up an advisory committee for the members of the Board of Regents. We tell them to have hearings in their districts so all the stakeholders and the public can be involved in a productive way. This bill goes a long way in getting the Regents in terms of meeting their duties and their responsibilities focused.

There is another piece here. It's a piece that I think goes right on the mark but it's probably the most controversial piece in the bill, and that deals with how you tie in the executive. Right now, the Governor, whether it's Pataki or Cuomo or Carey or whoever, has always had the frustration that other than the budget, their tie to the education system is really remote and frustrating because governors of this great state understand that education is, indeed, important, and they want to be involved, but they're not because the Board of Regents, by law and our Constitution, are the policymakers for education.

The Governor, many times, whoever that person may be, takes a lot of the heat because people say, "Something is broke, you fix it, Governor" but, indeed, they're not tied in in any way, and so this bill says that the chancellor and vice chancellor shall be appointed by the Governor with the advice and consent of the -- of the Senate. We need to bring together and harmonize the three parts of

the legislative process, and each part should have a role. Each part wants to play a role in -- in this process.

This bill was debated last year. What has changed in one year? Well, I have some good news for you. There are some things that have changed that I can talk about in a positive way. We have a new chancellor, Carl Hayden, and Carl Hayden has listened to the debate and has looked at the various legislative proposals, has listened to many of you personally and has said, "Yes, things are broke; we need to fix it" and has been very proactive in trying to make things better.

We have a new commissioner and that new commissioner, Rick Mills, has hit the pavement running, has done to date all the things you should do in having a management study to find out what is wrong out there. Why are all the stakeholders disconnected? Why is this process in the Empire State broken, and so he has done a good job, but it is my contention, despite the efforts of good people, that we

handcuff them because the process that they are working in and the structure that they are operating under is broke and it needs to be fixed. If we can have a better process with these better people who are more focused, I think that we can all work together collaboratively and cooperatively to make New York's education system, its professions, its libraries a much, much better place. In one year, the will has certainly changed. The will is there to make it a better place. Let us give these people a better structure to operate in.

I chose to -- and I didn't know whether this bill would be laid aside or not, but I chose to speak on this bill because it is, indeed, important. It's important for the other house to really focus on -- on this issue. I have talked to the chairs, and there is interest, but I think there needs to be a resolve on the part of the leader, the Speaker, to deal with this issue, and I know that members of the Board of Regents who I have spoken to would like to see a better structure.

In closing, I thank Senator Cook and many of my colleagues who -- Senator Libous and others who have given me input on this bill, who have given me encouragement to stay with the program and try to make changes, try to reform the system, and for that, my colleagues, I am grateful for that encouragement because I think, as you all know, sometimes you are out in the fields laboring and it feels lonely, so that encouragement that you give is, indeed, very, very important.

I would hope again that we pass both bills by the same margin that we did last year. We give our colleagues a very strong message that we need to fix this system.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on Calendar Number 19?

(There was no response.)

Hearing none, the Secretary will read the last section.

Senator Leichter.

SENATOR LEICHTER: Yeah. Mr.

President, I'm glad that Senator -- yes -- spoke on the bill because I think it's -- it's really a very significant bill and it deserves to be aired in this fashion and to have its provisions brought to our attention, but what I really want to do is I want to commend him because I think that he has taken an area where there's an awful lot of discontent where, on both sides of the aisle, people are dissatisfied with the way the Regents functions and particularly with the process by which the Regents are chosen, and he's done this where -- as this is in this house or in this Legislature -- in a manner that's not partisan, it's not political, but that I think really looked at substantive improvements that could be made, and clearly he has labored well.

He talks about laboring in the fields. I don't know whether that was the potato fields of Suffolk County, but wherever he was laboring, he obviously received a lot of inspiration and a lot of strength because I think he's come up with a very, very meaningful bill, and I certainly hope that the Assembly

will act on it.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 19 are Senators Connor, Gold, Lachman, Montgomery, Paterson, Seabrook, Stachowski. Ayes 47, nays 7. Also, Senator Smith. Ayes 46, nays 8.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 20, by Senator LaValle, Senate Print 2178-A, an act to amend the Education Law, in relation to the Board of Regents of the University of the

state of New York.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Johnson, Senate Print 2355, an act to amend the Education Law, in relation to requiring that the State University graduation ceremonies include the Pledge of Allegiance and the National Anthem.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 261 has been asked for by Senator Gold.

SENATOR JOHNSON: Mr. President, this -- this bill has visited us annually for half a dozen years or more. It requires that the State University graduation should provide that the Pledge of Allegiance and National Anthem be performed at all graduation ceremonies.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. Senator Johnson has been very gracious in the past explaining this, and I don't really, from my point of view, have to go through it too much more.

Senator Johnson, I would hope that the National Anthem was played at graduations and I would hope the Pledge of Allegiance was done, and I would hope it would be done because the graduating class felt that they wanted it and they did it, but I think in this country, this free, wonderful country that we should not have to, as they do, I'm sure, in some fascist states, order people to love their

flag, order people to love their National Anthem. I just don't know why we should have to legislate it.

I thank you for your courtesy of explaining it. I know that I speak for probably a very, very small minority. I've put a call in today and Pat Buchanan didn't get back to me as to what God wants me to do on this, but I'm going to continue to vote no.

SENATOR JOHNSON: Mr. President, I would like to say -

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: -- that the point has been made before by my colleagues on the other side that people should be able to recite the Pledge of Allegiance or sing the National Anthem spontaneously if they choose to do so, but if there's no structure within which that is possible, it's very unlikely that people of -- at a graduation ceremony would suddenly spontaneously stand up and start the Pledge of Allegiance. That would be kind of aberrant

behavior if that ever happened.

So, Senator, we just provide the opportunity for people to do it who choose to do so, but if they don't choose to do so, they can sit down, as many people have done. They cannot sing. They cannot recite it, but I think there is a place in this country for tradition and respect for our nation, and certainly somebody who's spent four years in the university and gets an education ought to know enough to have respect for the flag and participate in this ceremony.

I know the parents of the students certainly have asked me why we don't have that. We're providing an opportunity, if this bill goes through both houses, gets signed, for this to take place.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Yeah. Senator Johnson, I think it's unfortunate that parents have asked you why it wasn't done. I would have

felt better if they asked their child. They ought to be able to talk to their child, and they could have said to the child, "Well, you know, they put together a program for graduation. Don't you think the program - somebody there should have said, 'Let's do the program with the processional and whatever, an opening welcome and the National Anthem and let's salute the flag'" and, Senator, I want to tell you, I graduated college a couple centuries ago, it seems, and loved this country then, love it now. Always been proud.

When we stand up here and salute the flag, I try to come in every day to be one of those who's here to do it, and I'm proud of it, and that's the way kids ought to feel when they graduate school, and when they put the programs together -- that's the way the people ought to feel when they put the programs together, but you're not going to force people to be patriotic by passing laws that say you got to do it. What you do is you run a country in a right way and you give them an education and you

let them appreciate this is the greatest place on earth to live and hope that they do that because that's the feeling that they have.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Yeah. Mr. President, I'm always amused at the inconsistency and the contradictions one sees in this chamber, and here we see egregious contradiction.

Later on in this session we're going to see a bill that the Governor has proposed and I'm sure you people are going to bring it on to a vote and you're going to support it which is going to give more autonomy to all of the units of the State University system. They're going to have more control over their budgets. They're going to decide whether to impose tuition or not, and this is all in line with what we are told, the Republican philosophy that government shouldn't interfere -- not only shouldn't you interfere in business, you shouldn't interfere in educational

institutions. Let these institutions run themselves, but then you put forth a bill like that which mandates in minute detail an aspect of a graduation ceremony.

Senator Johnson, are you going to put in a bill saying the students ought to march in from the left -- I'm sorry. I'm sure yours will be that they'll march in from the right - what they have to wear, their shoes need to be shined? I mean, this is such petty detail.

Now, Senator Johnson, I think everyone here would like to see that they have the Pledge of Allegiance, that the flag is prominently displayed, that it's honored, and so on. I think Senator Gold is right that you can't force patriotic feelings. I believe, and I'm sure you share this view, that 95 or 98 percent of all Americans have that feeling and that belief, but for this Legislature to sort of micro-manage and to tell the State University how it has to conduct in this respect its graduation, after you're going to give them all this autonomy on things that really are very

important, standards, tuitions, salaries, manners of -- in which students will be admitted or not, but when it comes to graduation, we'll tell them about the Pledge of Allegiance.

I think, Senator, this is egregiously contradictory of what I thought was your principles and a vote that I expect you'll be casting later on this session.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 261, Senators Babbush, Gold, Lachman, Leichter, Markowitz, Montgomery, Paterson, Seabrook. Ayes 49, nays 8.

ACTING PRESIDENT KUHL: The bill

is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 279, by Senator Lack, Senate Print 1298, an act to amend the Real Property Law, in relation to allowing an assignment of mortgage in lieu of certificate of discharge.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. On Calendar Number 19, I would like unanimous consent -

ACTING PRESIDENT KUHL: Senator Abate, let us take care of this bill first and then we'll move to that.

SENATOR ABATE: Okay. Thanks.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on this bill, Calendar Number 279?

(There was no response.)

Hearing none, the Secretary will read the last section.

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

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

SENATOR PATERSON: Mr. President, I wanted to ask if Senator Lack would yield for a question.

ACTING PRESIDENT KUHL: Senator Lack, do you yield to a question from Senator Paterson?

SENATOR LACK: By all means, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, for the benefit of those who aren't looking at the bill, this bill amends Section 275.2 (c), and I guess it's to allow for the refinance of mortgages through the mortgage assignment.

SENATOR LACK: I'm sorry. I can't hear Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson, if you'll wait just a minute, we'll

get a little order in the house, a little quiet.

Thank you. I think we can proceed now.

SENATOR PATERSON: Mr. President, if I'm correct, this bill amends Section 275.2 (c) of the Real Property Law to allow for the reassignment of mortgages rather than to discharge when the purpose of the mortgage is to refinance, and so if Senator Lack would yield for a question -

SENATOR LACK: Surely.

ACTING PRESIDENT KUHL: The Senator yields, Senator Paterson.

SENATOR PATERSON: Senator, my question is why have you only amended Section 275.2 (c) almost in a way that implies that the other sections would deny the assignment of a mortgage and would force there to be a discharge even in those refinance cases as well?

SENATOR LACK: Mr. President, Senator, as you know, this bill has been vetoed in the past by Governor Cuomo. The answer is

that we're just trying to make a start. We realize, as you debated last year and, of course, I have a copy of the debate, there is an impact -- beginning of an impact upon local government. As you know, the difference between two years ago and last year and then last year and this year is where mortgage rates are, and last year mortgage rates were up. There would have been less of an impact than there is now. Mortgage rates -- mortgage rates are down. That means there's more refinancing.

So we're, quite frankly, making a beginning. I would like to see all of this wiped out, and as we discussed in the committee meeting, I would like to see those who have residential mortgages who take advantage of this section be in the same situation as those who are in businesses that routinely take advantage of reassignments and -- as opposed to discharges and, therefore, save a mortgage tax.

It is completely unfair, to my way of thinking, that those who refinance mortgages on a residential basis in this state

have to pay a mortgage tax a second time on money for which tax has already been paid.

You and I last year in our discussion both recognized the impact upon localities. You said I did less than you. So be it. This year, Senator, I would totally agree with you. There is a greater impact on localities that does not remove, quite frankly, my desire to see this particular section off the books as it pertains to residential property owners because, as I also said last year, this is quicksand financing for localities. It depends on the vagaries of the mortgage market and what's up and down and how many refinancings are taking place. In any event, it's not money that localities can count on on a stabilized basis from year to year.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you.

For purposes of clarification, Senator, first of all, how did I vote last year?

SENATOR LACK: You voted in favor, Senator.

SENATOR PATERSON: Oh, good. If you want to think about it, Senator, I think it's a great bill. The question that I just have now is then, to verify the clarification, if this bill is to pass, you would like to use this as the catalyst to amending all of the sections because, as you stated, what you're really trying to do is to avoid the payment of the mortgage tax for those who are in the position that are refinancing as opposed to a new owner, a first time owner. So if that's what you're actually trying to do -- we were just slightly afraid that by only amending one section, it would have actually been more restrictive. If we understand this is a catalyst for further legislation, then actually we think it's a good law.

SENATOR LACK: Thank you, Senator.

I would just like to get this passed by one Governor, one signed into law and

then we can proceed from there.

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

SENATOR GOLD: Would Senator Lack yield to a -

ACTING PRESIDENT KUHL: Senator Lack, do you yield to Senator Gold?

SENATOR LACK: Of course.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator Lack, as Senator Paterson said, I think it's a terrific idea and you're right on target, but I don't understand one thing and let me just ask it. In other words, is this one bill a negotiated position, or do you feel that if you did cover all the sections that have been suggested, you can't move the bill; is that what you're -

SENATOR LACK: This is the negotiation we've had in the past with the Assembly, Senator. Assemblyman Feldman who is sponsoring this bill in the Assembly had passed it in 1994. This last year in 1995, it died in

the Assembly Ways and Means. Assemblyman Feldman and I are both hopeful that the bill that is before the floor in the Senate now will be able to pass the Assembly and go on to the Governor.

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

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 293, by Senator Lack, Senate Print 5991, an act to amend the County Law, in relation to permitting district attorneys and their assistants to administer oaths.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Lack, an explanation of Calendar Number 293 has

been asked for by Senator Paterson.

SENATOR LACK: Thank you.

Senator Paterson, I hope it's Assemblyman Feldman you're at and not me. This is the second bill of the day I'm sponsoring with Mr. Feldman of the Assembly. This is what I would describe -

SENATOR GOLD: Explanation satisfactory, Senator.

SENATOR LACK: I have nothing further to say.

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

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the controversial calendar.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there are three reports which we could have read at this time.

ACTING PRESIDENT KUHL: I'm informed by the Secretary that you're correct, Senator Skelos. We'll return to the reports of standing committees. I'll ask the Secretary to read.

THE SECRETARY: Senator Saland, from the Committee on Children and Families, offers up the following bills: Senate Print 466-A, by Senator Holland, an act to amend the Social Services Law, in relation to access for the Statewide Register;

2115, by Senator Saland, an act to amend the Family Court Act, in relation to the placement of children;

2138, by Senator Nozzolio, an act to amend the Social Service Law and the Education Law, in relation to authorizing the fingerprinting of prospective employees;

2595, by Senator Saland, an act

to amend the Social Services Law, in relation to criminal screening;

3596, by Senator Saland, an act to amend the Family Court Act and the Social Services Law, in relation to severe and repeated child abuse;

3612, by Senator Skelos, an act to amend the Domestic Relations Law, the Criminal Procedure Law and the Family Court Act, in relation to imposing a mandatory surcharge;

4840, by Senator Skelos, an act to amend the Criminal Procedure Law, in relation to expanding the circumstances under which orders of protections may be continued;

5106-A, by Senator Saland, an act to amend the Social Service Law and the Education Law, in relation to the protection of pupils in public school settings.

Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, offers up the following bills: Senate Print 498, by Senator Velella, an act to amend the Alcoholic Beverage Control Law,

in relation to credit card sales;

2407, by Senator Velella, an act to amend the Arts and Cultural Affairs Law, in relation to actions against persons;

4507, by Senator Padavan, an act to amend the Alcoholic Beverage Control Law, in relation to revocation of a license;

5954, by Senator Lack, an act to amend the Tax Law, in relation to extending the authorization for imposition of a hotel and motel tax;

5997, by Senator Seward, an act to amend the Tax Law, in relation to extending the hotel and motel tax in Otsego County.

Senator Nozzolio, from the Committee on Crime Victims, Crime and Correction, offers up the following bills:

3814, by Senator Volker, an act to amend the Executive Law, in relation to written statements of the crime victim in making the parole release decision;

4003, by Senator Libous, an act to amend the Corrections Law, in relation to

extending civil immunity to officers or employees;

4500, by Senator Nozzolio, an act to amend the Executive Law, in relation to qualification for employment as a parole officer;

4923, by Senator Nozzolio, an act to amend the Executive Law, in relation to appeals to the state Board of Parole;

5017-A, by Senator Nozzolio, an act to amend the Correction Law, in relation to providing notification to law enforcement officials;

6175, by Senator Nozzolio, an act to amend the Executive Law and the Penal Law, in relation to sex offenders.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are reported directly to third reading.

The Chair recognizes Senator Abate.

SENATOR ABATE: Yes, Mr. President. I'd ask for unanimous consent to be recorded in the negative on Calendar Number 19.

ACTING PRESIDENT KUHL: Without objection.

(There was no response.)

Hearing no objection, Senator Abate will be recorded in the negative on Calendar Number 19.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno and after his consultation with the Minority Leader, I'd hand up the following committee assignments for filing at the desk.

ACTING PRESIDENT KUHL: The committee assignments are received and filed.

Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping at the desk?

ACTING PRESIDENT KUHL: Nothing else at the desk, Senator Skelos.

SENATOR SKELOS: There being no

further business, I move we adjourn until Wednesday, March 6th, at 11:00 a.m. sharp.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Wednesday, at 11:00 a.m.

(Whereupon, at 3:52 p.m., the Senate adjourned.)