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ALBANY, NEW YORK

March 20, 1996

11:03 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

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

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

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

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

12 (A moment of silence was
13 observed.)

14 Reading of the Journal.

15 THE SECRETARY: In Senate,
16 Tuesday, March 19th. The Senate met pursuant to
17 adjournment, prayer by the Reverend Father Peter
18 G. Young, Blessed Sacrament Church, Bolton
19 Landing. The Journal of Monday, March 18th, was
20 read and approved. On motion, the Senate
21 adjourned.

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

1 read.

2 Presentation of petitions.

3 Messages from the Assembly.

4 Messages from the Governor.

5 Reports of standing committees.

6 Reports of select committees.

7 Communications and reports from
8 state officers.

9 Motions and resolutions.

10 The Chair recognizes Senator
11 Farley.

12 SENATOR FARLEY: Thank you, Mr.
13 President.

14 On behalf of Senator Saland, on
15 page 18, I offer the following amendments to
16 Calendar Number 432, Senate Print 1436, and I
17 ask that that bill retain its place on the Third
18 Reading Calendar.

19 ACTING PRESIDENT KUHL: The
20 amendments to Calendar Number 432 are received
21 and adopted. The bill will retain its place on
22 the Third Reading Calendar.

23 Senator DeFrancisco.

1 SENATOR DeFRANCISCO: Mr.
2 President, on page 19, I offer the following
3 amendments to Calendar Number 442, my Senate
4 Bill Print Number 4686, and ask that the bill
5 retain its place on third reading.

6 ACTING PRESIDENT KUHL: The
7 amendments to Calendar Number 442 are received
8 and adopted. The bill will retain its place on
9 the Third Reading Calendar.

10 Senator Connor.

11 SENATOR CONNOR: Mr. President,
12 there's a privileged resolution at the desk, and
13 I'd ask that it be called up, its title be read
14 and it be moved for adoption.

15 ACTING PRESIDENT KUHL: The
16 privileged resolution is at the desk. I'll ask
17 the Secretary to read the title.

18 THE SECRETARY: By Senator
19 Connor, Legislative Resolution honoring Leonard
20 Greher, Principal of P. S. 34, in recognition of
21 his prompt and heroic efforts to save the life
22 of a young student who was a victim of choking.

23 ACTING PRESIDENT KUHL: The

1 question is on the resolution. All those in
2 favor signify by saying aye.

3 (Response of "Aye".)

4 Opposed, nay.

5 (There was no response.)

6 The resolution is adopted.

7 Senator Bruno.

8 SENATOR BRUNO: Mr. President, I
9 believe there is a resolution at the desk by
10 Senator Cook. I would move at this time that it
11 be read in its entirety and moved for adoption.

12 ACTING PRESIDENT KUHL: The
13 Resolution Number 2578 is at the desk. I'll ask
14 the Secretary to read the resolution in its
15 entirety.

16 THE SECRETARY: By Senator Cook,
17 Legislative Resolution Number 2578, commending
18 the New York Association for Continuing/
19 Community Education and the 1996 Students of the
20 Year.

21 WHEREAS, the Legislature of the
22 state of New York is pleased to welcome the New
23 York Association for Continuing/Community

1 Education and proud to commend the 1996 Students
2 of the Year for their outstanding work as adult
3 learners; and

4 WHEREAS, these students, all
5 honored recipients of the Student of the Year
6 Award, have been selected to receive this
7 esteemed distinction because of their
8 demonstrated outstanding perseverance and
9 dedication.

10 The 1996 Students of the Year
11 worked hard and overcame a myriad of challenges
12 and in doing so, developed within themselves a
13 strong sense of independence, self-reliance and
14 self-sufficiency which can never be taken away.

15 The 1996 Students of the Year
16 have confirmed, through their earnest commitment
17 and will to succeed, that they should be looked
18 upon as positive role models, not only to other
19 adult learners but to their community as well.

20 The Legislature of the state of
21 New York also pays tribute to the teachers,
22 coordinators, administrators and trainers of
23 these students for their selfless dedication to

1 the students and whose work has brought hope
2 into the lives of many, an accomplishment that
3 cannot be measured; and

4 WHEREAS, the Legislature of the
5 state of New York also honors the board members
6 for their guidance of the New York Association
7 for Continuing/Community Education and for their
8 continued dedication to education in New York
9 and to all the individuals on the Awards Day
10 Committee who worked diligently in order to
11 ensure these students receive their recognition
12 that they deserve; now, therefore, be it;

13 RESOLVED, that this legislative
14 body pause in its deliberation to commend the
15 New York Association for Continuing/Community
16 Education and the 1996 Students of the Year for
17 their tenacity and remarkable accomplishments;
18 and be it further

19 RESOLVED, that copies of this
20 resolution, suitably engrossed, be transmitted
21 to each of the Students of the Year, Board
22 President Amy Peritsky and the Awards Day
23 Chairperson, Lin Wishchhusen.

1 ACTING PRESIDENT KUHL: Senator
2 Cook, on the resolution.

3 SENATOR COOK: Mr. President, I
4 won't be redundant by repeating all of the
5 details that were in the resolution, except to
6 say that we are, indeed, very proud and
7 privileged to have with us today these
8 outstanding students. I think most of them are
9 here with us. A number of them are teachers,
10 leaders.

11 This is a program which recog
12 nizes individuals who not only have accomplished
13 but have accomplished in spite of some real
14 hardships, and I think we should be somewhat in
15 awe that they have accomplished what they have
16 under some rather telling circumstances.

17 So I would appreciate it, Mr.
18 President, if you would welcome them here
19 today. I think perhaps some of the other
20 members have some -- some special greetings they
21 want to add as well.

22 ACTING PRESIDENT KUHL: The Chair
23 recognizes Senator DeFrancisco on the

1 resolution.

2 SENATOR DeFRANCISCO: Yes, Mr.
3 President. I'm honored to have a constituent,
4 Melonise Felton, who's in the front row in the
5 gallery here as one of the honored students.

6 I wish I could share with you on
7 the floor what she overcame in order to get to
8 the point she is in her life right now. It's
9 truly -- it was truly a heroic effort that she
10 made to overcome some circumstances that I don't
11 believe many here could have overcome, and now
12 she is now well on her way to bigger and better
13 things. She set goals that probably were not
14 even thought about a few years ago in her life
15 and goals that I know from meeting her today
16 that she's going to achieve, and the same is
17 true for all the other honorees today.

18 She lives very close to me, less
19 than a half a mile from where I live, and she
20 has demonstrated through all of her efforts that
21 she probably will be a registered nurse very
22 soon. That's her goal, and I expressed to her
23 that anything that I could do to try to help her

1 reach that goal, we will continue to do so and
2 I'm sure she will have some items for all of us
3 to consider about how we could help other people
4 similarly situated as she is.

5 So I'm pleased and I'm really
6 proud that a member of my district living so
7 close to home that has achieved what she has
8 achieved in such a short time, and I wish her
9 the best of luck and success in all of her
10 future goals.

11 ACTING PRESIDENT KUHL: Senator
12 Maziarz.

13 SENATOR MAZIARZ: Thank you, Mr.
14 President.

15 I too want to join my colleagues
16 in congratulating all of the student honorees
17 who are with us today. I particularly want to
18 recognize James Mills of Gasport, New York, who
19 lives in my district and Jim is with us here
20 this morning, and Jim overcame some -- some
21 great obstacles at a later age and with the help
22 of a lot of good instructors and of literacy
23 volunteers, overcame some really, really great

1 obstacles and it was a big challenge for Jim to
2 do at this stage of his life, and I just want to
3 publicly congratulate him and his instructors
4 for their time and effort that they put into
5 Jim's goal and just to add to that, our
6 congratulations.

7 Thank you, Mr. President.

8 ACTING PRESIDENT KUHL: Any other
9 Senator wishing to speak on the resolution?

10 (There was no response.)

11 The resolution was previously
12 adopted on March 5th, so there's no need to
13 proceed in that line, but on behalf of Senator
14 Cook, Senator DeFrancisco, Senator Maziarz,
15 Senator Bruno and all of the members of the
16 Senate, we're just absolutely pleased that you
17 chose today to come join us. We wish you good
18 luck in your future endeavors and congratulate
19 you on what you've done in the past. Keep up
20 the good work. Make us proud as you have
21 already.

22 Thank you for being here.

23 (Applause)

1 Senator Skelos, that brings us to
2 the calendar.

3 SENATOR SKELOS: If we could take
4 up the non-controversial calendar.

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

8 THE SECRETARY: On page 13,
9 Calendar Number 379, by Senator Holland -

10 SENATOR GOLD: Lay it aside.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 399, by Senator Nozzolio, Senate Print 4923.

15 SENATOR PATERSON: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside.

18 THE SECRETARY: Calendar Number
19 415, by Senator Cook, Senate Print 3603, an act
20 to amend the General Business Law, in relation
21 to the licensing of barbers.

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

1 THE SECRETARY: Section 2. This
2 act shall take effect on the 60th day.

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

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

8 THE SECRETARY: Ayes 44, nays 1,
9 Senator Tully recorded in the negative.

10 ACTING PRESIDENT KUHL: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 419, by Senator Cook, Senate Print 5760, an act
14 to amend the General Business Law, in relation
15 to requiring certain notification to callers of
16 contests.

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

19 THE SECRETARY: Section 2. This
20 act shall take effect 180 days.

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 47.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 427, by Senator Johnson, Senate Print 5764, an
6 act authorizing the Commissioner of
7 Transportation to acquire in fee certain lands
8 in the county of Suffolk.

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

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 47.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 433, by Senator DeFrancisco, Senate Print 1972.

21 SENATOR CONNOR: Lay it aside.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside.

1 THE SECRETARY: Calendar Number
2 438, by the Assembly Committee on Rules,
3 Assembly Print Number 7535, an act to amend the
4 Civil Practice Law and Rules, in relation to the
5 recording of judicial rulings and orders.

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

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 47.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 439, by the Assembly Committee on Rules,
19 Assembly Print Number 7539, an act to amend the
20 Civil Practice Law and Rules, in relation to
21 non-joinder and misjoinder of parties.

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

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 49.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 440, by Senator Libous, Senate Print 4439, an
11 act to amend the Criminal Procedure Law, in
12 relation to venue for an application for an
13 order of retention.

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

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 49.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 463, by Assemblyman Feldman, Assembly Print
3 Number 8882, an act to amend Chapter 887 of the
4 Laws of 1983, amending the Correction Law.

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

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 49.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 500, by the Assembly Committee on Rules.

17 SENATOR VOLKER: Mr. President,
18 can we lay this bill aside for the day?

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside for the day at the request of the
21 sponsor.

22 Senator Skelos, that completes
23 the non-controversial calendar.

1 SENATOR SKELOS: Could we please
2 have the controversial calendar read.

3 ACTING PRESIDENT KUHL: The
4 Secretary will read the controversial calendar.

5 THE SECRETARY: Calendar Number
6 379, by Senator Holland, Senate Print 2046-B, an
7 act to amend the Social Services Law and the
8 Workers' Compensation Law, in relation to liens
9 for public assistance and care.

10 SENATOR STACHOWSKI: Explanation.

11 ACTING PRESIDENT KUHL: Senator
12 Holland, an explanation of Calendar Number 379
13 has been asked for by the Minority Leader.

14 SENATOR HOLLAND: Yes, Mr.
15 President. This bill allows the Department of
16 Social Services to place a lien on Workers'
17 Compensation benefits to recoup public
18 assistance payments made while someone was
19 awaiting a retroactive payment of compensation
20 benefits.

21 SENATOR STACHOWSKI: Mr.
22 President.

23 ACTING PRESIDENT KUHL: Senator

1 Stachowski.

2 SENATOR STACHOWSKI: Would
3 Senator Holland yield for a question?

4 ACTING PRESIDENT KUHL: Senator
5 Holland, do you yield to a question from Senator
6 Stachowski?

7 SENATOR HOLLAND: Yes, sir.

8 ACTING PRESIDENT KUHL: The
9 answer is yes, Senator Stachowski. The Senator
10 yields.

11 SENATOR STACHOWSKI: Senator, in
12 proposing this bill, I take it then you feel
13 that these people that are awaiting a pending
14 Workers' Compensation decision that are put into
15 terrible financial straits because they have no
16 income coming in, that they have to go on public
17 assistance, that that is an undeserved benefit
18 and that they should put a lien on this when the
19 judgment comes through so that that's paid back,
20 and these workers aren't entitled to collecting
21 public assistance even though for all their life
22 they worked or however long they worked and paid
23 into the system through taxes, et cetera, that

1 they shouldn't be allowed to collect when they
2 haven't chosen to be there but they were put
3 there because they were hurt and because of
4 whatever reason this case is pending and they're
5 not getting a decision most likely because the
6 insurance company is fighting it and choking
7 them off and now they're forced because of no
8 income to collect public assistance; you think
9 this is an unfair accrued benefit and it should
10 be paid back?

11 SENATOR HOLLAND: No, sir, I do
12 not think it's an unearned benefit. I think
13 that's what we're here for. When people are
14 injured and need assistance, that's what social
15 services is here for. They come to the social
16 services. We help them with payments and
17 medical, but then when the insurance company
18 finally decides how the case is going to be
19 decided -- or the judge finally decides how the
20 case is going to be decided and if there is a
21 payment due to that individual, then I believe
22 the individual should pay back the loan that was
23 made.

1 I think this is double dipping,
2 Senator. That's what I think it is, and I have
3 no problem with paying them and helping them
4 when they need the assistance, but then when the
5 court and the insurance company decides that
6 they should get the payment, I believe that they
7 should pay that back to the Department.

8 SENATOR STACHOWSKI: Mr.
9 President, on the bill.

10 ACTING PRESIDENT KUHL: Senator
11 Stachowski on the bill.

12 SENATOR STACHOWSKI: We have no
13 trouble with the part of the bill that says that
14 the medical Medicaid section for any kind of
15 medical payments should be paid back when that
16 judgment is finally rendered. We have a
17 terrible problem with the idea that somebody
18 that is forced because they're hurt and they
19 aren't collecting any kind of money and they
20 have rent bills or they have mortgage payments.
21 They have car payments. They have food and
22 clothing bills to pay. They might have kids in
23 school. They have all these bills of just

1 everyday living and we're going to tell them now
2 that we think this -- you getting public
3 assistance -- which most workers don't want to
4 take in the first place, but they have no choice
5 because they're put out there, hurt, no family
6 income or possibly even if they live by
7 themselves, no source of income, they're put out
8 there. They have all these bills. They're
9 finally forced to go on social services,
10 something that most working men and women never
11 want to be on, so they're forced to be a
12 recipient of social services and because of the
13 nature of this bill, we now consider that a loan
14 to these particular individuals that have worked
15 all their life and through no fault of their
16 own, they're hurt, and when they receive this
17 benefit, unlike anybody else receiving this
18 benefit, because they have a case pending that
19 some insurance company doesn't want to pay off
20 on and it makes them go on social services
21 because they're hurt and they don't want to pay
22 off, now they do pay off, we're considering that
23 they receive this loan from the state of New

1 York. We think that's something that they
2 worked all their lives and they're entitled to
3 those benefits and that they get an award from
4 an insurance company because of an injury, that
5 doesn't make up for the loss of whatever
6 physical problem they now have the rest of their
7 life, or it doesn't make up -- that award
8 doesn't make up for the fact that they can never
9 work again the rest of their lives in most
10 cases, and then we're telling them on top that,
11 You are in this bad situation, even though
12 you're one of the hard-working men and women of
13 the state of New York in whatever field you were
14 in before you got hurt, so you don't deserve the
15 right to have been on social services and in
16 your case, because you win this insurance award
17 out of a compensation injury which you are
18 injured still -- you know, when you get the
19 award, you're not suddenly whole and you're not
20 suddenly rich, and it will never pay you back
21 for the loss you have in both dignity and the
22 fact that you can't work again when you want to
23 work and probably never attain the life style

1 that you previously had, but because of that and
2 because you got this award, in your case, you
3 should pay back the state for social services.

4 I'm sorry. I find that callous.
5 I find that terribly unthoughtful. I find it
6 terrible unfair, and I just find it extremely
7 mean-spirited and a slap in the face to the
8 working men and women in the state of New York,
9 and I hope that people in the chamber will vote
10 no on this bill.

11 ACTING PRESIDENT KUHL: Is there
12 any other Senator wishing to speak on the bill?

13 The Chair recognizes Senator
14 Paterson.

15 SENATOR PATERSON: Thank you, Mr.
16 President.

17 If Senator Holland would yield
18 for a question.

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

21 SENATOR HOLLAND: Yes.

22 ACTING PRESIDENT KUHL: The
23 Senator yields.

1 SENATOR PATERSON: Senator, I was
2 wondering -- and thank you for yielding. I was
3 wondering what had changed in the law that
4 brings us to this position today where we would
5 want to deny these benefits when the Legislat
6 ure, in its wisdom years ago, specifically in
7 Section 104(b) of the Social Services Law,
8 excluded Workers' Compensation benefits and -
9 for volunteer police and social services and
10 volunteer police and firefighters.

11 Now, I see that you have left
12 volunteer police and firefighters in and have
13 taken individuals who, I think both you and I
14 would admit, were not seeking to be on social
15 services, were often driven into the program
16 because the employer didn't pay the benefit.
17 The employer fights the benefit, puts these
18 people in a terrible position for long periods
19 of time, sometimes up to a year, restricting the
20 reward to two-thirds of their salary with a cap
21 of \$400 a week. I mean, these are some severe
22 circumstances that these individuals are going
23 through, so to use the term "double dipping", I

1 think is a little unfair, Senator, because I
2 associate the term "double dipping" with a
3 person who is deriving a benefit; in other
4 words, someone's who's, you know, to use the
5 street vernacular, getting over. These people
6 are never even getting back to where they
7 started, and it didn't become this way because
8 of any action they took. It became this way
9 because of an accident and then the fact that
10 the employer fought the claim. So they're in a
11 real bad position to start out with.

12 These are not the people that you
13 hear being stigmatized quite often when we talk
14 about welfare cheats and that kind of thing.
15 There are very few individuals who are in this
16 kind of position and, you know, to change this
17 law after the Legislature looked at it some
18 years ago and determined that this was one of
19 the cases we would exclude from having to
20 reimburse, my -- you know, I guess my question
21 to you after all of this is what has changed?
22 Why would we want to do that now?

23 SENATOR HOLLAND: I missed the

1 end of it, Senator. I'm sorry. I listened to
2 all of it except the end of it.

3 SENATOR PATERSON: I'm sorry,
4 Senator. My question is what has changed today
5 from the laws that we enacted years ago that
6 makes us have to do this to these individuals
7 who I think you would admit were taxpayers; they
8 were hard-working. I can't explain it any
9 better than Senator Stachowski did. What's
10 changed that we want to do this to them?

11 SENATOR HOLLAND: Nothing has -
12 you know, the law was done years ago, as you
13 say, and I think it was a mistake. That's why I
14 brought it to the floor. I really believe it is
15 double dipping, Senator.

16 Let's talk to you and Senator
17 Stachowski's question about the workers and what
18 they deserve. How about the other workers who
19 are injured on the job and receive assistance -
20 or do not receive assistance, rather, but
21 accumulate bills and maybe their mortgage is
22 three months in arrears or their rent is three
23 months in arrears and they have to borrow from

1 their family and friends and the bank until they
2 get the award from the courts, then what do they
3 do? They pay off those loans. They pay off the
4 mortgage. They take that from the courts and
5 pay off those things. I'm only trying to make
6 it fair for everybody.

7 I have no problem, nor do I think
8 anybody in this room does, in taking care of the
9 people that need to be taken care of. However,
10 when the insurance company is required to make
11 the payment, I feel at that point that these
12 people should pay back the loans that they got
13 just like anybody else who wasn't forced to go
14 on social services.

15 SENATOR PATERSON: Senator.

16 SENATOR HOLLAND: Yes, sir.

17 SENATOR PATERSON: First of all,
18 I think we're disagreeing on what the social
19 services award is. I don't see it as a loan.
20 If they lose the Workers' Comp' claim, it's
21 certainly not a loan; they stay on social
22 services. So I'm saying that I don't understand
23 us classifying that as a loan.

1 Now, because it's not a loan -
2 and maybe if we can agree on this point, perhaps
3 we'll reach an understanding and, what do you
4 know, maybe we'll lay this bill aside -- because
5 it's not a loan, it's not in the mind of the
6 individual who receives the money that they're
7 going to wind up paying other monies back so
8 they would do what anybody else would do at a
9 point that they had been working. They're now
10 injured on the job. They're receiving social
11 services. They're going to take what meager
12 awards they get from social services and they're
13 going to try to pay their bills. They're going
14 to try to do anything they can do to survive.

15 As for the other workers you're
16 referring to, they have a right to apply for
17 social services too. Some of them don't because
18 they get their Workers' Compensation money up
19 front because the employer doesn't fight it. So
20 I'm saying, these are the specific cases where
21 the individuals were driven onto social services
22 because the employer fought the claim but the
23 employer turned out to be maybe not wrong but

1 we'll just say that the employee won. So now
2 the employee is -- has an award and we're
3 considering it a loan, but you can never
4 consider it a loan at the time they first got
5 it. Would you agree with that?

6 SENATOR HOLLAND: No, not
7 exactly, Senator. I -- I feel that we should
8 take care of the workers, as I said, but if
9 there is a payment by the courts, then it is a
10 loan.

11 Let's go back to the other
12 workers who don't have to go on Social Security
13 -- social services. They have to pay back all
14 the loans they take, whether it's from their
15 family or the bank or mortgage payments or lease
16 payments. I don't see the difference, Senator,
17 and if they do, as you say, have to stay on
18 social services, I don't have a problem with
19 that either. I would rather not have them
20 there. I'd like them to work their way off, but
21 if they can't repay the loan and there is no
22 settlement from the insurance companies, I do
23 not have a problem with that. If there is a

1 settlement from the companies, then I believe
2 that they are double dipping and they should
3 repay the money that the taxpayers of this state
4 have loaned them during that period of time.

5 ACTING PRESIDENT KUHL: Senator
6 Paterson.

7 SENATOR PATERSON: Thank you very
8 much, Senator.

9 Mr. President, on the bill.

10 ACTING PRESIDENT KUHL: Senator
11 Paterson, on the bill.

12 SENATOR PATERSON: I think that
13 I've loaned a little money in my time and I may
14 have borrowed some, and I sure knew when I
15 loaned the money out that it was a loan, and
16 when I didn't know when I borrowed it, I sure
17 got reminded that it was a loan.

18 This is a contingent award that,
19 if Senator Holland believes should be so
20 described, I would suggest that we might need to
21 change the Social Services Law, because at the
22 time the person applies for social services, no
23 one tells them, "By the way, if you win your

1 Workers' Comp' claim, we're going to take the
2 money and then apply it to whatever money you
3 receive for social services." I think that in
4 the technical sense of what Senator Holland is
5 proposing, that it is not illogical. I think it
6 does make sense, but there are two
7 distinguishing issues.

8 The former would be that the
9 social services award itself, at the time that
10 it's awarded, is not a loan. It's like anyone
11 else going to social services, and when we look
12 at it later on, we're talking about people who
13 have lost often two-thirds of their salary.
14 They've lost everything, and they didn't lose
15 everything because they were unwilling to work.
16 They didn't lose anything because they didn't
17 care about working. They were injured. They
18 were injured on the job.

19 It's one of those situations that
20 I think would be understood better by the
21 sponsors if it actually happened to somebody
22 that they knew. I think then they would start
23 to understand why the Legislature years ago

1 specifically deleted these types of situations
2 from the regular recovery, not because
3 technically they may have gotten an award from
4 social services and went on to get an award from
5 Workers' Compensation, but that collectively,
6 those two awards probably didn't even help
7 them. They were still seriously in debt and
8 would relish the opportunity to go back to
9 work. This is not in any way fostering or
10 enhancing or encouraging individuals who are on
11 social services to stay there. These are
12 specific individuals who probably have some of
13 the same contempt for the system that they have
14 to seek because they have no other choice. They
15 were driven there by their employers. Later on
16 they win their recovery, and the first thing
17 that happens is we come by and pick up part of
18 the check as part of the social services award.
19 If it was a benefit they were receiving, then I
20 would agree with Senator Holland, but there's no
21 benefit. They're often very much in debt.

22 And finally, Mr. President, I
23 would just really want to point out that we're

1 hurting workers. We're hurting taxpayers
2 through this. We're hurting individuals who
3 have fought and suffered and paid for it, and
4 they don't have the money to meet some of their
5 most essential needs, and this, as I agree with
6 Senator Stachowski, is not the way to treat
7 individuals who have been such contributors to
8 our society as they have.

9 And as for the other workers who
10 either have a right to apply and don't apply or
11 didn't apply because they got paid their
12 Workers' Compensation, I don't think that it's
13 apt to make a comparison between the other
14 workers because if they're put in the same
15 situation, they also have the right to apply for
16 social services.

17 ACTING PRESIDENT KUHL: The Chair
18 recognizes Senator Smith.

19 SENATOR SMITH: Thank you, Mr.
20 President.

21 I would just like to reiterate
22 and thank my colleague, Senator Paterson, for
23 bringing out the fact that at no time can you

1 receive more than \$400 under an award, and the
2 maximum award is two-thirds of your income for
3 -- on a weekly basis. Therefore, anyone
4 receiving an award would be indebted and could
5 not possibly be double dipping, as my colleague
6 would like to think of it.

7 The amounts are so menial that
8 anyone that is maimed or hurt would be put in a
9 situation where they could no longer take care
10 of their home or their family with such a menial
11 amount of money and, therefore, I encourage all
12 of my colleagues to vote against this bill.

13 ACTING PRESIDENT KUHL: Senator
14 Waldon.

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

17 Actually, Senator Smith just
18 covered the points that I wanted to make, but I
19 would like to ask the learned Senator from
20 Orange County, Senator Holland, to yield to just
21 perhaps one or two questions.

22 ACTING PRESIDENT KUHL: Senator
23 Holland, do you yield?

1 SENATOR HOLLAND: Yes, sir.

2 ACTING PRESIDENT KUHL: The
3 Senator yields.

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

6 Senator Holland, have you ever
7 been unemployed?

8 SENATOR HOLLAND: Oh, yes.

9 SENATOR WALDON: Were you while
10 unemployed in need of unemployment insurance?

11 SENATOR HOLLAND: I'm sorry. I
12 can't hear you, Senator.

13 SENATOR WALDON: While you were
14 unemployed, did you have a need for and did you
15 apply for unemployment insurance?

16 SENATOR HOLLAND: No, sir.

17 SENATOR WALDON: You have never
18 -- let me retract that. Have you ever had a
19 need in your life, as a result of "missed meal"
20 cramps or any other kind of condition, to apply
21 for assistance of any form outside of perhaps
22 your family?

23 SENATOR HOLLAND: Yes.

1 SENATOR WALDON: If I may, Mr.
2 President, one last question.

3 ACTING PRESIDENT KUHL: Senator
4 Holland, do you continue to yield?

5 SENATOR HOLLAND: Yes.

6 ACTING PRESIDENT KUHL: The
7 Senator continues to yield.

8 SENATOR WALDON: Senator Holland,
9 being that you are the sponsor of this proposal,
10 I have to assume that you understand very well
11 the points that Senator Smith and Senator
12 Paterson made and Senator Stachowski in more of
13 a philosophical approach made in regard to the
14 money that you can receive from social services
15 while -- retract that -- from compensation never
16 equals what you were actually earning -- maybe
17 "never" is not a correct term -- so you're
18 always in the hole. Do you understand that
19 concept, that you can only receive two-thirds or
20 whatever the amount of money is for the
21 particular situation?

22 SENATOR HOLLAND: I do. I
23 understand what you're trying -- what you're

1 saying, yes. I would hope that many times it
2 would cover the repayment and/or be a little
3 extra, depending upon what they were making when
4 they were working.

5 SENATOR WALDON: But if the
6 assumption is that you can never receive what
7 you were, in fact, earning in this hypothetical
8 sense, would one not always be in the hole; if
9 you're unemployed due to this injury for four
10 months, five months, six months, wouldn't your
11 best guesstimate say that you're going to be in
12 the hole once the settlement actually happens?

13 SENATOR HOLLAND: To tell you the
14 truth, I do not know, Senator, but if the
15 settlement does not cover everything that they
16 owe DSS, they would not be required to pay
17 anything additional. If it was excess, then
18 they would keep the excess.

19 SENATOR WALDON: Mr. President,
20 thank you very much.

21 Thank you very much, Senator
22 Holland.

23 ACTING PRESIDENT KUHL: Is there

1 any other Senator wishing to speak on the bill?

2 (There was no response.)

3 Hearing none, the Secretary will
4 read the last section.

5 SENATOR STACHOWSKI: Slow roll
6 call, please.

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT KUHL: Call the
13 roll slowly. There are five Senators
14 requesting. Ring the bells.

15 THE SECRETARY: Senator Abate.

16 SENATOR ABATE: No.

17 THE SECRETARY: Senator Alesi.

18 SENATOR ALESI: Yes.

19 THE SECRETARY: Senator Babbush.

20 (There was no response.)

21 Senator Bruno.

22 (Affirmative indication.)

23 Senator Connor.

1 (Negative indication.)

2 Senator Cook.

3 SENATOR COOK: Yes.

4 THE SECRETARY: Senator

5 DeFrancisco.

6 SENATOR DeFRANCISCO: Yes.

7 THE SECRETARY: Senator DiCarlo.

8 (There was no response.)

9 Senator Dollinger.

10 SENATOR DOLLINGER: Explain my
11 vote, Mr. President.

12 ACTING PRESIDENT KUHL: Senator
13 Dollinger to explain his vote.

14 SENATOR DOLLINGER: Mr.
15 President, I couldn't agree more with Senator
16 Stachowski who quite eloquently summed up my
17 view about this bill.

18 I guess the other thing that I'm
19 astounded at is that for some reason in this
20 state, we don't ask major corporations that get
21 grants for job development; we don't ask people
22 who get enormous tax cuts, rich and wealthy
23 people who get enormous tax cuts, we don't

1 consider that public benefit alone, but yet when
2 someone has the misfortune of being hurt on the
3 job and needs money to survive, what we do is we
4 treat their welfare recipients or their
5 transitional benefit as a loan. It just seems
6 to me -- I agree with Senator Stachowski. It's
7 mean-spirited. It's hard-hearted, and why do we
8 do this to the working people of this state? We
9 don't do it to anybody else. It's nonsensical.

10 I'm voting no.

11 ACTING PRESIDENT KUHL: Senator
12 Dollinger will be recorded in the negative.
13 Announce the results. I tried. I tried.
14 Continue to call the roll.

15 Senator Paterson, why do you
16 rise?

17 SENATOR PATERSON: Mr. President,
18 with the permission from the Majority, would we
19 allow Senator Montgomery to vote right now? She
20 has an important issue that she has to -

21 ACTING PRESIDENT KUHL: Senator
22 Skelos, do you have no -- no objection.

23 The Secretary will call -

1 Senator Montgomery, how do you vote?

2 SENATOR MONTGOMERY: No.

3 ACTING PRESIDENT KUHL: Senator
4 Montgomery will be recorded in the negative.
5 The Secretary will continue to call the roll
6 slowly.

7 THE SECRETARY: Senator Espada.

8 SENATOR ESPADA: No.

9 THE SECRETARY: Senator Farley.
10 Senator Farley.

11 SENATOR FARLEY: Aye.

12 THE SECRETARY: Senator Gold.

13 SENATOR GOLD: Senator Farley was
14 in the affirmative? In the negative.

15 THE SECRETARY: Senator Gonzalez.

16 SENATOR GONZALEZ: No.

17 THE SECRETARY: Senator Goodman.

18 SENATOR GOODMAN: Yes.

19 THE SECRETARY: Senator Hannon.

20 SENATOR HANNON: Yes.

21 THE SECRETARY: Senator Hoblock.

22 SENATOR HOBLOCK: Yes.

23 THE SECRETARY: Senator Hoffmann.

1 SENATOR HOFFMANN: No.
2 THE SECRETARY: Senator Holland.
3 SENATOR HOLLAND: Yes.
4 THE SECRETARY: Senator Johnson.
5 SENATOR JOHNSON: Aye.
6 THE SECRETARY: Senator Kruger.
7 SENATOR KRUGER: No.
8 THE SECRETARY: Senator Kuhl.
9 SENATOR KUHL: Aye.
10 THE SECRETARY: Senator Lachman.
11 SENATOR LACHMAN: No.
12 THE SECRETARY: Senator Lack.
13 SENATOR LACK: Yes.
14 THE SECRETARY: Senator Larkin.
15 (There was no response.)
16 Senator LaValle.
17 SENATOR LAVALLE: Aye.
18 THE SECRETARY: Senator Leibell.
19 SENATOR LEIBELL: Aye.
20 THE SECRETARY: Senator Leichter.
21 SENATOR LEICHTER: No.
22 THE SECRETARY: Senator Levy.
23 SENATOR LEVY: Aye.

1 THE SECRETARY: Senator Libous.
2 (There was no response.)
3 Senator Maltese.
4 (There was no response.)
5 Senator Marcellino.
6 SENATOR MARCELLINO: Yes.
7 THE SECRETARY: Senator Marchi.
8 SENATOR MARCHI: No.
9 THE SECRETARY: Senator
10 Markowitz.
11 SENATOR MARKOWITZ: No.
12 THE SECRETARY: Senator Maziarz.
13 SENATOR MAZIARZ: Aye.
14 THE SECRETARY: Senator Mendez.
15 SENATOR MENDEZ: No.
16 THE SECRETARY: Senator Nanula.
17 SENATOR NANULA: No.
18 THE SECRETARY: Senator Nozzolio.
19 SENATOR NOZZOLIO: Aye.
20 THE SECRETARY: Senator Onorato.
21 SENATOR ONORATO: No.
22 THE SECRETARY: Senator
23 Oppenheimer.

1 SENATOR OPPENHEIMER: No.
2 THE SECRETARY: Senator Padavan.
3 SENATOR PADAVAN: Yes.
4 THE SECRETARY: Senator Paterson.
5 SENATOR PATERSON: No.
6 THE SECRETARY: Senator Present.
7 SENATOR PRESENT: Aye.
8 THE SECRETARY: Senator Rath.
9 SENATOR RATH: Aye.
10 THE SECRETARY: Senator Saland.
11 SENATOR SALAND: Aye.
12 THE SECRETARY: Senator Santiago.
13 SENATOR SANTIAGO: No.
14 THE SECRETARY: Senator Seabrook.
15 SENATOR SEABROOK: No.
16 THE SECRETARY: Senator Sears.
17 SENATOR SEARS: Aye.
18 THE SECRETARY: Senator Seward.
19 SENATOR SEWARD: Yes.
20 THE SECRETARY: Senator Skelos.
21 SENATOR SKELOS: Yes.
22 THE SECRETARY: Senator Smith.
23 SENATOR SMITH: Nay.

1 THE SECRETARY: Senator Spano.

2 SENATOR SPANO: Aye.

3 THE SECRETARY: Senator
4 Stachowski.

5 SENATOR STACHOWSKI: Explain my
6 vote.

7 ACTING PRESIDENT KUHL: Senator
8 Stachowski to explain his vote.

9 SENATOR STACHOWSKI: I made some
10 points earlier. I would just like to read
11 briefly in explaining my vote a section from the
12 AFL-CIO opposition memo, and the points are that
13 the real issue on this hardship associated with
14 this controversial claim is "being forced into
15 public assistance is demeaning to injured
16 workers and their families. Demeaning workers
17 is a technique used to encourage such injured
18 workers not to pursue legitimate claims", and
19 it's for that reason that the law was developed
20 to shield Workers' Compensation claims from the
21 lien process. That's why the law is like it is,
22 to help injured workers to feel free to go after
23 the claims that they have justly -- should

1 justly receive because of the fact they were
2 injured. I just find it amazing that all of
3 these people can put a bill up like this -- and
4 I can understand -- the only part of this bill I
5 could see that possibly could be considered
6 double dipping would be if the medical expenses
7 -- you were paid twice for those, but that's
8 not the problem in this bill.

9 The problem is if you have to go
10 on social services, people don't want to do
11 that. People that work every day for a living
12 don't want to do that. An iron worker that
13 falls, other members of the building trades that
14 get hurt on the job and get hurt seriously, they
15 don't want to go on social services but they
16 have to, and to tell them then that they got
17 maybe \$10,000 because they lost their right arm,
18 that out of that \$10,000 that their family is
19 expected to live on from then on, they should
20 pay whatever social services they got, that's a
21 disgrace. I'm sorry. People may be happy with
22 their vote, but I think this is a real sad day
23 in the Senate.

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I vote no.

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

The Secretary will continue to
call the roll slowly.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(Negative indication.)

Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT KUHL: The
Secretary will call the absentees.

1 THE SECRETARY: Senator Babbush.
2 SENATOR BABBUSH: No.
3 THE SECRETARY: Senator DiCarlo.
4 SENATOR DiCARLO: Aye.
5 THE SECRETARY: Senator Larkin.
6 (There was no response.)
7 Senator Libous.
8 (There was no response.)
9 Senator Maltese.
10 SENATOR MALTESE: Aye.
11 ACTING PRESIDENT KUHL: Announce
12 the results.
13 THE SECRETARY: Ayes 34, nays 25.
14 ACTING PRESIDENT KUHL: The bill
15 is passed.
16 The Secretary will continue to
17 call the controversial calendar.
18 Senator Santiago, why do you
19 rise?
20 SENATOR SANTIAGO: Mr. President,
21 I would like the record to show that if I had
22 been in the chamber when Senate Bill 5395-A was
23 voted on, I would have voted in the negative.

1 That's Calendar 182. That was yesterday.

2 ACTING PRESIDENT KUHL: Senator
3 Santiago, the calendar will -- the record will
4 reflect that had you been in the chamber
5 yesterday, you would have voted in the negative
6 on Calendar Number 182, as the record will so
7 reflect.

8 The Secretary will continue to
9 read the calendar.

10 THE SECRETARY: Calendar Number
11 399, by Senator Nozzolio, Senate Print 4923, an
12 act to amend the Executive Law, in relation to
13 appeals to the state Board of Parole.

14 SENATOR PATERSON: Explanation,
15 please.

16 ACTING PRESIDENT KUHL: Senator
17 Nozzolio, an explanation of Calendar Number 399
18 has been asked for by the Acting Minority
19 Leader, Senator Paterson.

20 SENATOR NOZZOLIO: Thank you, Mr.
21 President.

22 This measure reinstates -- it
23 closes an inequity in the law that unfairly has

1 the burden of representation of indigent
2 parolees in the county of Cayuga, in terms of
3 bearing the entire cost by the county.

4 When the indigent counsel program
5 in Cayuga County was established, it was first
6 requested to represent parolees in connection
7 with their final revocation hearings and
8 appeals. It was assured to the county of Cayuga
9 that the state of New York would reimburse the
10 program 100 percent because it was a state
11 rather than local function. Although the
12 requirement for representation was included in
13 the Executive Law, reimbursement was not. This
14 simply reimburses the county for that duty.

15 ACTING PRESIDENT KUHL: Senator
16 Paterson.

17 SENATOR PATERSON: If Senator
18 Nozzolio would yield for a question.

19 SENATOR NOZZOLIO: Yes, Mr.
20 President.

21 ACTING PRESIDENT KUHL: The
22 Senator yields.

23 SENATOR PATERSON: Thank you so

1 much, Senator Nozzolio.

2 As much as it reimburses the
3 county of Cayuga, what it really does is it
4 spreads the cost around to the other counties
5 for which the individual is incarcerated, am I
6 not correct?

7 SENATOR NOZZOLIO: Yes.

8 SENATOR PATERSON: Does this put
9 a burden on all of the counties? In other
10 words, are we taking a problem and just
11 spreading it out among other counties that are
12 now going to have to share the cost?

13 SENATOR NOZZOLIO: Senator
14 Paterson, it makes those counties with parolees
15 as their -- within that as responsible for the
16 cost of their representation. Cayuga County is
17 now bearing the entire cost of the region in an
18 inordinate, unfair fashion. So rather than say
19 it spreads the burden, frankly, it takes the
20 unfairness away from the current policy and it
21 presents it in a more fair, equitable and
22 appropriate way.

23 ACTING PRESIDENT KUHL: Senator

1 Paterson.

2 SENATOR PATERSON: Thank you,
3 Senator.

4 Mr. President, these appeals are
5 now all held in Auburn -

6 SENATOR NOZZOLIO: Yes.

7 SENATOR PATERSON: -- in Cayuga
8 County?

9 SENATOR NOZZOLIO: Yes.

10 SENATOR PATERSON: So there
11 wouldn't be a desire to actually farm out where
12 the actual appeals are being held, would there?

13 SENATOR NOZZOLIO: It actually is
14 a cost savings to the state, David, if the -

15 SENATOR PATERSON: To have them
16 all in one county.

17 SENATOR NOZZOLIO: To have them
18 consolidate in the county, even though they may
19 be from around -- inmates all scattered across
20 the correctional facilities all across the
21 region.

22 Also, I should add parenthet
23 ically that when they're held in Cayuga County,

1 even though the site is -- of the hearing is in
2 the county of Cayuga, the parolee may be located
3 30, 40, 50 miles away, necessitating counsel to
4 drive out to visit the indigent and in order to
5 represent them, that entails additional costs
6 that is also borne by the county of Cayuga.

7 SENATOR PATERSON: So now -- if
8 the Senator would continue to yield. So now -

9 ACTING PRESIDENT KUHL: Do you
10 continue to yield, Senator Nozzolio?

11 SENATOR NOZZOLIO: Yes, Mr.
12 President.

13 ACTING PRESIDENT KUHL: The
14 Senator continues to yield.

15 SENATOR PATERSON: When the
16 lawyer travels -- I'm sorry. When the lawyer
17 travels to Cayuga County, the county from which
18 the lawyer traveled will have to pay that
19 expense.

20 SENATOR NOZZOLIO: I'm sorry,
21 David.

22 SENATOR PATERSON: In other
23 words, the county will have to pay for the

1 lawyer to travel to Cayuga to resolve this legal
2 proceeding.

3 SENATOR NOZZOLIO: Either that or
4 -- no, no, not at all, Senator Paterson. The
5 attorney still would be from the Cayuga County
6 indigent counsel program. They now would be
7 reimbursed by the state rather than have the
8 county bear the entire cost.

9 ACTING PRESIDENT KUHL: Senator
10 Paterson.

11 SENATOR PATERSON: Finally -
12 last question. Are there any lawyers that do
13 travel from the other counties to come to Cayuga
14 to handle these cases?

15 SENATOR NOZZOLIO: No, because
16 it's -- the county was given the responsibility
17 to represent the indigents, and as part of the
18 Cayuga County indigent counsel program, they
19 were told you must represent the indigent
20 parolee when, in fact, the indigent parolee was
21 from another county.

22 So, no, David, the Cayuga County
23 lawyers in the indigent counsel program are

1 doing all the representation, all the work, all
2 the travel and the county of Cayuga is bearing
3 all the expense.

4 ACTING PRESIDENT KUHL: Senator
5 Paterson.

6 SENATOR PATERSON: I understand.
7 Thank you very much, Senator.

8 SENATOR NOZZOLIO: Thank you.

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

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 61.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 Senator Larkin, why do you rise?

20 SENATOR LARKIN: Mr. President, I
21 was out of the chamber when Calendar Number 379,
22 by Senator Holland, was called and had I been in
23 the chamber, I would have voted yes.

1 ACTING PRESIDENT KUHL: Senator
2 Larkin, the record will reflect that had you
3 been in the chamber when the roll call was
4 called on Calendar Number 379, that you would
5 have voted in the affirmative.

6 The Secretary will continue to
7 call the controversial calendar.

8 THE SECRETARY: Calendar Number
9 433, by Senator DeFrancisco, Senate Print 1972,
10 an act to amend the Criminal Procedure Law, in
11 relation to access to sealed records.

12 SENATOR PATERSON: Explanation.

13 ACTING PRESIDENT KUHL: Senator
14 DeFrancisco, an explanation of Calendar Number
15 433 has been asked for by the Acting Minority
16 Leader, Senator Paterson.

17 SENATOR DeFRANCISCO: This bill
18 provides for the procedure whereby an individual
19 agency or department that's charged with the
20 regulation of certain professionals, including
21 lawyers, teachers and the like that are listed
22 in the bill, to apply to the court for access to
23 sealed records upon notice to the individual

1 about whom they request the information, and the
2 purpose of the bill is to provide disciplinary
3 agencies and regulatory agencies that are
4 concerned about maintaining the public trust -
5 maintaining the quality of professionals who
6 must have the public trust so that they have a
7 vehicle to do that.

8 SENATOR PATERSON: Mr. President,
9 with your permission and with -

10 ACTING PRESIDENT KUHL: Senator
11 Paterson.

12 SENATOR PATERSON: -- Senator
13 DeFrancisco's, I would like to clarify a couple
14 of the definitions in the legislation.

15 ACTING PRESIDENT KUHL: Senator
16 DeFrancisco, do you yield to a question?

17 SENATOR DeFRANCISCO: Yes, I do.

18 ACTING PRESIDENT KUHL: The
19 Senator yields.

20 SENATOR PATERSON: Thank you,
21 Senator.

22 My reading of this legislation
23 would -- since it amends the Criminal Procedure

1 Law, would lead me to conclude that this only
2 applies to criminal cases.

3 SENATOR DeFRANCISCO: That's
4 correct.

5 SENATOR PATERSON: Thank you.
6 If the Senator would continue to
7 yield.

8 SENATOR DeFRANCISCO: Yes.

9 ACTING PRESIDENT KUHL: The
10 Senator continues to yield.

11 SENATOR PATERSON: Senator, can
12 you describe for me an extraordinary
13 circumstance whereby we would want to take a
14 look at the sealed documents?

15 SENATOR DeFRANCISCO: Well, the
16 -- I guess the key point in this whole issue is
17 the fact that a criminal standard is to prove a
18 case beyond a reasonable doubt, and it's
19 conceivable that an attorney representing a
20 client who -- and the attorney may have been
21 charged with embezzlement from a client's trust
22 fund or escrow account, and for some reason the
23 jury doesn't believe that beyond a reasonable

1 doubt that the defendant is guilty. The fact
2 that there was an allegation and the fact that
3 there was some information that was generated in
4 the course of that investigation or in the
5 course of the lawsuit that may prove that the
6 individual maybe by not beyond a reasonable
7 doubt, but by a preponderance of the evidence,
8 the weight of the evidence, did do something
9 that was not in accordance with the fiduciary
10 duty of the attorney, under those circumstances,
11 I think the disciplinary agency should have the
12 opportunity to at least review that information.

13 Now, the procedural safeguard is
14 to provide -- to do it only by motion to a judge
15 and by due notice to the attorney in that case
16 who would have the opportunity to bring whatever
17 arguments that he or she wanted to, to the
18 presiding judge to deny the application to
19 review the records that had been sealed.

20 ACTING PRESIDENT KUHL: Senator
21 Paterson.

22 SENATOR PATERSON: Thank you,
23 Senator.

1 I want to give you, if you'll
2 continue to yield -

3 SENATOR DeFRANCISCO: Sure.

4 SENATOR PATERSON: -- my
5 interpretation of what sealed records are and
6 ask you to comment. You see, I think that's
7 exactly why the record -- the criminal records
8 are sealed, because perhaps there was a
9 preponderance of the evidence, perhaps the
10 attorney should have been sued more than tried
11 in a criminal court, but because of the fact
12 that the attorney is not convicted under our
13 criminal standard, in the criminal records, we
14 seal them.

15 What I'm saying is my fear about
16 the legislation -- while I understand what
17 you're trying to accomplish is that we're
18 actually taking the civil standard and applying
19 it to a criminal case so, in other words, we're
20 almost creating a presumption criminally that
21 may have actually existed civilly but we're now
22 opening the records up so people can find it
23 out, contravening, in my opinion, what -- the

1 whole idea of sealing records, the public policy
2 that formed it.

3 I just wanted you to give me your
4 idea of why the sealed records should be
5 opened.

6 SENATOR DeFRANCISCO: Well,
7 whenever you do any legislation, you're
8 balancing competing interests, and it seems to
9 me that the state has a genuine and legitimate
10 interest in making sure that professionals -
11 and that's all this deals with -- certain
12 professions that are regulated by the state,
13 that professionals are truly professionals and
14 they don't practice, whether it's law or some
15 other profession, in a manner that's unethical
16 and that's -- that could harm clients.

17 So in balancing that interest,
18 all that we're saying is that a court should
19 have the opportunity to review an application
20 by, say the state Education Department, to
21 determine -- concerning an attorney that they
22 may be investigating and to determine what the
23 circumstances were around that criminal

1 prosecution and -- but a court would have to
2 review that, and I think balancing the competing
3 interest that we have a group of people that we
4 have to protect against unscrupulous
5 professionals that deserve some protection and
6 an agency that's got to investigate that,
7 balancing those interests, I think in this
8 situation, it is appropriate to allow for a
9 review, provided the proper procedural
10 safeguards are provided.

11 ACTING PRESIDENT KUHL: Senator
12 Paterson.

13 SENATOR PATERSON: Thank you,
14 Senator DeFrancisco.

15 Mr. President, on the bill.

16 ACTING PRESIDENT KUHL: Senator
17 Paterson, on the bill.

18 SENATOR PATERSON: Senator
19 DeFrancisco was very scrupulous in his
20 definitions and took a lot of care in the
21 description of what I think is the key issue
22 which is the balancing test that must be used
23 here. He clearly recognizes what the anxieties

1 might be about abuse of this type of procedure,
2 and it is clear that he's trying to balance
3 them.

4 My fear is that the individuals
5 who will apply this legislation as it's passed
6 will not be as clear and will not exercise the
7 same kind of sensitivity to the freedoms that
8 are retained by sealing records, such as in a
9 case where an individual is adjudged on a
10 misdemeanor, for instance, to be unable to stand
11 trial, and so what we're really saying is the
12 person may have done it like a trespass, but it
13 may be that way because the person isn't fit to
14 go to trial, so we dismiss the charges. We seal
15 the record, and so years later now, the person
16 who is a professional has to have this part of
17 their life brought up when the court sealed the
18 records to try to shield it.

19 I think if Senator DeFrancisco
20 himself was the one making the decisions, we
21 would be all right, but I think that there are
22 times that there is a notion on the part of
23 agencies that we should know everything that was

1 in a court record when our -- when we have
2 determined in the past that we want to seal
3 these records.

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

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 61.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 Senator Skelos, that completes
15 the controversial calendar.

16 SENATOR SKELOS: Mr. President,
17 on behalf of Senator Bruno, I hand up the
18 following resolution amending the Senate rules
19 and ask that it be read and move for its
20 immediate adoption.

21 ACTING PRESIDENT KUHL: We'll
22 return to motions and resolutions. I'll ask the
23 Secretary to read.

1 THE SECRETARY: Senator Bruno,
2 Senate resolution amending Section 1 of Rule VII
3 of the Senate rules, in relation to the
4 membership of certain standing committees.

5 RESOLVED, that Section 1 of Rule
6 VII of the Senate rules is amended to read as
7 follows:

8 Section 1, there shall be the
9 following standing committees which shall serve
10 and shall continue throughout the year:

11 To consist of 28 Senators:

12 Finance;

13 To consist of 18 Senators:

14 Banks, Codes, Judiciary and Rules;

15 To consist of 16 Senators:

16 Education;

17 To consist of 15 Senators:

18 Insurance, Racing, Gaming and Wagering and

19 Transportation;

20 To consist of 14 Senators: Crime

21 Victims, Crime and Correction and Environmental

22 Conservation;

23 To consist of 13 Senators:

1 Commerce, Economic Development and Small
2 Business, Energy and Telecommunications, Health,
3 Higher Education, Housing and Community
4 Development, Labor and Tourism, Recreation and
5 Sports Development;

6 To consist of 12 Senators:

7 Aging, Alcoholism and Drug Abuse, Civil Service
8 and Pensions, Consumer Protection, Elections,
9 Investigations, Taxation and Government
10 Operations, Mental Health and Developmental
11 Disabilities and Veterans and Military Affairs;

12 To consist of ten Senators:

13 Agriculture, Children and Families and Cities;

14 To consist of nine Senators:

15 Corporations, Authorities and Commissions, Local
16 Government and Water Resources;

17 To consist of eight Senators:

18 Ethics and Social Services.

19 The Temporary President, the
20 Vice-president Pro Tempore, the Temporary
21 Majority Leader for Legislative Operations and
22 the Minority Leader and Deputy Minority Leader
23 shall be non-voting ex-officio members of all

1 standing committees of the Senate of which they
2 are not actual members.

3 ACTING PRESIDENT KUHL: The
4 question is on the resolution. All those in
5 favor signify by saying aye.

6 (Response of "Aye".)

7 Opposed, nay.

8 (There was no response.)

9 The resolution is adopted.

10 Senator Skelos.

11 SENATOR SKELOS: Mr. President,

12 on behalf of Senator Bruno, I hand up the

13 following committee changes for filing.

14 ACTING PRESIDENT KUHL: The
15 committee changes are received and will be filed
16 in the record.

17 Senator Skelos, we have a report
18 of standing committees here. Also we have a
19 motion from Senator Marcellino, if you would
20 like to take that at the current time.

21 SENATOR SKELOS: Would you please
22 recognize Senator Marcellino.

23 ACTING PRESIDENT KUHL: The Chair

1 recognizes Senator Marcellino.

2 SENATOR MARCELLINO: Mr.
3 President, on behalf of Senator Padavan, on page
4 number 14, I offer the following amendments to
5 Calendar Number 385, Senate Print Number 4507
6 and ask that said bill retain its place on the
7 Third Reading Calendar.

8 ACTING PRESIDENT KUHL: The
9 amendments to Calendar Number 385 are received
10 and adopted. The bill will retain its place on
11 the Third Reading Calendar.

12 Senator Skelos.

13 SENATOR SKELOS: We have a report
14 from standing committees. If we could turn to
15 reports of standing committees then.

16 ACTING PRESIDENT KUHL: We'll
17 return to reports of standing committees. I'll
18 ask the Secretary to read.

19 THE SECRETARY: Senator Maltese,
20 from the Committee on Elections, reports the
21 following bills: Senate Print 1861, by Senator
22 Farley, an act to amend the Election Law and the
23 State Finance Law, in relation to requiring

1 proposition authorizing the creation of a state
2 debt;

3 4470, by Senator Johnson, an act
4 to amend the Election Law, in relation to
5 distributing the names of inactive voters to the
6 polling places in the county of Suffolk. All
7 bills ordered directly for third reading.

8 ACTING PRESIDENT KUHL: The bills
9 are ordered directly to third reading.

10 The Chair recognizes Senator
11 Skelos.

12 SENATOR SKELOS: Would you please
13 recognize Senator Marchi.

14 ACTING PRESIDENT KUHL: The Chair
15 recognizes Senator Marchi.

16 SENATOR MARCHI: Mr. President,
17 our procedures, our protocol and rules do not
18 permit us to advance resolutions that call on
19 Congress or bodies that are outside of our own
20 jurisdiction and beyond our own control, direct
21 control, in an attempt to keep the focus
22 properly in place on those things that we have
23 jurisdiction. However, it does not provide

1 either -

2 ACTING PRESIDENT KUHL: Senator
3 Marchi.

4 SENATOR MARCHI: -- and it does
5 allow -

6 ACTING PRESIDENT KUHL: Senator
7 Marchi, excuse me. Are you asking permission to
8 make a statement, a unanimous statement, at this
9 time? Does anybody have an objection?

10 SENATOR MARCHI: Well, yes, the
11 formulation would be that Senator Bruno was
12 going to start, but I'll make that motion, yes.

13 ACTING PRESIDENT KUHL: All
14 right. Does anybody have an objection to
15 Senator Marchi making a statement at this time?

16 (There was no response.)

17 No objection being heard, Senator
18 -- the Chair recognizes Senator Marchi for the
19 position -

20 SENATOR MARCHI: Thank you again,
21 Mr. President.

22 ACTING PRESIDENT KUHL: -- for
23 making a statement.

1 SENATOR MARCHI: We don't -- we
2 still have feelings and we are not insensitive
3 to events that take place outside our immediate
4 province, and there is nothing that exists in
5 our rules that would suffuse the expression -
6 that expression -- and that's my purpose in
7 getting up.

8 Senator Bruno would have spoken
9 to this subject very briefly before yielding to
10 me, and I'm not going to be long because the -
11 I believe the subject matter is well-known to
12 everyone in this chamber and is troublesome to
13 every member of this chamber and those who are
14 our guests, and that has to do with the conduct
15 of free elections in Taiwan.

16 It is a matter of common feeling
17 that the franchise -- the ballot -- is the
18 keystone that sustains the whole structure of a
19 free society. Without it, it deprives a society
20 of those elements which allow for change, which
21 allow for consultation and which recognizes the
22 inherent power of the people to have a
23 significant and decisive voice on the conduct of

1 the affairs of that society.

2 The people of Taiwan have been
3 subjected to unconscionable pressures by the
4 massive presence of flotillas, aircraft and
5 other means of intimidation within visual sight
6 of the island of For... I was going to say
7 Formosa. I'm a little dated -- Taiwan, in the
8 Straits of Taiwan, and the President, to his
9 credit and to the American people and to the
10 Congress, giving full support, has dispatched a
11 carrier force to discourage any adventures in
12 that sector of the world that would frustrate
13 the conduct of free and open elections which are
14 scheduled to take place on March 23rd.

15 In saying the things that I've
16 said, that we are very, very displeased that -
17 without ritually repeating it, that any American
18 I've met, any individual that I've met is very
19 sympathetic to the effort of the People's
20 Republic -- the Republic of China to conduct
21 their elections free of intimidation, free of
22 coercion, and that this process be allowed to go
23 forward.

1 When it does take place, I
2 believe the factor that we are present and in
3 the area -- not in the straits but in the area
4 immediately adjacent to the island of Taiwan
5 will have a sobering effect on many people and
6 certainly gives great credit to the people of
7 Taiwan that they are now engaged in very honest
8 colloquy and discussion about the conduct of the
9 public affairs of the island of Taiwan in the
10 future, and it will also have a very sobering
11 effect on the mainland, and it's to be sincerely
12 hoped that this example that is being furnished
13 and is enjoying a kind of auspices and certainly
14 discouragement to any adventurous spirit that
15 might prompt the mainland.

16 There are elements in the
17 mainland who had expressed themselves so freely
18 at T'ien An Men Square, a great personal
19 sacrifice and some of them are still paying the
20 penalty, but this is a spirit that is growing in
21 dimensions within the mainland itself, and the
22 fact that they are making these maneuvers,
23 firing missiles and doing everything that's

1 offensive in a brutalitarian way to discourage
2 the exercise of the franchise shows that they
3 are very nervous about it because they know that
4 it has a very direct impact -- this example does
5 have a very direct impact on the people of the
6 People's Republic of China. So that I am just
7 satisfied to express this sentiment because I
8 believe it reflects the sentiment of everyone
9 within the range of my voice and certainly
10 outside.

11 We prayerfully hope that this
12 spirit and this ability to conduct this election
13 and all of the colloquy and discussions that
14 precede it take place in an orderly manner and
15 that they will make their judgment according to
16 their own likes as to what is in the best
17 interests of that island, and it is my prayerful
18 hope, and I think it is the prayerful hope of
19 Americans generally, because even in a fractious
20 year such as this where we have political
21 confrontation, we have a unanimity of view on
22 the value of that ballot and of the franchise
23 and of the people exercising it, that it have a

1 salutary effect and encourage those forces that
2 are within China itself that are aspiring to the
3 same experience and that will accelerate and
4 speed up the process by which freedom and a free
5 ballot will be entertained on the mainland and
6 that China perhaps will be united once the
7 circumstances or the pre-conditions are
8 established, the foundations laid for the
9 joinder of a society that can function freely
10 and openly in the spirit that is being
11 exemplified in the island of Taiwan.

12 Thank you, Mr. President.

13 ACTING PRESIDENT KUHL: The Chair
14 recognizes Senator Skelos.

15 SENATOR SKELOS: Is there any
16 housekeeping at the desk, Mr. President?

17 ACTING PRESIDENT KUHL: There is
18 none.

19 SENATOR SKELOS: There being no
20 further business, I move we adjourn until
21 Monday, March 25th, 1996, at 3:00 p.m. sharp,
22 intervening days to be legislative days.

23 ACTING PRESIDENT KUHL: Without

1 objection, the Senate will stand adjourned until
2 Monday, March 25th, at 3:00 p.m..

3 (Whereupon, at 12:16 p.m., the
4 Senate adjourned.)

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