ALBANY, NEW YORK

March 25, 1996

3:03 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join with me in the Pledge of Allegiance.

(The assemblage joined in the Pledge of Allegiance to the Flag.)

The invocation today will be given by Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing.

REVEREND PETER G. YOUNG: Let us pray. May we pray for all of the people of New York State that their wealth and their power might become a force for peace rather than conflict, a source of hope rather than discontent, an agent of friendship rather than enmity. May the actions of this Senate thus be dedicated.

THE PRESIDENT: The reading of the Journal, please.

THE SECRETARY: In Senate, Sunday, March 24th. The Senate met pursuant to adjournment, Senator Farley in the Chair. The Journal of Saturday, March 23rd, was read and

approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On page 22, I offer the following amendments to my bill, Calendar Number 482, Senate Print 2083, and I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR FARLEY: On behalf of Senator Skelos, on page 10, I offer the following amendments to Calendar Number 296,

Senate Print 6072, and I ask that that bill retain its place.

THE PRESIDENT: Amendments received.

SENATOR FARLEY: On behalf of Senator Skelos again, on page 27, Calendar Number 520, Senate Print 6112, I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR FARLEY: Madam President, on behalf of Senator Goodman, I wish to call up his bill, Print Number 1695-A, which was recalled from the Assembly which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: 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.

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

THE PRESIDENT: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 41.

SENATOR FARLEY: I now offer the following amendments.

THE PRESIDENT: Amendments received.

Senator Saland.

SENATOR SALAND: Madam President, I'd like to remove a star please: Sponsor's star from Calendar Number 447, Senate 5104-A.

THE PRESIDENT: The star is removed.

Senator Velella.

SENATOR VELELLA: Madam President, there will be an immediate meeting of the Civil Service Committee in Room 332.

THE PRESIDENT: There will be an

immediate meeting of the Civil Service Committee in Room 332.

SENATOR VELELLA: Madam President, could we proceed to the non-controversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 18, by Senator Cook, Senate Print 4875-A, an act to amend the Agriculture and Markets Law, in relation to agricultural practices.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 43, by Senator Levy, Senate Print Number 429-A, an act in relation to authorizing the Commissioner of Transportation and others to develop an implementing uniform statewide system.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 110, by Senator LaValle, Senate Print 5765-A, an act to amend the Highway Law, in relation to the Long Island Suburban Highway Improvement Program.

SENATOR PATERSON: Lay aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 249, by Senator Marcellino, Senate Print 4529 D, an act to amend the Environmental Conservation Law, in relation to the harvest and shipment of shellfish.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 8. This

act shall take effect on the first day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 281, by Senator Kuhl, Senate Print Number 2314, an act to amend the General Obligations Law, in relation to the liability for negligence of owner.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 345, by Senator Holland, Senate Print Number

206, an act to amend the Public Health Law, in relation to notification to local social services departments.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 370, by Senator Seward, Senate Print Number 4301, an act to amend the Public Service Law, in relation to information provided to telephone subscribers.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator Velella, Senate Print Number 498, an act to amend the Alcoholic Beverage Control Law, in relation to credit card sales.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 428, by Senator Seward, Senate Print Number 5949, an act to amend the Abandoned Property Law and Cooperative Corporations Law, in relation to disposition of certain unclaimed property.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 434, by Senator Volker, Senate Print Number 2445, an act to amend -

SENATOR PATERSON: Lay aside.

THE PRESIDENT: Lay aside.

THE SECRETARY: Calendar Number 435, by Senator Skelos, Senate Print Number 3450-A, Civil Practice Law and Rules, in relation to the method of commencing an action or special proceeding.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

436, by Senator Volker, Senate Print Number 3695-A, an act to amend the Civil Practice Law and Rules, in relation to the jurisdictional limit in relation to the arbitration of certain claims.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect July 1st, 1996.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 437, by Senator Volker, Senate Print Number 3768, an act to amend the Civil Practice Law and Rules, in relation to objections to service.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 488, by Senator Leibell, Senate Print Number 5201, an act to amend the Public Authorities Law, in relation to loan insurance.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 490, by Senator Leibell, Senate Print Number 6134, an act to amend the Public Authorities Law, in relation to the power of the state of New York Mortgage Agency.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 513, by Senator Padavan, Senate Print 6433, an act to amend Chapter 399 of the Laws of 1995, amending the Education Law, relating to making community school board members ineligible.

SENATOR GOLD: Lay it aside.

THE PRESIDENT: Lay it aside, please.

That completes the non-controversial calendar.

SENATOR VELELLA: Madam President, can we proceed to the controversial calendar, please.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: On page 4, Calendar Number 18, by Senator Cook, Senate Print 4875-A, an act to amend the Agriculture and Markets Law, in relation to agricultural practices.

SENATOR PATERSON: Explanation.

SENATOR COOK: Madam President, thank you. I believe there's a -- there's certain types of legal actions in which it says the truth is an absolute defense, and I raise the truth as an absolute defense against a certain memorandum that we have in opposition to this bill, and I would simply ask members to read the bill as opposed to the memorandum, in which they will note that the Section 1, paragraph (b) of the Agriculture and Markets Law says:

"1 (a) The Commissioner shall, in consultation with the State Advisory Council on Agriculture, issue opinions upon request from any person as to whether a particular agricultural practice -- particular agricultural

practices are sound." In other words, the Commissioner issues an opinion.

The (b) part of the bill, the portion being amended, says then: "Examples of activities which entail practices the Commissioner may consider include but are not limited to operation of farm equipment, proper use of agricultural chemicals and other types of protection methods, construction and use of farm structures," to which we are adding, "including aerial application performed in accordance with accepted standards."

ACTING PRESIDENT KUHL: Senator Paterson.

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

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

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, most

of the standards of farming or particular practices that are used are such that when we limit the ability to bring lawsuits, what we are really saying is that they may be nuisances but they don't rise to the threshold that a lawsuit would bring forth any damages that would be equal to the sufferance that many farmers might endure, and in cases such as the odor of manure or the audible levels of tractors or perhaps the cannons that go off to frighten deer away from farming that may be true, but we're talking about aerial spraying in this particular case which connotes a lot of different chemicals and techniques that may be used that can be extremely harmful, and there are parts all over the state, particularly on Long Island, where serious questions are being raised about the use of these substances.

So at a later date, if we were to find that some of the aerial sprays were equal to what we found in the early '50s about DDT, I'm suggesting to you that this could be extremely dangerous.

The Environmental Protection Lobby thinks it's dangerous, gives it two smoke stacks, and many Senators voted against this bill last year.

My question is, don't you think we should be drawing a distinction between the regular farming practices that we would want to limit, and aerial spraying which has been found in many quarters to be quite dangerous?

SENATOR COOK: Mr. President, I'd have to observe that I think the Environmental Protection Agency sometimes thinks it's a hazard if you eat onions and exhale. But anyway relative to the points that you make, Senator, there are really two points, the first being that this really doesn't relate to the use of particular pesticides because you can presumably apply those same pesticides on the ground under correct conditions.

That's not addressed in the bill. Where that is addressed is in the Environmental Conservation Law, and aerial spraying is probably the most regulated and

controlled activity that takes place on a farm and there are certain conditions under which it is practically necessary. If you have, for example, the black loam areas where the soil is very soft, you can't get heavy vehicles on that ground if it is -- if it is wet. Then you really don't have any alternative except to be able to spray them aerially; or if you have a crop of corn, let's say, or some other crop that is -- that is tall, that has grown, that is half grown or mostly grown, and you need to make some applications, you simply can't put ground-based machinery through there, and the only possible way in some cases is to use aerial applications.

This bill doesn't say, O.K., under any circumstance you just get an airplane and dump anything you will on the ground. It says first the Commissioner shall consider whether it is an appropriate agricultural activity and (b) it does not address at all the very, very stringent regulations that have existed and continue to exist in the Environmental Conservation Law which require

licensure of the people who would do the application, which require on-site inspections in some cases which are very, very stringent.

So we really aren't adding any more hazard if you even consider it a hazard than would currently exist.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. I'm better informed after listening to Senator Cook's answer. However, I am still concerned, as are many of us, about the confusion that may arise from the passage of this legislation. This is something that the Department of Environmental Conservation has a certain amount of jurisdiction over, but what we are concerned about in responding is what the remedy is to the individual who is afflicted, to someone who would like to bring a lawsuit and if the Commissioner of Agriculture and Markets is in the situation where this judgment may conflict with what DEC is doing, we feel that it lends a great deal of confusion and certainly

conflict to the entire issue when the issue may be very serious. Perhaps in some of the other things, it might not be that way, but with the tremendous fear to such an extent as Senator Cook points out, that DEC does have some very strict regulations and at times there is a strict necessity to use aerial spraying, the fact is that in the end we don't want to delay or in any way minimize what remedies an individual who may feel that they have suffered harm may endure at a point that they want to bring an action, and we see a tremendous difference between aerial spraying and some of the other practices in which perhaps in the past we have been a little bit excessive and have at times raised undue concern.

Aerial spraying is something that is still not totally understood and in some respects we have past evidence that misuse of certain chemicals has caused great damage to our land and certainly to our people and certainly to individuals who have suffered as a result of it.

We are recommending a no vote on this, and we usually don't do this, Mr. President, but we're going to ask for a slow roll call so that all of those individuals who are registering opposition may stand and do so at this time.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill? Seeing and hearing none, the Secretary will read the last section.

SENATOR VELELLA: Mr. President.

ACTING PRESIDENT KUHL: Senator Velella.

SENATOR VELELLA: Mr. President, while you're preparing for that roll call, I'd ask that all members on the Civil Service Committee please go to Room 332. The meeting is taking place right now and we need the members in that room immediately.

ACTING PRESIDENT KUHL: For the benefit of the members on the Civil Service Committee, there is a meeting of that committee taking place at this moment in the Majority

Conference Room, Room 332. Would they please go there to participate.

Secretary will call or 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.)

SENATOR PATERSON: Slow roll call.

SENATOR SMITH: Slow roll call.

ACTING PRESIDENT KUHL: Are there five members in the chamber requesting a slow roll call? If they are, would they please stand. I see one, two, three, four, five. Slow roll call has been requested. I'll ask the Secretary to call the roll slowly.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

Senator Connor.

(Negative indication.)

Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold.

SENATOR GOLD: No.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Nay.

THE SECRETARY: Senator Hoblock.

(Affirmative indication.)

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

(There was no response.)

Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: No.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: No.
THE SECRETARY: Senator Leichter.
(There was no response.)
Senator Levy.
SENATOR LEVY: No.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: No.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Aye.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: No.
THE SECRETARY: Senator Nozzolio.
(There was no response.)
Senator Onorato.
SENATOR ONORATO: No.
THE SECRETARY: Senator Oppenheimer.
(There was no response.)
Senator Padavan.
SENATOR PADAVAN: Yes.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: No.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.
(There was no response.)
Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
(There was no response.)
Senator Seabrook.
SENATOR SEABROOK: No.
THE SECRETARY: Senator Sears.
SENATOR SEARS: (Affirmative indication.)
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Mr. President, may I have my name called.

ACTING PRESIDENT KUHL: Senator Stafford to explain his vote.

SENATOR STAFFORD: Mr. President, I hope one of these days, in supporting Senator Cook, that we'll learn that the produce that we have doesn't come from the back room of the supermarket. It doesn't. These people are regulated that use this, and I mean they're regulated, and unless we get sensible and allow our agricultural industry to practice agriculture as it should be today, the first thing we know we're not going to have an agricultural industry and on top of that, we're not going to have anything to eat.

I vote aye.

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

Secretary continue to call the roll slowly.

THE SECRETARY: Senator Stavisky.

(There was no response.)

Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Nope.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

SENATOR COOK: Mr. President.

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

SENATOR COOK: Would you please withdraw the roll call and lay the bill aside.

ACTING PRESIDENT KUHL: Bill will be laid aside.

SENATOR COOK: Thank you.

ACTING PRESIDENT KUHL: Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 110, by Senator LaValle, Senate Print Number 5765-A, an act to amend the Highway Law, in relation to the Long Island Suburban Highway Improvement Program.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator LaValle, an explanation of Calendar Number 110 has been requested by the acting Minority Leader, Senator Paterson.

SENATOR LAVALLE: Mr. President, this bill would allow the Department of Transportation to use what we call "SHIP's" monies or other monies that they have for improvements at the ferry terminal on Shelter Island, and the bill is very, very straight forward in that regard.

The reason for this -- and this goes back to the days when Hugh Carey was Governor and lived on Shelter Island, and

periodically I think everyone knows that Shelter Island is completely surrounded by water, has no bridges, and the only way you can get to and from the island is from North Haven, which is just up a little bit from Sag Harbor, or on the North Shore from Greenport.

The ferries, of course, with the increased cost of petroleum and other costs, the fee for transit across to the island has become more and more expensive, and we in government have tried to find ways of stabilizing the fares to Shelter Island.

In the days when Commissioner Bill Hennessy was the Transportation Commissioner and Governor Carey was governor, the thought came up that we could stabilize the fare by utilizing state monies to improve the ferry terminal staging area. That was a cost that presently the ferries incur on their own and obviously by being relieved of those costs they can use the monies for fare stabilization.

We thought in -- in one of the budgets that we had this all put together, that

we could use SHIP monies, but it was felt until we spelled this out statutorily that that would be the best and clearest route for everyone, and that's what this bill does.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator LaValle would yield for just a couple questions.

SENATOR LAVALLE: Yes, sir.

ACTING PRESIDENT KUHL: Senator LaValle yields.

SENATOR PATERSON: Senator, I'm just curious to ask whether or not these - whether or not Shelter Island is already on the list for SHIP's funding. In other words, what's confusing me -

SENATOR LAVALLE: The answer is -- the answer is yes, the -- I believe the memorandum of understanding should have Shelter Island as designated as having received or being eligible to receive monies. That would -- they were put on the list very specifically for the

purpose that I just enunciated, Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson.

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

SENATOR LAVALLE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: I certainly believe that you have made the case for the fact that the area needs assistance. What I'm just asking is for clarification of why we need a bill when it would appear that there has already been assistance provided or, if you feel that you've already answered that, I guess what I'm -

SENATOR LAVALLE: Yes, Senator, I'd be happy to answer that.

As you well know, there are always people in the bureaucracy who feel that you need some sort of clarification that this - that we are being somewhat creative and that

this has not been spelled out any place else before and people would feel more comfortable.

In the legislation, Senator, what you should know is that Route 114 that starts at Sag Harbor on one side of the island, on the south side, and in Greenport on the north side, goes across the island and when you get off the ferry -- one of the ferries, either on the south side or the north side, there's a big sign stares you in the face, says Route 114; and so the thought was many years ago that the ferry terminal really is part of the State Route 114, but in essence, there is the property when you get off the ferry in the most immediate way in what we call the ferry terminal or staging area, actually belongs to the ferry company and not the state. So we want to make sure that we are not proscribed in any other section of law and that we are very specifically saying that 114 is a continuum, and we can use the monies for this -- for this purpose.

So we are spelling it out very specifically so that people in the bureaucracy

feel more comfortable and that it has the seal of approval of the Legislature and if it reaches the Governor's desk, his approval.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator. That's really quite clear, and so I think we can end this. Is it safe to assume that there will be no loss of any funding from any other project or any other area?

SENATOR LAVALLE: Yes, Senator, that's correct.

SENATOR PATERSON: All right. Thank you very much, Senator LaValle, and, Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: Since I'm on a roll now, I'm not calling for a slow roll call. I'm going to let this one go.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator Velella, Senate Print 498, an act to amend the Alcoholic Beverage Control Law, in relation to credit card sales.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR PATERSON: May we have an explanation of that bill, Mr. President?

ACTING PRESIDENT KUHL: Senator

Velella, an explanation of Calendar Number 383 has been asked for by the acting Minority Leader, Senator Paterson.

SENATOR VELELLA: This bill, Senator, would allow package stores to set minimum standards or minimal amounts for which liquor could be charged in a liquor store on a credit card. When we allowed liquor stores to charge wines and spirits and taking credit cards and make sales on credit cards, there was an unwritten understanding that we would not allow them to have sales made for very small amounts, one pint or two pints of a wine or something of that nature.

The credit card companies now have instituted a system whereby if you refuse to accept the credit card for a minimum sale they are penalizing the owners of the stores for the first violation 2,000, for the second violation 5,000 and for the third violation 25,000. That money is automatically electronically transferred from their account and imposed by the credit card companies.

Other states have had this problem. North Carolina has led the way in passing legislation similar to this and we are proposing that there be a minimum charge of $15.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Velella from the corn growing region of the Bronx would yield for a question.

ACTING PRESIDENT KUHL: Senator Velella, do you yield?

SENATOR VELELLA: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, why in this legislation are we giving an advantage to these retailers as opposed to any others whom we have in the past restricted from setting a credit card limit where there must be a minimum purchase?

SENATOR VELELLA: Well, one of

the reasons that I think we should set this minimum is that we don't want to encourage people to come in and buy a small amount of wine on a daily basis or small amounts of spirits on a daily basis putting them on credit cards and getting in over their heads to feed their habit continuously out of a credit card.

Secondly, there's been a lot of experience in the industry where stolen credit cards have been brought in and small amounts of liquor have been bought. That doesn't trigger the system of checking with the credit card company for the status of the card as it would a larger sale, so that we're trying to prevent people from coming in and making these small purchases, whether it be because of the fact that that would feed a habit that would be not in the best interests of the community.

When we did pass the original bill allowing credit cards part of the debate included the fact that the shop owners voluntarily agreed to set minimum standards on what would be charged. It's only the action of

the major credit card companies now in imposing a fine on store owners that has forced us to follow suit with North Carolina and pass this minimum legislation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If the Senator would continue to yield.

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Through you, Mr. President, it's known that in the research and development of the treatment of alcoholism that there is a process that has a lot of different names. Some people call it tipping, where an individual goes into a store and is continually purchasing small amounts of alcohol because in some way they are psyching themselves into believing that it's not that much, and I guess if there was a way to stop it, this would certainly be an attempt at it, but I don't think

it works because rather than -- once the individual is using a credit card, once the minimum is raised from say $5 to where they won't be able to spend $5, now they'll have to spend $15, it would be my assumption that what they will do is they will charge $15. No one is going to say that because -- because they already have a credit card, whatever the amount that we have set it at, they'd be likely to charge it and also given the fact that the credit card check for stolen credit cards or phony credit cards starts at a minimum of $50, I just don't understand that there would be a real result in this bill having a positive effect, even though it's a good attempt.

My question is, why would we want to set up a system that would probably encourage individuals to spend more money on alcohol when our concern is that they are over-consuming?

SENATOR VELELLA: Well, Senator, if I can respond, I would just like to point out that if you and I could agree on the way to handle the problem of alcoholism or drug

addiction or cigarette addiction, we would probably be very wealthy men. Reasonable minds will differ on the approach.

I've been told by various groups of Alcoholics Anonymous, various people who are concerned about this, that in fact the small purchasing on credit cards or the small purchase availability of making these small purchases will continue to have people be addicted to or be dependent on alcohol.

Now, whether that's right or wrong, I'm not qualified to say, but I rest on some of the experts that advised me. Perhaps you may be right, but certainly the larger purchases on the credit cards will cause for a store owner to double check possibly on his own. It's not an automatic checking for a stolen credit card, but at $50, as you indicate, is when the automatic checking of the stolen credit card would go into place, but a $15 minimum might prompt the person to question whether or not that is a legitimate credit card.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I think Senator Velella aptly points out that there is a concern by professionals who treat this rampant disease and very serious disease that these small purchases of alcohol are contributing really to what is a major problem in our society today.

What I'm suggesting is that this piece of legislation, its result is just to increase the price, and I just cannot imagine a person suffering with this addiction leaving the liquor store and not making the higher purchase price because they think the price is too high. They're already over-consuming. They're already addicted. I think it is the natural order of their process that since all they have to do is

just write down a higher number on their own credit card, that it will actually be the effect in a way to create the situation where larger amounts of money are spent on alcohol.

I think the real negative to this piece of legislation, as the retailers may see it, is just the fact that a number of these small purchases cause a lot of administrative paperwork and a lot of problems with credit cards, and I understand that, but this would contradict what we have set as a policy for all retailers and to assert the issue of alcoholism as if it's going to be of assistance just based on the fact that what exists right now is in many respects a catalyst for the continuation of the disease that many suffer from, is not really the point.

The point is that by passing this piece of legislation, I don't believe that one person that goes into a liquor store will be dissuaded from making the purchase because the price is higher when all they have to do is write it down on a credit card, nor do I think

that anybody who is coming into a store with an illegal credit card will be the slightest bit intimidated, particularly if we're suggesting that they're being driven there because of an addiction and an abuse, to not make the purchase.

So I just think that the real effect of this bill would be to make it easier for the retailers to give them an advantage over other retailers. I don't think that's fair, and I certainly don't think the use of alcoholism as a subject is going to be, you know, particularly effective in thwarting the thought that we would not want to pass this bill.

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 56, nays one, Senator Paterson recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar but before that, Senator Libous, did you wish to make a request at this point?

SENATOR LIBOUS: Thank you, Mr. President.

Last Wednesday, March 20th, I was out of the chamber when Senate 2068 had a roll call. Had I been in the chamber -- I was out on legislative business -- I would have asked to be recorded in the affirmative.

ACTING PRESIDENT KUHL: Senator Libous, the record will reflect that had you been in the chamber last Wednesday when a roll call on Senate Bill 2046 was called that you would have voted in the affirmative.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number

434, by Senator Volker, Senate Print 2445, an act to amend the Civil Practice Law and Rules, in relation to limitations on certain actions against professional engineers.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of Calendar Number 434, Senate Print 2445, has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR SKELOS: Mr. President.

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

SENATOR SKELOS: If we could, with the consent of Senator Volker, lay his bill aside temporarily and return to motions and resolutions. I believe there is a resolution by Senator Bruno, Senator DeFrancisco and Senator Maltese. If we could have Senator DeFrancisco -- have the title read.

ACTING PRESIDENT KUHL: The Calendar Number 434 will be laid aside temporarily. We'll return to motions and resolutions, and I'll ask the Secretary to read

the title of the privileged resolution by Senator DeFrancisco which is at the desk.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution, honoring Andrew Loia of L. Pearl Palmer Elementary School upon the occasion of his selection as New York State second place winner in the U. S. Savings Bonds 1996 National Student Poster Contest.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Do you mind if we have the titles read on the three resolu tions. I believe we have some young people here who would like to hear the titles read and some comments made on them.

ACTING PRESIDENT KUHL: Secretary will continue to read the titles. Read the titles of the two remaining resolutions at the desk.

THE SECRETARY: Legislative resolution honoring Seth Deutchman of Lake Avenue School upon the occasion of his designation as New York State first place winner

in the U.S. Savings Bond 1996 National Poster Contest.

Also, by Senator Maltese, Legislative Resolution honoring Lawrence Lee of I.S. 73 upon the occasion of his selection as New York State's third place winner in the U. S. Savings Bonds 1996 National Student Poster Contest.

ACTING PRESIDENT KUHL: The Chair recognizes Senator DeFrancisco on the resolution.

SENATOR DeFRANCISCO: Mr. President, we were trying to time this so all three Senators would be in here at the same time because I know Senator Bruno and Senator Maltese also wanted to say something, but both of them are on business, and it's just impossible to get us here together, so on behalf of both Senator Maltese and our Majority Leader, Senator Bruno, I would like to congratulate the three participants in the U. S. Savings Bond Poster Contest, and basically this was put on by the United States Department of Treasury and each of

these individuals did posters and won savings bonds of quite a substantial amount, I might add, and are being honored here by the state Senate for their creativity and their effort in this regard, and on behalf of each of the Senators, I would like to congratulate all of them, especially Andrew Loia, who is from the county of Onondaga, the home of the Syracuse Orange men, who I had to put that in somehow today on the floor, who will be in New Jersey soon along with some of us here, and I want to congratulate each of them for being fine young citizens and for being very successful in what they do, and wish them the best in all of their future endeavors, and the three young gentlemen are standing right in front of us in the gallery.

(Applause)

ACTING PRESIDENT KUHL: Senator DeFrancisco, the Chair didn't understand you. Were you inviting these three young gentlemen to New Jersey with you?

SENATOR DeFRANCISCO: I can get

them to New Jersey. Whether I can get tickets for everybody is another story.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the resolutions? Hearing none, the question is on the resolutions. We'll do all three of them at the same time.

All in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolutions are adopted.

Seth, Andrew and Lawrence, we appreciate your being with us. Keep up your ingenuity. Keep the good work going on and we'll have bigger rewards for you than just United States Savings Bonds, and thank you for joining us in the state Senate here today.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to the controversial calendar.

ACTING PRESIDENT KUHL: We'll

return to the controversial calendar, beginning with Calendar Number 434, by Senator Volker.

THE SECRETARY: Calendar Number 434, by Senator Volker, Senate Print 2445, in relation to limitations on certain actions against professional engineers.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: This is a bill that establishes a 7-year statute of limitations on professional -- on personal injury or wrong ful death actions brought against professional engineers, architects, surveyors or construction contractors.

The accrual date for this limitation period would be the date of comple tion of the project. The term "completion" or rather the bill also includes a one-year extension of time should the injury or death occur during the seventh year after completion of the project.

As we discussed last year on the

floor, by the way, another thing is that if the project is -- continues to be under the direct control and possession of the person who developed the project, then this limitation would not apply. In other words, that's a situation where you have somebody who actually may have designed it, the architect or whatever, a contractor, if that person continues to be in direct control and supervision over that proper ty, in that case this statute of limitations wouldn't apply.

There is also a provision in this bill which would extend a provision which is now found in medical malpractice, I believe it is, and what's the other -- psychiatry and several other medical people, that would provide that the requirement of a certificate of merit -- and Senator Dollinger and I had a discussion about this last year -- and there are provisions in the bill that would allow a person to move ahead if there was any attempt by the defendant to prevent someone from getting a certificate of merit which, for instance, would require that

someone get an engineer or an architect or someone merely to verify that there was some sort of cause of action.

This bill, by the way, passed the Senate last year by a vote of 51 to 9, and we - Senator Paterson, would you like to ask any questions?

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Senator, in the other states that have created the statute of repose, I notice that the people are told that 92 percent of the claims actually involve incidents where the deaths occurred in the first nine years. So I was wondering what is the average time of a statute of repose that has been established in the other states?

SENATOR VOLKER: I think that, Senator, you're right, that there are 32 states that have some sort of statute of limitations,

and it seems to me that something close to 85 percent of the deaths and injuries occur prior to the 7-year -- prior to the time of the extension of seven years and, in fact, one of the reasons for the extra year was that a number of extra claims appeared to have occurred in that seventh year, and that's why there is the -- in effect, the extender which I believe moves it up to somewhere in the 90 percent category.

So as I -- as I understand it, this bill should cover on an average for those states that have a statute of limitations, that this bill would cover about 92 percent or better of the cases that have been reported; that is, death or injury cases that are claimed for professional engineers, architects, and so forth. There are states, as you say, that have longer statutes of limitations. I think there are a couple that have even shorter statutes but it depends, of course, as you know, on the language of how you are able to bring the action.

One of the things that I did mention here that is not, I do not believe, in a number of statutes across the country is that if you are in direct control of the property; that is, if you're the owner or whatever of the property, this would not apply because you are not in direct -- even though you designed it or you're the architect or whatever, the old rules would still apply because you would not be able to assert this as an affirmative defense.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: This applies specifically to the design of the architect.

SENATOR VOLKER: Right.

SENATOR PATERSON: Not the owner of the property.

SENATOR VOLKER: Exactly. It's conceivable you could be the architect or the engineer of your own property and you could be in control of it long after seven years or 20 years or 30 years. As you know, there are some famous people that that's occurred not on a

regular basis, but there are a number of people, so those people would not be covered by this statute.

SENATOR PATERSON: Thank you, Senator.

Mr. President, if the Senator would continue to yield.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Senator, the construction of the statute of repose in this particular case as it's applied, is that the statute begins to run at the signing of the certificate of occupancy, so at the point that the building is actually ready there would be a 7-year time period for these claims and then we kind of throw in the extra year because, as you pointed out, there seem to be a number of claims coming up after the first seven years.

In many consumer injuries, the

statute of limitations actually starts to run at the point of the injury which could be years later. It's really saying that the person did not know of the defect and, therefore, the statute runs at the point of the time that the person should know of the defect which is, of course, when the injury actually takes place.

In your opinion, what disting uishes these types of situations involving the architects and building construction from the regular consumer procedure that's followed in so many other cases with appliances and other items with which consumers come in contact?

SENATOR VOLKER: Well, Senator, as I think you're aware that there are very, very infrequently -- there is a design defect or something that -- something wrong with a building or a bridge or whatever it is. The defects generally show up virtually immediately or are under the -- are under the aegis of someone else who assumes that project.

I think that the difference here is, and I think the problem that we are facing

here is that most of the -- virtually all the time, in fact, there are almost no claims that have been maintained against architects, engineers, and so forth, other than the fact that they are brought into these suits because some sort of defect has occurred which probably -- which virtually in every case is not under their direct control, and the -- as you know, the problem with these cases is that the cost of insurance has escalated dramatically, the cost of these projects, and has created a huge problem for the people who do the designing, the engineering work, and so forth, and so what we're -- what we're doing here is that we're saying that there is a remedy for someone that should not be ad infinitum against those people who merely do the design work or the surveying or whatever and are put in a situation where they can never avoid the possibility of some lawsuit down the line when they may have absolutely no contact or no -- no liability at all but are drawn in simply because of the fact that there's nothing that says that there's any

kind of termination. They're in a position where they have no connection with the property. Someone else owns the property, someone else has been -- has been dealing with that property for a long time, and that any design defect or anything that was wrong with the property as a result of what they have done should long since have been determined to -- to have been -- to have been involved.

So I think the difference is here that you're dealing with professional people who have been in a position to do a job and have done the job and a long period of time has occurred in which no kind of liability has been determined and now people who have been controlling the building, although they're being sued also, the people who are very remote from what is occurring in these lawsuits are drawn in also, and the cost to the public for insurance is huge.

I think we just don't -- I think we have trouble realizing how much this really does cost the public, and I'm not talking about

the individuals involved. I'm talking about the public-at-large, because a good deal of the liability problems that we're seeing occurs because of situations like this where 99 and 99/100ths percent of the time there's absolutely no liability or even hint of liability but they're merely drawn into the lawsuits because they're not excluded from being in the lawsuits.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Mr. President, I've advised colleagues in this chamber from time to time against legislating for the exception, and so I don't want to turn the table now and suggest that we ought to legislate because of the exception. But there are 8 percent of the claims that the industry admits are coming after this, say, 7- to 9-year period for which we are legislating and in those 8 percent of the cases, I'm concerned about the courtroom door being

closed to what may be some of the valid claims.

If I might, I want to present an example that I think came up in this discussion over the past couple years, had to do with a building that had a firewall running up through and to the top of the building except that the firewall did not move to the top floor. There was a wall there, but nobody could see that it wouldn't protect against fire. When a fire broke out on the top floors of the building, it was prevented by the firewalls on the floors immediately below, but it spread over the top on this top floor that offered no protection. Because of that, it was considered that the fire spread throughout the building.

This would have been, I would suppose, a defect in the architecture of the actual building, but because it took place after the ten years would be barred by the statute of repose.

My question is, aren't these the type of cases that we will find replicated even though they are few, in comparison to the claims

in which we, as a result of passing this legislation, have denied the victim the opportunity to be a plaintiff in a civil suit against all of those who were involved in the negligence?

SENATOR VOLKER: Senator, the - first of all, the eight percent that we're talking about, by no means necessarily means the fact that those claims were in any way valid. What we're talking about here, as you know, is the ability after that time to -- to make the claim. That's all.

The example you give, I suppose, could be considered to be an example of what you just said. Of course, you have to take into consideration that the -- the interesting question is shouldn't that have been detected long before that, and otherwise interesting is to whether that really was the designed defect or not, but whether the owner of the building may have added something on or something of that necessity, but you make a point, I think, that the lawsuit, by the way, in that case, as you

know, would be against the building owner if that were such, and an action could still be maintained against the owner and/or the lessee of the building because you still would be in a position where you should have known that that kind of a situation would occur, and so you would have someone to bring an action against because there's always the possibility, as I say, that in that kind of a case that the owner was as much responsible for that occurring as the person who did the building anyways.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President, and thank Senator Volker for his kind responses.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I was citing the statistics of V.O. Schinnerer who in 1987 conducted a study. They are the largest insurers of the design professionals. An

updated survey in 1994 shows that 95 percent of those who received claims -- because the way I phrased it before -- in other words, received damages -- 95 percent of those who received damages received their damages within nine years of the construction of the building.

What I think I certainly implied was that they would adjust the claims.

ACTING PRESIDENT KUHL: Excuse me, Senator Paterson.

Senator Padavan, why do you rise?

SENATOR PADAVAN: Would Senator Paterson yield to a question?

ACTING PRESIDENT KUHL: Senator Paterson, do you yield to Senator Padavan?

SENATOR PADAVAN: Senator, the study you referred to, is that a national study?

SENATOR PATERSON: Yes, yes.

SENATOR PADAVAN: That would include all the states, many of which do not have a building code?

SENATOR PATERSON: Yes, it would.

SENATOR PADAVAN: Okay. Has any study been done in New York State where we have a state building code and in the city of New York, an even more strict code involving fire safety as an example?

SENATOR PATERSON: I think the architects could probably answer the question better than I could, Senator, but I don't know of such a study.

SENATOR PADAVAN: All right. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, the floor is still yours.

SENATOR PATERSON: I think what I'm trying to say is that perhaps the figure might be lower, if Senator Padavan is correct, that the proper code enforcement might bring down the number of claims, but what we are just trying to put on the record is that there are individuals who have recovered after the period of time that the statute of repose would expire, and what we're just saying is that the usual

procedure of tolling the statute of limitations until such time as the injury occurs and then using the statute period to determine whether or not the injured party wants to bring a claim is probably the one that we would best prefer because of the fact that there are individuals who have received damages and they weren't just identifiable exceptions as in a scintilla, but a large representative group of individuals who were injured due to some misfeasance of conduct in the construction of the building, either through the architecture or some other defect.

So we're just pointing out that it has happened that there is a number that may not be significant, but it still is a representative amount of people who the courtroom door would be closed if we passed this law.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Mr. President, just for the record and since we are talking about for the record here, I'm just looking at

-- New York State is the only state in the Union which has never had a statute of repose for third-party suits. 47 states currently have statutes of repose or limitation of varying lengths with completion of the projects serving as the actual date for the cause of action. Two other states, by the way, have had their statutes declared unconstitutional, Ohio and Vermont, and are appealing or addressing it legislatively. I just wanted to point that out.

The other item I might mention, and we were talking about numbers and the seven-year period plus one year was selected, by the way, because of insurance claims against design professionals, which is preferred - prepared by the American Institute of Architects. It was first done in 1987 and updated in 1995, and they found that by seven years from substantial completion, 91.67 percent of claims resulting in indemnity payments had been made and by ten years from substantial completion, there were almost no claims. In fact, apparently they had found none that had

actually surfaced prior to 1995.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. I would like to bring -- on the bill. I would like to bring to the attention of this body a memo that was drafted by the Association of the Bar of the city of New York which made certain recommendations which they felt would improve this proposed legislation.

They are not opposed per se to a statute of repose, and they looked and studied the existing law in other states, and they came to the conclusion, while there is no one right limitation period because the other states have adopted anywhere from five to fifteen years as a statute of repose, they felt that the seven-year plus one year grace period was too short, and they adopted a nine-year plus one year, a total of ten-year statute of repose, and the reason I am voting against this legislation -- and I hope Senator Volker in the future will consider a change -- is to extend the seven-year to

somewhere between the ten- to fifteen-year to take into consideration maybe ten years is sufficient. Maybe twelve years is better. To take into consideration what Senator Paterson said, there is a body of plaintiffs that could not seek remedy when the statute of repose is as short as seven years, and the Bar Association of the city of New York did a study, looked at this carefully, and so I hope in the future to be able to support this if the statute of repose is lengthened beyond the seven and one and thereby provide a better balance of addressing the needs of the potential plaintiffs and those of the potential defendants in these cases.

So if this bill comes to the floor again, I hope there could be a compromise that could be rendered, and I think it would receive more support from both sides of the aisle.

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

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

January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I'm going to vote in the negative again this year, and I just want to put on the record my reasons why. I have no problem with the concept of the statute of repose, but the concept of this certificate of merit, I think is a bad one. I know we have it for doctors and podiatrists, and I think we should remove that requirement in those litigated matters as well.

Anybody who's practiced law recognizes that the certificate of merit simply is another step in the legal process that requires somebody to come forward and say that there's merit to the claim before a lawsuit can be brought. There is no plaintiff who is going to bring a lawsuit that could cost substantial money and time without having an opinion from

somebody at some point that this lawsuit has some merit, and to require another step for only certain preferred classes of individuals in order to find redress in the court, I think is wrong, whether it's doctors, architects or for that matter, lawyers. So I think that the certificate of merit concept is a wrong one, and I'll vote no.

ACTING PRESIDENT KUHL: Senator DeFrancisco will be recorded in the negative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 434 are Senators Abate, Babbush, Connor, DeFrancisco, Espada, Gold, Lachman, Markowitz, Onorato, Seabrook, Stavisky and Waldon. Also, Senator Paterson. Also, Senator Smith. Ayes 43, nays 14 -- ayes 42, nays 14.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number

513, by Senator Padavan, 6433, an act to amend Chapter 399 of the Laws of 1995, amending the Education Law, relating to making community school board members ineligible for election or appointment to district offices in certain cases.

ACTING PRESIDENT KUHL: Senator Padavan, an explanation of Calendar Number 513 has been asked for by Senator Paterson.

SENATOR PADAVAN: Thank you, Mr. President.

In 1969, the state Legislature dealt with a very complex, very important issue known as decentralization of the school system within the city of New York. It went into effect on July 1st of 1970. Part of that body of law provided certain powers for the chancellor of the city of New York with regard to the newly created community school boards. Such authority as covered by Section 2590 (l) allowed for -

SENATOR GOLD: Mr. President.

SENATOR PADAVAN: Please,

Senator, let me explain the bill, as Senator Paterson asked for.

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

SENATOR GOLD: Could I just ask one procedural question, Senator Padavan, nothing -

SENATOR PADAVAN: All right.

SENATOR GOLD: Mr. President, I heard talk today about an amendment -- or chapter amendment on this bill, and obviously from the point of view of some people, if there is such a chapter, it might affect thinking, and I just thought maybe before getting into the merits of this bill -

SENATOR PADAVAN: I would like to address that, Senator, at the appropriate time.

SENATOR GOLD: -- if you don't mind -

SENATOR PADAVAN: Sure.

SENATOR GOLD: When?

SENATOR PADAVAN: I said before I sit down, I will address that issue.

SENATOR GOLD: Oh.

ACTING PRESIDENT KUHL: Senator Padavan, on the bill.

SENATOR PADAVAN: As I started to say, Section 2590 (l) of the decentralization law gave certain powers to the chancellor as it related to these newly created community school boards. Among those powers was the ability to suspend individuals or school boards for specific reasons as articulated in the statute.

The situation we are presented with at this moment in time, 26 years later, is that we have an election scheduled for our community school boards on May 7th. Four of those school boards have been superseded or suspended and trustees appointed by the chancellor to deal with the problems within those community school districts. Problems that range from issues of corruption to mismanagement have, frankly, an adverse impact on the education of the children in those districts.

What we are trying to prevent is a situation where on May 7th, many of the same

people on those school boards will run for re-election, and the suspensions that are currently in effect and the trustees have been appointed will become null and void and those boards will be sanitized by virtue of an election.

The original recommendation was to delay the community school board elections for a year to deal with that problem. In the minds of many, myself included, that was not the right thing to do, because by and large, our community school boards work very effectively, made up of volunteers, people who are unpaid, dedicated to the education of the children in their districts. It seemed to us that such individuals should not be denied the opportunity of either seeking election, and in some cases, people wishing to retire having put in what they considered good service and to be replaced by others; in other words, allow the process to continue.

At the same time, it was felt that those boards and individuals who are

currently under the suspension or supersession by the chancellor should not continue, at least not for a year, and so the bill before you provides for that mechanism. It allows the election to go forward. It maintains the suspension on those boards. It allows the trustees to continue their work. It allows for an appeal process within 15 days thereafter. It puts a time limit of one year on the suspension. It allows the chancellor to lift the suspension if reasons are there to do so. An example might be the entire board is new and in his view, the situation has changed -- whatever. It's a balanced approach to an existing problem. It provides the necessary safeguards. It allows the elections to go forward. It's consistent with the law of decentralization, and I think you should also know who it's supported by.

It's supported by the Board of Education of the city of New York, the boards of the five big cities, the state Commissioner of Education, the chancellor, the African-American Leadership Summit, the UFT and the Council of

Supervisors.

Now, with regard to the issue raised by Senator Gold, a suggestion was made by certain members of this house, and I presume elsewhere, that there ought to be a sunset provision. Such a chapter amendment is being drawn and will be before this house and the Assembly within, I assume some time this week, if not within a day or so. So those of you who have a concern in that regard will have an opportunity to vote for that chapter amendment which will provide for a three-year sunset.

ACTING PRESIDENT KUHL: Senator Paterson, any further -

SENATOR PATERSON: No, Mr. President. Asked and answered. What I was going to ask was exactly what Senator Gold was asking about the chapter amendment which would have made it a little more comfortable for people to -- to vote for the bill.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Stavisky.

SENATOR PATERSON: Well, Mr.

President -

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: That's all right. I'll tell him off the record.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: Would Senator Padavan yield for a few questions?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STAVISKY: Senator Padavan, can you cite any other example under law in New York State where a dually-elected official may be removed by an appointed official without charges being proven and without due process being guaranteed?

SENATOR PADAVAN: The state Commissioner of Education can take action against school boards anywhere in this state under current law, and that same authority was given to the chancellor and it's been on the

books since 1970. As I recall, Senator Stavisky, you were chairman of the Education Committee in the Assembly for a number of years.

SENATOR STAVISKY: Not when decentralization -

SENATOR PADAVAN: That's not my point. That's not my point, and not any period of time during those years where you chaired that committee or, to my knowledge, in this house have you introduced legislation to amend 2590 (l), to take away the authority given to the chancellor. Now, maybe that's something this body ought to consider, but you certainly haven't proposed it, to my knowledge, in your former capacity or as a member of this house, nor has anyone else that I'm aware of, but to answer your first question, the state Commissioner of Education has that authority.

SENATOR STAVISKY: Senator Padavan, you are completely incorrect on my record. I introduced legislation to remove this power granted to this appointed official, the commissioner -- the chancellor of the New York

City school system because I believed that a chancellor should not have the power to remove elected members.

Your school district and one that I have represented also has been superseded by previous chancellors because they did the outrageous thing of declaring a snow day when children or the teachers were unable to reach the schools, and I thought it was wrong. I cited that to former Chancellor Macchiarola, and I did introduce legislation which I will be happy to furnish to you if you would care to read it.

Now, my question is this: Can you remove an elected member of this Legislature under the ground rules spelled out in the chancellor's existing power, or would you need a conviction on a violation of a felony before that is done? Could a member of this house be removed on the basis of an allegation?

SENATOR PADAVAN: Is that a question?

SENATOR STAVISKY: Yes.

SENATOR PADAVAN: Senator, we sit in this house by virtue of the state Constitution. We're created in that -- within the framework of that Constitution. Decentralization and the powers of the commissioner are by statute. Therefore, to draw an analogy between a constitutionally created body, namely this Senate, and a community school board created in 1970 within the framework of that law and the authorities given to the chancellor at that time -- and perhaps you did introduce a bill but I'm unaware of any such bill passing the Assembly during your tenure as chairman of the Education Committee to remove those powers from the chancellor, and I'm aware of the snow day issue.

You may be aware of a bill that I passed in this house year after year allowing community school boards to have that prerogative as it relates to snow days. In answer to your question, again, the state Commissioner of Education has this administrative power over school boards.

SENATOR STAVISKY: Senator Padavan, no member of this house would be removed in the absence of a demonstrated violation of law, a serious demonstrated violation of law, a felony, and it would be unwise and unreasonable to have a member of this house or any other elected official removed on the basis of allegation.

Senator Padavan, what due process is guaranteed to the community school board members who are superseded, suspended or removed?

SENATOR PADAVAN: I would be glad to share that with you, Senator, and I'm surprised that you asked because I think you know the answer. It's rhetorical on your part.

First, they have the right to appeal within 15 days to the Board of Education of the city of New York, any ruling by the chancellor that would relate to this issue.

Secondly, as is the case right now, they could go into any court of competent jurisdiction. As I recall, one of the school

boards, perhaps one of the members in that particular part of the city can speak to it with more clarity, but one of the school boards is in court on that issue. So, therefore, administratively and judicially, there are ways for a community school board to deal with this particular issue should they choose to.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: In view of that question, if Senator Padavan would yield -

ACTING PRESIDENT KUHL: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STAVISKY: Shouldn't that be prior to the suspension, supersession or removal? Shouldn't there be a requirement of due process and of proof that a serious violation of law occurred? What proof of a serious violation of law is needed in order to suspend, supersede or remove under the present

law or the continuation in this form before us?

SENATOR PADAVAN: First, as you know, the chancellor sits by virtue of having been placed in that position by the Board of Education. If any chancellor were to use his powers in a manner that was inappropriate, in a fashion that was both destructive, or as I think you tried to put it, totally outrageous, then the Board of Education could step in on its own and take action in one or more ways, one of them, obviously removing the chancellor, but the overriding issue here is that we're dealing with the education of children. We're dealing with community school boards who have an important responsibility. We're dealing with a Board of Education and a chancellor that has even a more important responsibility, and the crafters of decentralization felt there had to be those safeguards when it relates to children within the framework of that law, and so they provided for us something that's been in existence for 26 years, a methodology for the chancellor to step in when he or she feels it's necessary to take

appropriate action when it relates to the education and the well-being of children in the Board of Education in the city of New York. If we want to take that power away, then it's something we can do, but this particular bill deals with an existing situation that must be addressed by May 7th and in a fashion that I think provides for a balance, due process and is most equitable in my view.

There are major differences when we talk about education and the powers we give appointed individuals such as the chancellor as opposed to anything else we might consider. We give those same powers to the state Commissioner of Education, and I'm sure if we wanted to go through the body of law that governs this state, we would find other examples.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: On the bill.

ACTING PRESIDENT KUHL: Senator Stavisky, on the bill.

SENATOR STAVISKY: Senator

Padavan and I have a basic disagreement. Before an action is taken, there should be some demonstrable proof. No demonstrable proof is required. Before an action is taken, there should be due process, not after the action is taken but before. Maybe there should be a hearing. Maybe it should be out in the open, in public, but there has to be a way of separating the whim and will of a chancellor, regardless of the academic credentials, from all standards of fairness, and I think standards of fairness have to be observed by the Legislature of the state and by an educational system where I assure you, Senator Padavan, every advocacy group in the field of education relies on the same excuse. "We're doing it in the best interests of the children." Have you ever seen the legislative agendas and the lobbying materials submitted by the Central Board of Education, the community school boards, the chancellor, the superintendents' association, the teachers, the supervisors? Very often they contradict each other with remedies, and they are all doing it

to protect the best interests of the children.

I think they can't all be protecting the best interests of the children if they regularly contradict each other, and we would not wish to be subject to that kind of non-proof. We would not wish to be subject to that kind of lack of due process before the ax falls. It's bad enough that the powers already exist, but to extend this flawed concept to new elections about to be held belies all rational consideration.

How do you know who's going to be elected? Will the new boards be prevented from taking their place and seeking their positions if the new board members have never been charged with anything? What will happen if thoroughly clean board members are chosen and they cannot function in the absence of a quorum? There may not be five members who are able to vote and make decisions. What do we do to the education of the elementary and junior high school pupils when we entrust to one person a chancellor who may have decent motives but who may be abusing

the power?

You would not wish to have that power as the first line of action taken against your elected boards of education. I can hear the complaints that would come from all parts of the state if somebody suggested that this haphazard, non-proven series of allegations would be sufficient to remove your Board of Education members, your local school board members after they have been elected. You would be saying denial of home rule. You will be saying it's unfair.

We have had members of legislative bodies and we have had mayors who have served in their offices after they have been convicted. We've had cases of members of this house who have continued to serve sometimes in another legislative body after they have been convicted of felonies. We have had a mayor of another city able to serve while he was spending the election in jail behind bars. That's wrong. It's wrong to have crooks in charge of community school boards and it's wrong to have

legislation which doesn't understand fairness and decency and due process masquerading as the law of New York State.

If you know the background under which decentralization was accomplished, competing groups descended upon the Legislature. Members of the Legislature couldn't decide whether they wanted community control or central control. Different advocacy groups argued for different remedies, and in order to get out from under, the Legislature adopted a so-called compromised decentralization law which includes some unreasonable and flawed provisions, such as the one we're now discussing.

I don't want to perpetuate it. I don't want to make it worse. I don't want to have a prior decision affecting a newly-elected board for an entire year; and by the way, I have reason to believe that the chancellor is not going to stop with the removal or suspension of four boards, that he has in his agenda the desire to suspend other boards -- other community school boards which may be in some of

your districts, ladies and gentlemen. I think that is too much power. Rudy Crew may be a fine chancellor. The power is not an appropriate one for any appointed official to remove elected school board members.

And for these reasons and others, I would be voting against the bill, and I hope there will be some who take the same stand. The fact that it will sunset doesn't mean that a flawed system will go out of existence. Sunsets have been extended. We've had multiple sunsets. We have had sunset upon sunset upon sunset reconsidered and extended, and I honestly believe we will be making a mistake if we go to this unfair and flawed piece of legislation.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I just want to, first of all, compliment and thank Senator Padavan for bringing this legislation to the floor, and it's unfortunate, I usually am certainly in agreement

with Senator Stavisky because I consider him our guru on education, but I must disagree with him on this particular issue.

I have two of those districts that have already been suspended in my Senate District, Mr. President, and one of those districts is one of the largest, if not the largest in the City, has the largest number of children and both of those have had a very long history of trouble, not only in terms of the school board's dysfunctioning, but because they have had a very long history of school failure for children.

One of those schools -- one of those districts have three surschools, which means that the Commissioner of Education of the state -- the state commissioner and the Board of Regents has been evaluating those schools over a period of time and in the last ten years, they have continued to decline in the level of performance of the students in those schools despite the fact that the commissioner has gone in with a team of experts to work with the

principal, with the teachers, with the people in the district. Those schools have continued to fail. So something is clearly wrong, and we have three of those in one district.

I note that while we point out that some of us in the Legislature are not supporting this -- this bill and we're very concerned about superseding an elected board, I want to note for your record that the community, the parents, the educators, the teachers in the schools, the administrators in the schools, the Board of Ed', the chancellor, the -- even some community school board members themselves, in addition to the state Commissioner of Education, are definitively in support of this measure. And why are they in support of this measure? Because the parents of the children in those schools understand what it means to have children on an ongoing basis, year in and year out, be involved in a system that fails them, and there is nothing more heartbreaking than to see 12-year-olds and 13-year-olds the size of men in this room who are struggling with -- with

elementary readers.

If you have ever seen that, ladies and gentlemen, it will make you understand why, of all the things that we do today, this is a significant thing and that we should not -- we should not be satisfied at all with the system.

ACTING PRESIDENT KUHL: Excuse me, Senator Montgomery.

Senator Mendez, why do you rise?

SENATOR MENDEZ: Would the Senator yield for a question?

ACTING PRESIDENT KUHL: Senator Montgomery, do you yield to a question from Senator Mendez?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MENDEZ: You stated that parents in that school in your district are very -

SENATOR MONTGOMERY: Supportive.

SENATOR MENDEZ: Because they see

that year after year their children are learning and are struggling with -- with primary readers. Are you implying that the board in that district that has been suspended is the one that has to be blamed for the lack of achievement of the kids in that school district?

SENATOR MONTGOMERY: Senator Mendez, let me just answer your question by saying this: That there must be someone in that system who is responsible for making it work, and that in my mind is the chancellor and so, yes, we should empower the chancellor to move in any school in that system, in any district in that system and take whatever actions are necessary to change that situation, and what I'm supporting today is this legislation which allows the chancellor to continue a board suspension while he hopefully is able to make some changes, some significant changes and maintain the stability in that district.

So, yes, I support the chancellor's being able to do that.

SENATOR MENDEZ: The question was -

ACTING PRESIDENT KUHL: Senator Mendez, are you asking Senator Montgomery to continue to yield?

SENATOR MENDEZ: Yes.

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

SENATOR MONTGOMERY: I will yield.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MENDEZ: The question was because those 12-year-olds are not performing academically, let's say in the area of reading, at least at grade levels, if you say that the local Board of Education is responsible for - for the lack of achievement of those 12-year-olds, are the members the deciders of the curriculum? Are the members of the board the ones that are implementing that curriculum in the classroom? This is what I'm saying to you. So they have to be responsible for the

education of the children because they do establish policy, not implementation of policy.

Thank you.

SENATOR MONTGOMERY: Absolutely. Let me just say to you, Senator Mendez, that one of the other reasons why I'm supporting this is that Chancellor Crew, along with Chancellor Cortines, along with Chancellor -- the chancellor before -- Fernandez, have all -- have all said very clearly that the standard for measuring the performance of community school boards needs to be raised to the level of educational performance and outcome.

So while we have traditionally measured them based on malfeasance and criminal activity, I think this brings the issue of educational standards into the formula for measuring and determining whether or not a community school board should continue, and I support that, and I believe that we should use that standard for every part of the system and, yes, Senator Mendez, you are correct. This is only one -- one small part of the beginning to

improve that system, but I think it is an important one, and furthermore, I am all in favor of the chancellor's role being strengthened permanently. I don't think this should sunset. I think that we should just accept the fact that without someone in that system who is a strong leader committed to the system, working with the power and authority to make decisions when it's not working as to the consequences for it not working, then we are failing our children.

So, Mr. President, I am very much in favor of this legislation. It is timely. I think -- I hope that my colleagues will certainly vote for it, and I am applauding the chancellor for -- at this point in time in the history of education in New York City for saying very clearly, very succinctly without equivocation that educational standards is the measure and nothing less.

Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

There has existed and continues to exist a state of emergency in our school system. In that context, this bill is no cure-all. It does not deal with the fundamental issues of fairness in funding. It does not deal specifically with standards or textbooks or curriculum, and if this bill is all we do this session about educational reform in this state, then maybe the same fate that is being debated that would be conferred upon those people that would mismanage school boards should befall us. Maybe something should intercede here in this institutional paralysis here so that we can do something about what ought to be done from the ground up.

It is a multi-layered, long-term problem that we're dealing with here, and I'm the first one to agree that we shouldn't have piecemeal tinkering with something so severe. Yet, we have concerns about disenfranchising voters. We have concerns about due process, and

we have concerns about the Voting Rights Act, but we're talking about 26 years here. This is not something that just came upon us, 26 years, and I agree totally with what Senator Montgomery has said, of a failed system, of a failed approach. It sought to involve parents.

Two of these school boards districts are in my state Senatorial District. I speak from personal experience here. We're talking about a couple hundred votes out of 100,000 people. Has this really empowered parents? We're talking about asking about demonstrable proof, due process for people that I know -- let me tell you about the people I know. They're worried about the aroma of corruption that somehow this thing will follow the aroma of corruption. The aroma of corruption? These people, the stench and degradation that they have fallen into for so many years is what we're dealing with here, not all of them, no, but you know what? I'm sick and tired of talking about the bad apple here and the bad apple there. It gives rise -- this

system gives rise to these bad apples that control the fate of these children.

You're absolutely right, Senator Montgomery. It pains the heart to see grown-ups now not able to read the third and fourth grade levels. You want demonstrable proof? I have no sealed indictments or anything to render, but you look in the eyes of those children. They'll tell you about a failed system.

You know, last year we took over a school district, Roosevelt Island. We took it over. Two months after that takeover, the Roosevelt Island -- I'm quoting from the New York Times report on March 4th on that matter. It says, "there is hope -- there is more hope than doubt as a result of intervention. Two months into the school year, they talked about teachers and students seeing signs of improvement, visible signs of improvement. Since then change" -- by the way, that same school board resisted the intervention. They were ousted, appropriately so, in my view, and "Since then change has come quickly. Safety

and fire code violations at the high school have been corrected. Classrooms now have supplies, new textbooks, fire extinguishers." They didn't have any new money. No new money was allocated. They dealt with existing resources that dealt responsibly with it but change came from outside. We are desperate, desperate for change.

This is no panacea. It is no cure-all, but it is a measure born out of desperation, and so it must be supported, it must be applauded. Some will cry out, as well they should, about some concerns they have for those members that have been doing a good job, but we're talking about a system here, a system in need of repair. We're talking about a bill here, a bill here that balances the need to take strong action against corruption, strong action against incompetence and at the same time, weighing the rights of dually-elected officials.

In my view, it is a good compromise and I urge its adoption.

Thank you, Mr. President.

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

SENATOR MENDEZ: Mr. President, I wondered if Mr. Espada would yield for a question.

ACTING PRESIDENT KUHL: Senator Espada, do you yield to Senator Mendez?

SENATOR ESPADA: Of course.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MENDEZ: Senator Espada, you mentioned that in your district, these two community school boards, they are full of corruption and, in fact, they are suspended at the present time. Tell me how many of those individuals who are being alleged to be corruptive, how many of them have been found to be guilty?

SENATOR ESPADA: I am less interested in what their day in court will bring them. As the state Senator for the area, I am not given to theoretical kind of gamesmanship about what their outcome will be. Some of them

are under investigation now. Some of them in the past have been indicted, have been convicted, only to seek to continue to influence those outcomes that we talked about which generally speaking only takes a couple hundred votes.

And so I tell you that when I talk to them, they don't talk to me about educational policy. They talk to me about the power that they will have to turn out a vote and change an election or get a job, and I'm telling you after years and years of this, that's all they talk about. So what their concerns are and what those misplaced priorities are is what this is about. Due process is imbedded in this legislation. It is a matter of their right. Their outcome will be whatever their outcome is. All we're talking about here is empowering an outside agent, a strong chancellor to act on the children's behalf.

SENATOR MENDEZ: Senator, if, in fact -

ACTING PRESIDENT KUHL: Senator

Mendez, excuse me, are you asking Senator Espada to continue to yield?

SENATOR MENDEZ: Thank you.

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

SENATOR ESPADA: Yes.

ACTING PRESIDENT KUHL: Excuse me just a minute.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like to ask Senator Mendez a question, if you would yield. Is that appropriate? Am I out of order?

ACTING PRESIDENT KUHL: That's a little bit out of order, Senator Montgomery.

SENATOR MONTGOMERY: I wanted to ask her a question while she was -

ACTING PRESIDENT KUHL: You would really get Senator Gold chomping at the bit if we allowed that to happen, but we'll get to that.

SENATOR MENDEZ: Senator

Espada -

SENATOR ESPADA: Yes.

SENATOR MENDEZ: -- You mentioned that some of those board members in your district were indicted and found guilty, and I understand, guilty of malfeasance of funds. What kind of charges? Didn't they go to jail?

SENATOR ESPADA: The chancellor had to intervene to stop them from retaking their office after they were indicted. After they were indicted and convicted, they ran again and won again.

SENATOR MENDEZ: Did they serve jail terms?

SENATOR ESPADA: I'm not familiar, again, but how bad does it need -- how bad does it have to get here? These people were indicted and convicted.

SENATOR MENDEZ: You think -

SENATOR ESPADA: They should have served time, but I don't know if they did.

ACTING PRESIDENT KUHL: Senator Mendez, are you asking Senator Espada to

continue to yield?

SENATOR MENDEZ: Senator Espada, so you think that this bill is an act of desperation and because it is an act of desperation, then it is worthwhile to go -- to dismiss completely some of those concepts that are supposed to be so dear to our hearts in our system of government like due process, like a person is innocent until proven guilty. So you think that because this is such a desperate situation, even the rights of the voters should be dismissed? After all, they are, as you know, public elected officials as we are. Are we going to provide them a different set of measure to the public elected officials at the local level?

SENATOR ESPADA: Senator Mendez, this bill, when it becomes law, will not run a foul of the Constitution. It will tilt what has been going on for 26 years. It has been a disaster. This bill and this law will tilt things in favor of children for once.

SENATOR MENDEZ: Thank you.

SENATOR ESPADA: I feel proud that we will do justice by these children. I feel proud that I am a co-sponsor of this bill, and I'm not so proud that it addresses the desperate conditions in my district, but something needs to happen and this is but a beginning.

SENATOR MENDEZ: So my last question, Mr. President -

ACTING PRESIDENT KUHL: Senator Espada -

SENATOR MENDEZ: -- Senator Espada -

ACTING PRESIDENT KUHL: Excuse me, Senator Mendez.

Senator Espada, do you continue to yield?

SENATOR ESPADA: Yes, of course.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MENDEZ: Senator Espada, then you do believe that it is these boards of education who are responsible for the academic

failure of children in those schools? Are they also besides the deciding policy, deciding the curriculum and implementing that curriculum in the classrooms? Are they doing that, the board members?

SENATOR ESPADA: Senator Mendez, I stated in my opening remark that if this is the only bill that we enact into law, if this is the only remedial action that we take on behalf of children in this state, then we -- the same fate that will befall those school board members that have mismanaged educational opportunity should befall us.

SENATOR MENDEZ: Thank you.

ACTING PRESIDENT KUHL: Senator Gold, you had indicated a willingness or a want to speak. It's your time on the list.

SENATOR GOLD: I just want to -

ACTING PRESIDENT KUHL: Senator Seabrook, you want to be on the list too?

Senator Oppenheimer, Senator Markowitz, Senator Smith.

SENATOR GOLD: Mr. President, I

just -- what did I do wrong?

ACTING PRESIDENT KUHL: You detained, apparently, Senator Oppenheimer from asking Senator Espada a question. Now she wants to go ahead of you to ask Senator Espada a question.

Do you have any objection, Senator Gold? I didn't think so.

Senator Espada, do you yield to a question from Senator Oppenheimer?

SENATOR ESPADA: Of course.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR OPPENHEIMER: Thank you. Thank you, Senator Gold.

I'm not from the City, so sometimes I feel that I ought not to ask some questions because, you know, not -- being an upstater, although I live 35 minutes from Grand Central, but I'm an upstater.

The question I have is, is removal possible if, instead of there being indictments, if merely the people who are

supposed to be concerned with the welfare of the children are simply not doing their job? They haven't taken care of, as you just mentioned, the fire equipment. In other words, they are not performing the duties that they're supposed to be performing. If they're totally ignoring the children, is that -- does that constitute a reason to have them superseded?

SENATOR ESPADA: I think that there's a careful balance that's been given to so-called corruption and infighting and mismanagement, and I think issues of that type would fall under the realm of mismanagement, institutional paralysis. Not taking care of fire and safety issues is a major, major concern.

SENATOR OPPENHEIMER: Because we hear much about due process and indictments, but I would think that taking care of the children's needs is, you know, maybe not just as important but certainly almost as important as whether you're stealing money. If you're not taking care of the children, you ought to be replaced.

SENATOR ESPADA: Absolutely. You only have to think about the Happy Land disaster, people dancing and having a great time, and it was a fire trap. It was a fire hazard. So I think issues having to do with facility issues while they shouldn't all totally be the responsibility of a mismanaged -- even a mismanaged board, it's our responsibility. I said that before, that if we -- we have the ability to address some of these issues. We'll hopefully get that opportunity this session. We can't just blind our eyes and punt away some of these problems of school boards but if, in fact, they have a fiduciary responsibility to do so and to act and they haven't, that falls under mismanagement in my class of definitions, yes.

SENATOR OPPENHEIMER: Thank you. I just wanted to make sure it didn't have to be a criminal action.

Thank you.

ACTING PRESIDENT KUHL: Senator Gold.

For the benefit of the members -

SENATOR GOLD: Mr. President -

ACTING PRESIDENT KUHL: Senator Gold, before you start, for the benefit of the members, I do have a list of those people who are wondering whether or not a list has been established, and after Senator Gold there will be Senator Lachman, Senator Waldon, Senator Mendez, Senator Leichter, Senator Seabrook, Senator Markowitz and Senator Smith. So -- and the debate started, for those of you who are interested, at 4:18.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Would Senator Padavan yield to a question?

ACTING PRESIDENT KUHL: Senator Padavan, do you yield to a question from Senator Gold?

SENATOR PADAVAN: Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, I had

heard earlier today, as I indicated to you, that apparently there was some discussion of an amendment or a chapter amendment to this that would, in effect, change the dates or sunset the bill. I heard about that. What I -- and you made some reference, but what I would like to know, Senator, is for those of us who may have a problem with the bill as it's written, as we have in other years with other bills, usually you see the chapter or you see the amendment, and you have a chance to put them together and vote. Is the chapter in existence?

SENATOR PADAVAN: Senator, I'm going to repeat what I said to you before. There's complete agreement by the Minority Leader, the Majority Leader, the Speaker of the Assembly, that a chapter amendment will be presented to both houses, and you can take that to the bank. Now, it's being printed. A discussion took place over the last two working days, and it will be before us, probably within a day, certainly before we leave. That is a fact.

SENATOR GOLD: Mr. President, if the Senator will yield to another question.

ACTING PRESIDENT KUHL: Senator Padavan, do you yield to another question?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, we have had two occasions this year where I think we have done something we had never done before. We had Conference Committees between the two houses working things out. Now, the reason is that each house passed a label. It passed something that said it deals with a subject, but as you and I both know, we don't pass labels into law. There are words that are a specific bill, and what I'm concerned about, Senator, is that there is, quotes, "agreement", which I heard a million times around here, but people may not agree with the particular language or how the particular bill works itself out and, therefore, the Senate will pass something. The Assembly may pass something, or it may be that

the bill that comes in to be the chapter contains some other provisions because now there's an opportunity to do some other things, and we may not buy into that, but then you're told you either buy into that or take the whole chapter or you get nothing.

Wouldn't it be more prudent, Senator, if it's going to be nothing more than an extender -- and I don't know -- or a sunset, which I don't know why it couldn't have been written in ten minutes, that we hold this bill and vote on them both together? If it's going to be a chapter amendment, I assume they're going to go to the Governor together. I assume the Governor is going to handle them together and as a matter of fact, if it hasn't been put in print yet and we're going to send something to the printer, why don't you send this bill to the printer with the amendment in it so it's in one piece of paper?

SENATOR PADAVAN: Senator, I have given you a very direct, for the record, representation. I assume you've asked that same

question of your leader. I'm sure -- if you have not, I would urge you to do so. If you did, you got the same answer.

The chapter amendment which is being drawn and being printed will be addressed in a very simple fashion. It will sunset this law in three years, nothing more, nothing less. I don't want to hold up debate and final conclusion of this bill. I don't want to do this on another day. This bill has to pass both houses. There will undoubtedly be a requirement for review by the Justice Department on the Voting Rights Act and whatever other reviews take place. I think what I've said to you answers your question very fairly, directly. I see no reason to lay this bill aside and have to do this on another day. The request for a sunset was made. It was accepted. It'll be dealt with, and that ought to be enough.

ACTING PRESIDENT KUHL: Senator Gold, the floor is yours.

SENATOR GOLD: Yes, on the bill.

ACTING PRESIDENT KUHL: Senator

Gold, on the bill.

SENATOR GOLD: Senator Padavan, I don't want my remarks to be interpreted as any question upon your integrity or your honesty in dealing with this subject. Maybe it's that you get to a point when you have been around long enough where you have either been educated or tainted, depending upon how you want to describe it, but you do get to be suspicious.

I've heard too many times, Senator Padavan, that there's a simple chapter amendment and then things get added in, or the chapter doesn't come about, or the Governor signs a bill and they don't -- they veto the chapter, and all I'm saying to you, Senator, is that if something has to be printed, it's easy enough to reprint this bill, get a message from the Governor, pass it tomorrow and what have we lost, 24 hours?

Senator, if you -- as you know, if this bill passes in both houses, it's got to go to the Governor. I assume that the two will go to the Governor. We're talking about things

which do not take time, not the kind of time you're talking about. You want to send it to the Justice Department? Send it to the Justice Department tomorrow with an amended bill that deals with the sunset.

All I'm saying to you is that I appreciate your assurances. I think you're an honest man, Senator, and that's fine, but in this place -- in this place and in the place across the building from us, there are people not elected -- and I don't want to make disparaging remarks about staff, but they have their own ideas, and while they're doing this, they throw something in, and there are some staff people who think they are bigger than legislators. There are some legislators who make their staffs bigger than them.

All I'm saying to you is I think it's prudent to see what you're voting on as a package. That's my belief, Senator, and I've got my questions about the bill as it is. I think there are some significant issues that have been raised. I think that the rights of

people -- the rights of people who are elected are serious rights and that this bill, in my opinion, makes some serious changes.

Would I vote yes if I knew that there was a sunset? Would I vote to give Rudy Crew a year as people have suggested? Maybe, but, Senator, all I know is that you're asking for a vote today that's asking me to change a law and that's forever.

SENATOR PADAVAN: Mr. President, may I interrupt Senator Gold with his -

SENATOR GOLD: Yes, of course.

ACTING PRESIDENT KUHL: The Senator yields to a question.

SENATOR PADAVAN: Senator, maybe I didn't make something clear. This bill stands or falls on its own before us now. People will either vote for it or against it. They will do the same thing with the chapter amendment. Some people, myself included, don't think that we should sunset. I think I heard Senator Montgomery say the same thing. You asked me whether or not there would be a chapter

amendment before us, and I gave you an honest, fair answer. There will be. However, I think people in this chamber and in the Assembly ought to have the prerogative of deciding on each issue on its own. You'll have that opportunity probably tomorrow.

SENATOR GOLD: Mr. President, Senator Padavan just fell into the trap. I accused him of being honest and he stood up and proved it.

Senator Padavan, you're exactly right. You are an honest man and you are saying there's a chapter out there, but nobody knows whether it will pass and, gee whiz, supposing the chapter comes up and people defeat it or whatever. Well, Senator, I understand that and, therefore, when you take a bill and you take a chapter and you do some things, you have a patchwork, and maybe you don't know where that patchwork is going to come out, and all I'm saying, Senator Padavan, is that's too easy for me.

You're saying, well, I can vote

for this because I heard there was a chapter and then if there's no chapter, I can say to people, "Hey, I got the best of both worlds. If you like the bill, I voted for it. If you don't like the bill, I only did it because I heard there was a chapter." Maybe politically that's a terrific place to be, but I don't want to be in that position.

I really believe I owe it to the people that elected me to know what I'm doing and, therefore, Senator, in the present form, I will not vote for the bill. I do think that it invades in areas and does it in a way that violates rights and I'm not going to do that, and while I tell you on the record, I might have considered certain things if the chapter was here and may have voted differently if the chapter was here, I cannot deal without that.

I also will tell you that there have been a number of bills this year which affect the city of New York, not only in the educational structure but in other ways, and I haven't had one representative from the city of

New York visit my office to discuss it with me and to tell me that one thing or another was important to the City.

I will tell the mayor of the city of New York on the record that he has done some fine things for the City. He has also done some things that I don't agree with, but I'm not going to represent the City by taking his opinions from the newspapers. He has a right to issue press releases and he has a right to speak out in public, and I respect that, but as a legislator if there's a matter before the Legislature and he wants me to know about it, I think he could send somebody around to my office, as well as to some of the other offices, and if that does not happen, I can only assume that the matter does not rise to a certain level of concern as far as the City's office is concerned.

As this stands now, I will vote no.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Lachman.

SENATOR LACHMAN: Mr. President, as a new member of this body, after listening to this discussion and previous discussions, I have to say that I am very proud of the fact that I am a member of a deliberative body which has so many differences of opinion that I respect, even differences within my own political party, and if I may explain to my colleagues why I am supporting this bill, I would like to do so at this point.

Even though the community school boards in question are sometimes larger than the school boards of Rochester or Syracuse and Albany and other upstate cities, they are not school boards. They are not LEAs. In legal parlance, in education law, they are not considered to be local educational authorities.

The Local Educational Authority for the city of New York is the Central Board of Education of the city of New York. So the question is why do we have these community school boards in the first place? We have these community school boards because in 1969, this

Legislature created a decentralization law, shortly after the great dispute and strike at Oceanhill-Brownsville in New York City, and rather than choosing between community control or non-community control, the Legislature, in its infinite wisdom, decided to compromise and brought out a bill that stressed modified decentralization.

Now, what does this mean in reality? It means that the community school boards do not have the power of the purse. They do not have the power over the budget. The Central Board of Education has that power, and that is a major power of any Board of Education in the city of New York.

It also means that the community school boards are not boards of education. They are subdivisions of the New York City Board of Education, and the reason why some of you who were here 25 years ago, unlike me, changed the name of the superintendent of schools to chancellor is because you wanted to give him extraordinary powers to monitor oversight in the

New York City Board of Education, which you did, and which the chancellors, through the years, have attempted to do.

Unfortunately, that law in 1969 was an imperfect law, just as this law that we're about to vote upon is also an imperfect law, and I am told by people wiser than me that there are few perfect laws this side of heaven. However, I am also told by others that we can change and make the '69 decentralization law more perfect if we attempt to reorganize and restructure the governance of education in the city of New York, either this year or in the coming year.

Now, I would like to comment on some things that were mentioned before. The appellate process is even broader than Senator Padavan mentioned, if I may. Not only do the members of the community school boards who are affected have the right to appeal within 15 days to the chancellor; they also have the right to appeal the decision of the chancellor to the Central Board of Education after another 15 days

when a decision has been rendered, and then they have the right to go above the Board of Education to the state Commissioner of Education within another 15 days, and the state Commissioner of Education in the state of New York has quasi-judicial powers. He does have the right to remove boards of education throughout the state of New York. Even though he is an appointed official, he can remove elected boards. He, in turn, can be removed by the state Board of Regents. The ultimate authority in education law rests upon us, the state Legislature in the state of New York, to make the changes that we deem appropriate to attempt to perfect and eliminate the imperfections in education law.

So what we are voting upon now - and I would prefer to have this sunset law incorporated in the law, Senator Padavan, as my colleague, Senator Gold, has said, but I'm willing to go along with the law based upon the assumption that there will be a corollary law dealing with sunset provisions, and also based

upon the premise that the civil liberties that are very important that Senator Stavisky has enumerated might be incorporated in a broader law dealing with reorganization of a governance of education law in the city of New York.

And why am I willing to go along with this? Because I had served at the tender age of 33 as president of the New York City Board of Education. I inherited the law that our predecessors adopted, which we discovered to have 175 technical -- technical inaccuracies, which was a combination of six or seven different bills brought together, but that is, I am told, how legislation is crafted, by legislative bodies, imperfectly, to deal with - with solutions that don't have perhaps absolute variances but relatively we can resolve.

So at this point in history, I think it is essential, as Senator Montgomery and Senator Espada have said and Senator Padavan has said -- and this is a non-partisan issue -- that we allow the chancellor and the Board of Education to have the power that they

desperately need in order to continue and improve education in the city of New York.

ACTING PRESIDENT KUHL: Excuse me, Senator Lachman.

Senator Mendez, why do you rise?

SENATOR MENDEZ: Will the good Senator yield for a question?

SENATOR LACHMAN: It is my pleasure to yield, Senator Mendez.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MENDEZ: Thank you.

You mentioned that the 32 local community boards are not boards as the rest of the state and that the delegated board -- the one in -

SENATOR LACHMAN: Local Educational Authority is the Central Board of Education in the city of New York.

SENATOR MENDEZ: So then does - the Commissioner of Education of the state of New York has the authority to supersede -

SENATOR LACHMAN: Sure.

SENATOR MENDEZ: -- a local community borough -

SENATOR LACHMAN: Absolutely.

SENATOR MENDEZ: -- without -

SENATOR LACHMAN: Absolutely. During the Oceanhill-Brownsville crisis, the state -- then state Commissioner of Education superseded the Oceanhill-Brownsville experimental district and made it part of his office and sent an assistant commissioner there to administer that board.

SENATOR MENDEZ: Now, because you're so very well versed in education law, my question is, it is my understanding that at the present time, the -- at the present time, the chancellor, under the law, has the right, as he's been doing, to supersede local community school boards.

SENATOR LACHMAN: Yes.

SENATOR MENDEZ: So in the -- in the case of this legislation, don't you think it would be most appropriate not to violate the rights of people that have been elected, the

wish of the voters, and then just let them sit on the boards and then go through the same process that he has done before?

SENATOR LACHMAN: Senator Mendez, I do, but in a democratic society, we unfortunately have to choose between two rights or three rights given to our citizens. Which right is stronger? Which right is more important? Which right is most essential? And I think this right is the most essential right.

SENATOR MENDEZ: Thank you.

SENATOR LACHMAN: Now, let me just conclude, Senator Mendez, if I may, that the -- these people can go-

ACTING PRESIDENT KUHL: Senator Lachman, let me just interrupt you a minute.

Senator Marcellino, why do you rise?

SENATOR MARCELLINO: Mr. President, may we have the last section read on this particular piece of legislation so that Senator Seward and Senator Saland can -- and Senator Rath can vote?

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.)

ACTING PRESIDENT KUHL: Senator Seward, how do you vote?

SENATOR SEWARD: I vote aye.

ACTING PRESIDENT KUHL: Senator Saland, how do you vote?

SENATOR SALAND: Aye.

ACTING PRESIDENT KUHL: Senator Rath, how do you vote?

SENATOR RATH: Aye.

ACTING PRESIDENT KUHL: Senator DeFrancisco, how do you vote?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The roll call is withdrawn -- the roll call is withdrawn. We're back on debate.

Senator Lachman, now you'll have

a chance to respond to the question posed to you by Senator Mendez.

SENATOR LACHMAN: I just wanted to say that the ultimate appeal -- the people who object to this, the people who support the position that a board that is elected cannot be removed by an appointed official, have the ultimate authority of going into the courts and the courts will then decide, and they have done that through many appeals in many years in New York City, as well as in communities in Connecticut and New Jersey.

ACTING PRESIDENT KUHL: Next on the list is Senator Waldon.

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

Would Senator Dollinger yield to a question or two?

ACTING PRESIDENT KUHL: Senator Waldon, I'd have to at this point point out to you that the rules of our house don't allow you to call upon a member who has not at this point spoken on the issue, so you would be in

violation of the rules of the house by asking Senator Dollinger to yield when he is not a sponsor of the bill, nor has he spoken on the issue.

SENATOR WALDON: I appreciate your correction, Mr. President.

Did Senator Paterson speak on the bill earlier?

ACTING PRESIDENT KUHL: Senator Paterson, I believe did. I think he asked the question of information from Senator Padavan.

SENATOR WALDON: My purpose would be satisfied if the good Senator from the village of Harlem would step into the batter's box in place of hammering Rick Dollinger from the Rochester area. Would the good Senator please -

ACTING PRESIDENT KUHL: Senator Paterson, do you yield?

SENATOR DOLLINGER: Mr. President, does that mean that I have been removed from the lineup?

ACTING PRESIDENT KUHL: The

Senator yields, Senator Waldon.

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

Senator Paterson, I'm concerned about the intent of the founding fathers of this nation in regard to creating our democracy and the real intent underlying philosophically everything that they did. So I would ask you three questions:

One, what does the separation of powers, as implemented by the founding fathers, mean to you. Two, what does the decision rendered by Chief Justice John Marshall in Marbury v. Madison mean to you regarding who will interpret the law and, three, to your personal knowledge, is there any precedent ongoing in this state or any state, whereby removal of elected bodies and/or persons is the common rule by appointive authorities? And we could have the stenographer read that back. One was separation of powers.

SENATOR PATERSON: Mr. President, New York State was originally founded by the

Dutch in 1626.

SENATOR MONTGOMERY: Correction, Mr. President. The native Americans were already here, Mr. President.

SENATOR PATERSON: I'm sorry about the slur, Senator Mendez.

The answer to the first question, the issue of separation of powers, what I infer from that, Senator Waldon, is that there is a definite separation between the executive, the judicial and the legislative branches of government that there was an intent that there not be any interference in the ambit of control of one by any of the others and that there were clearly defined roles.

The second question, which is the Marbury v. Madison case, the case that established Supreme Court Justice Marshall and in a sense, it defined judicial review when the Supreme Court upheld the decision of President Jefferson, I believe, who appointed Marbury and then it was appealed by President Madison. In this particular case, what it definitely

established was the control of existing power.

The third question was the question of -- what was the third question, Senator Waldon?

SENATOR WALDON: Whether, to your personal knowledge, in this state or in any of the states of the United States, there is a common, ongoing precedent that appointive authorities can remove elected bodies and/or persons.

SENATOR PATERSON: I think in this particular debate, there is a question as to what the actual status of elected officials is based on the legislation. It's a very apt question. It probably cuts to the basic issue that we are -- that we are discussing, which I wonder why Senator Padavan is sitting there.

SENATOR PADAVAN: You're doing a great job. You keep it up.

SENATOR PATERSON: Okay. And it is whether or not we consider these particular school boards as separate entities or, as Senator Lachman pointed out, if they are

actually, in a sense, subsidiaries of what is a larger entity, which is actually the identifiable one that is run by the chancellor of the city of New York.

What Senator Lachman was trying to say is that by raising and changing the name "superintendent" to "chancellor", that we were creating what would sort of be a -- an election in the local school districts which would be more advisory. It's the reason that we allow legal permanent residents to vote in those particular elections where we don't allow them to vote in the regular elections of our general elected officials, but in answer to your question, Senator Waldon, I think you've raised an excellent question, which is that even though this may be the specifically delineated path that we've taken in this particular legislation -- and we're being advised now by another Senator -- but the point is that what may actually be the end product is a perception which becomes the reality that these are elected officials. We've tried to drum up support.

We've thought of changing the days to have these school board officials to be elected, and if they're going to be elected, as I think you're driving at, Senator Waldon, then we have to treat them with some kind of respect, or if we do not, it certainly opens the door to the general violation of what would be the Democratic principles that elected officials would then be challenged by those individuals who are appointed, and so this is a -- an ongoing discussion that we're having in the state right now, even in respect to the decision made just the other day to relieve an elected official under Article IV, Section 2 of the Constitution that provides that under broad supervisory powers that the Governor, in certain cases, can appoint a special prosecutor under Executive Law 63, Section 2.

SENATOR WALDON: Senator, I'm getting to that point. Don't jump ahead of me, please, Senator. If you would permit me, I had a purpose in standing up. You jumped. You leapfrogged. I don't want to do that just yet,

and I -- suffer the interruption, please. I did not mean to be disrespectful to -

SENATOR PATERSON: No, not at all.

SENATOR WALDON: -- The Deputy Minority Leader. So that's the point that I want to get to, but let me get there, please, sir. You're working wonders now. You're helping me.

Senator, respectfully -- if the Senator continues to yield.

ACTING PRESIDENT KUHL: Senator Paterson, are you finished with your answer at this point?

SENATOR PATERSON: I'm finished with my answer. I yield to the noble Senator.

ACTING PRESIDENT KUHL: Senator Waldon, you have the floor.

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

Senator Paterson, in your understanding -- reflecting back to the founding fathers, in your understanding of what they did

-- in your understanding of what they did, I'm -- I'm assuming now from what you've said and from my awareness of your philosophy in regard to constitutional law, is it that you believe that they created the separation of powers which has lasted so well in this nation is because they feared a majority in power being abusive to all the other branches of government and, therefore, using an expression from a learned colleague of mine, they created hands with fingers so that one finger would not be superior to any of the other fingers, but that the hand itself would work to do the greatest good for the greatest number.

SENATOR PATERSON: Yes.

SENATOR WALDON: Thank you.

SENATOR PATERSON: Actually, Senator, I agree with you, and I think that what is most precious in our Constitution was the protection where the majority in a particular area, such as a local district or perhaps even in a local school board, is protected from what may be the greater majority in that city or that

state, such that the decisions that are made by the few in that particular area but the decisions made in an election where the majority rules in that particular area are not superseded by a greater majority on scale throughout the state. So I think the point is well taken, and I thank you for raising it, and I hope I've provided, without any preparation, at least some answers that have assisted.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Mr. President, let me first thank -- on the bill, Mr. President.

Let me first thank Senator Paterson who is, in my opinion, one of the brightest, if not the brightest person in this chamber, and with such short notice, to stand up and to be the foil for the path that I wished to take, I think speaks to his courtesy, speaks to the gentle character of the learned gentleman from Harlem and also speaks to his brilliance.

I believe that this proposal,

which is not yet law but will become law if it's passed this law and in our other house and then signed by the Governor, is a dangerous precedent. I believe that it is usurping the will and intent of the people and undermining what the founding fathers of this nation intended when they created this great democracy.

I believe this is an example of that behavior. I believe when an executive imposes his will on a district attorney, as was done in Bronx County, the same parallel occurs. I believe that is dangerous conduct. I believe even though you may feel that a judge is wrong, as some feel that Judge Baer was wrong, that even our President is wrong in interfering with the prerogatives of the judiciary. There are bodies set up to handle those undertakings. There's a body set up, the Office of Court Administration, to deal with the judge in Brooklyn who may have done some things which angered people and which, in your personal opinion, are outside of the pale of acceptable

behavior for those who sit upon the bench. I believe all of these are dangerous precedents and are not drifting us towards the loss of the beauty of this great nation, but careening us towards a path which will one day wake us up and say, Gee whiz, we no longer have the democracy that so many sacrificed their lives for.

I would encourage you to think about that. I don't think anyone here will dramatically change their vote on what Senator Paterson and I have done, but I want you to think about the fact that we are chipping away, chipping away, chipping away at the fabric of this great nation and its democracy with bills like this, with actions like what happened in Bronx County, with actions like what happened surrounding Judge Duckman, with actions which surround what's happening with Judge Baer.

I will vote no on this particular bill, and I thank you, Mr. President, and I thank my colleagues for listening to me.

ACTING PRESIDENT KUHL: Next on the list is Senator Mendez, but I don't see her

in the chamber.

Then she's followed by Senator Leichter. I don't see Senator Leichter in the chamber.

Next is Senator Seabrook.

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

This bill that we have here today has been described by some as a panacea and by others as a state of emergency that we have to move and do these things.

I think we already have a bill to do all of the things that we desire, and I am looking at the law that created decentralization in 1969, and all of the things that we talk about that we really want to do, the chancellor had the right to do it by law in this bill, but what we're doing now is giving the chancellor the right to do something that's fundamentally going against the principles and tradition of the American society. I think here when we talk about school districts and -- people get a little confused and get caught up into believing

that we're talking about the same situation outside of New York City.

The Senator from Brooklyn indicated that the central board is the legal elected board, or which is considered the legal elected board of the city of New York, and that's a board that's appointed. That's a board that is actually appointed, but in the original intent of the bill in 1969, they were supposed to be elected, but they were appointed, never elected, appointed.

We have here now all of the rights -- and I was just reading some of the rights of the chancellor that was given in 1969, and all of the responsibility of educating, contracting, assignments, even to signing off on teachers' aides is the chancellor's.

So when we talk about giving all of this power and "he needs this to do this and that", he already has that power. He already has the power. What he's asking us to do is to cover up something that we refuse to do, is to actually dust off the law in 1969 that's on the

books. He's asking us to do away with what we consider fundamental principles in the American society, the whole sense of due process.

I had the opportunity to be in the Bronx Court listening to the argument the other day about the chancellor superseding District 7 and 9, and I heard some of my colleagues here make some statements about people were indicted, and that they were convicted. Not one person in District 7 is indicted. Not one person in District 9 is indicted. So these people should actually go to their districts and find out what's actually happening. Not one person.

The judge asked the attorney for the Board of Education, "What crimes have been committed by this board?" The attorney said, "There was no crime that was committed. There was no crime that was committed." That's what the Board of Education's attorney told the judge. The judge said, "Then, in other words, you're telling me that you are responding to a newspaper article", and he said that these were

allegations that were brought by the newspaper and the media, not by any authority that could bring about any indictment or any convictions. He said that there was a, quote-unquote "integrity hearing" that is appointed by the Borough President, and we saw the tapes, and people made allegations, and he said, "So are you telling me again, there is no crime committed", and the answer was "There was no crime committed."

This bill that we have here says if the chancellor feels or gets moved by the "daily blues", that he can make a decision to supersede and say "Well, you can't sit on the board even if you are elected", and some people raise the issue about the percentage of how school board people are elected. Well, let's put it in context: The percentage of how some of us are elected.

So the reality is if it's one vote that elects the individual, then the people have spoken. The issue should be what happens to the board who has the responsibility over the

budget, responsibility over curriculum, responsibility over facilities, because we talk about surschools. They don't only just talk about curriculum. They talk about facilities that's bad. They do a whole gamut of what makes a surschool. All of that is controlled by the Central Board of Education unelected, by law should have been elected but appointed, and they make the decision as to how the community school board is the whipping boy here today. Some of us say that they are the solution to solving all the problems while they found corruption, indictment, possibly indictments by custodians.

Less than ten days ago, local school boards write no contract for custodians in the school. Those contracts are controlled by the central board, should have been elected, appointed.

So the issue of class sizes, the issue of teachers who are uncertified, the issue of libraries that don't have updated books, that's not the local board. The responsibility is by a board that should have been elected but

was appointed, and in their appointment, who removes them? Who has the responsibility to remove the central board, an unelected board? People who appoint central board members can't even recall them. Ask the Borough President of the Bronx. He said he couldn't recall it. Who removes them when we talk about the lack of education? It is written here in 1969 that said the chancellor has all the responsibility, even training the local school boards. He has a responsibility to see that parents and teachers associations are established in statute, his responsibility.

This is a joke. This is a fraud, and this is going to come back to haunt elected -- elected individuals that we are allowing selected individuals to control budgets in districts that they know nothing about. That's what this is all about.

The chancellor worked for a board and he's hired a board that should have been elected but is appointed, and he's in competition for the funds that's allocated to

all the districts in direct opposition to local boards, and now the local boards will lose their control over the budget aspect and he, as an appointed official, and he being hired by appointed officials, will have control over all of the dollars. That's what this play is all about. It has nothing to do with reform.

You want to talk about reform. Let's redraw some district lines. That's reform. Haven't been redrawn since 1969. That's when we talk about justice, state of emergency, and we talk about abide by the rules. We got districts that don't even have enough students in it by law that we put together in 1969. That's guts. That's guts, to talk about those districts that don't even meet up to the number required to be a district. Who's responsible for dealing with them? The board that we do not elect but selected, make that decision.

Read the bill that was passed in this house in 1969. The chancellor got all the power he needs, but when he decides to do what's

right -- if you get the gang of five, that we didn't elect, that was selected -- the chancellor's got -- so I think that we need to understand this -- the chancellor's got all the power he needs. All he's got to do is do his job, but when five folks control, what he has to do is their tune, and for all the folks who talk about the problem of corruption in their districts, well, that's your fault. That's your fault. You have a responsibility as an elected official to be responsible for the people in which you serve to get out and do what has to be done so that those people wouldn't be elected.

So I say that it is our job, but we need to dust off the board in 1969. Was it perfect? No, but read what rules and rights we gave to the chancellor if you want to change the educational system.

Right now you're asking the chancellor to do away with the Constitution, the fundamental principles of America, America's fundamental principle. We still live here, and people say that we've got this state of

emergency. Well, that's what they said about the guy that said he was going to make the trains run on time.

We better be very careful about this, allowing selected people, not elected, to make a decision about people who are elected even if it's by one. Merely just newspaper stories. I mean, an indictment is merely an accusation. Not even an indictment, a newspaper story drove this, and we're -- our rush to judgment, do something, do something. Read the bill, and if we read the bill, we would understand that we've done something in 1969. Was it perfect? No, but it'll work if we follow the blueprint here.

So I will say that this whole rush to judgment, this whole idea about state of emergency, this whole question about, "Well, you know they're not really legal boards", well, hell, the Board of Ed' ain't legal. Who elected them?

So what I'm saying, the fundamental principles -- let's not get confused

and say that, "Well, you know, it worked over in Roosevelt." Roosevelt is different. Each of those are one school district, separate. All of New York City is one with a central board and local board, and I say to you that, when you decide to take this away, there will be an element that will decide to say that we need to get rid of elected officials even if we think they're doing something wrong, and then the question is going to be, "Mr. Senator, how do you vote?"

On this one, I vote no.

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

SENATOR WALDON: I would like to know if the learned Senator from the Bronx would yield to a question or two.

ACTING PRESIDENT KUHL: Senator Seabrook, do you yield to a question from Senator Waldon?

SENATOR SEABROOK: Yes, sir.

ACTING PRESIDENT KUHL: The Senator yields.

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

Senator, I heard you say earlier that the lines had not been redrawn since '69, and that there were districts where there were not enough students to really reach the threshold requirement for having a school district.

I believe I read or heard somewhere that also within the city of New York, there are districts which do not meet federal guidelines in terms of students of color in comparison to students which in this country are traditionally called majority students. To your personal knowledge, is there any gerrymandering or things which are wrong in regard to the student base distribution in the City based on racial lines?

SENATOR SEABROOK: Well, I can't answer that, but I can tell you this: In -- the city of New York is probably one the most segregated school systems in America. 85 percent of all the children who are classified,

quote-unquote, "white", attend school in 17 percent of the school district in the city of New York. You can't get no more segregated than that. We have yet to redraw lines, and if a chancellor had guts -- because every time we passed a bill here -- don't do a redistricting. We got a new chancellor. Let him get his feet wet. Richard Greene got his feet wet and he died. Cortines, he's new. He can't do it. Let's wait. We haven't have redistricting since we redrew the first lines. We redraw lines here every ten years. We haven't had a redrawing of lines since we instituted the first. That's reform. That's guts.

ACTING PRESIDENT KUHL: Senator Waldon.

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

Thank you, Senator.

ACTING PRESIDENT KUHL: Senator Markowitz?

(There was no response.)

Senator Leichter, why do you

rise?

SENATOR LEICHTER: I thought -- I know I was out of the house when you called my name, but I was hoping -

ACTING PRESIDENT KUHL: As was Senator Mendez, and I'll come back to you if you wish to speak.

The Chair recognizes Senator Marchi who's next on the list, then Senator Mendez, then Senator Leichter.

SENATOR LEICHTER: Okay.

ACTING PRESIDENT KUHL: And then Senator Markowitz, if he's in the chamber.

SENATOR MARCHI: I certainly think that we should all be impressed with the vivacity with which these considerations have been advanced, very spirited remarks of Senator Seabrook, because there is a burning desire to honor the democratic process, with a small "d", in structuring our school systems, our school system here in the city of New York, and to bring it as close as possible to the people on a -- on a viable level. We've attempted to do

that with community boards with respect to other matters where they are advisory.

I believe that the genesis and the description of the present structure of the school system of the state of New York and the city of New York was lucidly and with the greatest precision, described by Senator Lachman.

We go to the chancellor -- we go to the Commissioner of Education in the state of New York who was put in place by a Board of Regents and is not elected by the people. This is not a singular phenomenon in the state of New York because we also have done the same thing with the Court of Appeals, and notwithstanding the fact that I sometimes have had very serious differences with them, I would not advise us to go back to an elective board of Court of Appeals.

What do we have in the city of New York? In the city of New York, we did have local boards that were appointed by the mayor. They were not bad boards. A lot of the problems

that helped -- that occurred did not happen because of a failure of those local boards. By and large, the mayor -- mayors -- at that time, it was Mayor Wagner, although there were serious failings in the -- in the educational system structure, the boards were by and large good citizens, but they did not -- they were not the expression of any vote.

I remember in 1961 being invited to address a school in Arrochar, New York, Staten Island, and I arrived there, and much to my surprise, I saw that it was the object of very rigorous attention. They were changing broken panes of glass. They were painting. They were fixing plumbing, and I said "Well, you must be delighted", I said to the principal and to some of the staff, "because other schools are waiting patiently for some attention." He said "Well, I would be delighted too, but in two weeks from now, this school is scheduled for destruction", and it was at that time that I felt that we ought to get back a little closer to the people so that at least one hand knows

what the other is doing.

When we had a series of experimentations that ended up in Oceanhill Brownsville, as Senator Lachman mentioned, we had some very, very serious difficulty, and I remember going to Jim Allen who was then the commissioner, am I correct, and Jim told me, he said, "I have plenipotentiary powers, but if I try to exercise them and I don't have an effect, I have to be able to select my time and moment within which I might exercise an impact on this process", and obviously it was not available at that time, but he did exercise responsibility, in some respects, a little further down the road.

When we finally formulated a decentralization process, there were many conflicting interests that had to be harmonized, and you described it correctly. It couldn't have been done better, as if we were just reliving those moments, and I remember just how much power could we devolve to elected boards where there's no proven track record and

experience, and the feeling generally was that we would re-address this issue after some experience. At that time, the deputy mayor of the city of New York who was carrying the coals for Mayor Lindsay, Bob -- he's on the federal court right now. Somebody will help me out - do you remember? Bob Sweet, exactly. And the commissioner, Commissioner Allen, felt that some positive powers should be given to the boards, but they weren't the complete array, and your characterization of a quasi-board was not inaccurate.

We also -- at that time, the question came up whether non-citizens could vote. Well, it went into the courts and at one district level, they said yes and at another district level, they said no, and they decided not to appeal, but those of you who don't come from New York City, is it possible for someone -- and I'm not saying that it was a -- it was a noble experiment in New York, and I don't think much happened that we can regret -- they were parents and maybe it was a good treatment of it,

but is there one Senator from outside the city of New York who can tell me that non-citizens can vote in the election of their boards? They can't because it's in the law, and any follow-up would have taken that right away in the city of New York, but it was an attempt to accommodate to the -- as much as possible, the people who were involved in the school system and to generate from that closer involvement by parents and by districts with these parallel efforts being made in community boards, so that we achieve some degree of decentralization in a city that was over-centralized, and that was the purpose, but as Senator Lachman pointed out, we were -- we did not track that -- we did not track the system as some people have described it.

Senator Stavisky, of course, has made contributions that are enduring for 25, 30 years. He made mammoth contributions to the educational system of this state, and they are enduring contributions, but this situation, I believe is totally accommodated by the

legislation that's offered by Senator Padavan and which has the support of the City in an effort to proceed with the elections and at least in those districts where there is a feeling that there is a hemorrhaging with ample rights to appeal and to seek justice and obtain justice if it's necessary, not to let it fester and continue.

So it makes -- it makes eminent sense, I think, at this point to go forward. I'm not quite sure that I can go along with my colleague on the question of a sunset because I agree with you, sir, that at some point I would hope that a restructuring process proceeds. We do need a restructuring process, and I wouldn't want -- want it to be construed in any way as being at odds with a restructuring that's meaningful.

Do you think that I was quiet and happy with circumstances as they were four or five years following the -- I fully expected - you know, when we started out, we had our first chancellor, but not right away. It took

considerable time, didn't it, Senator Lachman, and you have a very -- we used to discuss these things way back in those days. I knew him personally, and we used to discuss these matters.

I was very disturbed that we did not revisit with a consensus and critique so that we could take some of the burrs out. What had happened, of course, initially, the Board of Education became the chancellor. We conferred that title for the precise reason you assigned. We wanted someone who was strong and who would exercise his responsibility with firmness. We were looking for a strong name. That's how the chancellor was born, and you brought it out in public view, and you are absolutely correct. That was the conversations we were having at that time in trying to give it an appropriate description, also with the substance that goes with it, but it took a while before we could find anybody to do that.

In the meantime, the Board of Education became the chancellor. They were

entertaining all the Mickey Mouse appeals and everything else that was happening, didn't go to a chancellor or to a channel that was appropriate to the purpose. It was going to the Board of Education, and they were struggling manfully with this problem. They exercised Herculean efforts to make sense, and it wasn't easy.

I believe when I mentioned a little earlier to you about Mr. Gross who came in from Pittsburgh or Pennsylvania, he was a front piece on Time Magazine as the savior coming in. What happened? Some day I will write a book. I'm not going to say all the things that happened, but I will tell you there was very serious impedance to a review of what we had done, a review which I felt ab initio should have been -- should have been implied and said so at the time.

This is a system that had some positive and dispositive powers granted to the boards on restricted terms with residual authority in the chancellor, who wasn't around

at the time when it went into motion, but by that time, groups, good groups who had the best of intentions for the school system of the city of New York, were learning how to live with it. They were learning how to live with it.

I'll let you in on one thing and some -- to some of my Hispanic friends, proportional representation was very strong there because they felt at that time -- and that's not true today -- but the voting -- the voting pattern of Hispanics in the city of New York at that time, there were linguistic difficulties; there were a lot of problems but did not reach the level that exists today, and they were very fearful that unless we did have proportional representation, their representation would have been minuscule.

At that time, Citizens Union campaigned very heavily for that, and I remember their unhappiness with the first election but not with subsequent elections because virtually no one made it, and that's the truth. The record will bear me out.

When we tackled that same problem again finally with Angelo DelToro in the Assembly, we had a very, very fine commission. We made very positive -- we made a -- we made a very positive offering to the people of something that could fly, and I believe that it would have, perhaps, and I'm not going to go into the merits because some will say they were right or they were wrong, but the rainbow curriculum came along and everybody was disoriented and diverted from the central. There was no disposition at that point where I could possibly get a group together to consider restructuring of the City system while we were being pulled and hauled and tugged by the debate that was going on on this curriculum, rainbow curriculum, and I'm not going to invite any comment on that or point with pride or view with alarm. I'm just saying the effect that it had at that time, it provided so much -- so much of a diversion, so much difference where this might have been handled after we had solved the problem of restructuring that we had difficulty

reaching a solution.

This chancellor came in with a school district smaller than the one on Staten Island. The one on Staten Island isn't small, mind you, because two years ago we said, "No. You don't have to have a specific number." There isn't a school district in the city of New York that's so small that it compares poorly with districts around the state. You have, what, over 600 districts -- over 700 districts in this state of New York. I would say virtually all of them are smaller than the average in New York City, and the chancellor came from a very small district, smaller than Staten Island's district, and he's struggling manfully. There's not an evil, mean bone in his body. He's trying very hard, and he recognizes the fact that he can't have a festering wound that continues to nourish and hurt people, perhaps where the basis so eloquently described by Senator Lachman is as slender as it is until we redefine local governance.

We have a way here and it's

supported also by the mayor to -- and it was artfully presented, well presented by Senator Padavan. The remedies are there, but it's urgent that we act so that the elections can go forward.

There was a critique made that many times we -- we didn't reapportion. The right was always in the board, but each and every one of you know what the difficulty of redrawing lines is going to mean, and I mean about -- well, Staten Island -- Staten Island doesn't want it. They just want to be Staten Island. I said, "Well, you can have two boards. You can have perhaps something even better." "No, no. We like to be one island", and they are one island for the Bar Association, for almost anything that moves on Staten Island, they like to think as an island, but let me tell you when you start changing lines around the city of New York, I don't care where whether it's Republicans or Democrats, they don't like it on their beat, and by this time there are relationships that are built up and they're

strong, and they know each other and they interact on that basis, so that we have to - the power is there, but it will have to be defined, and we did have a system of definition in the bill that -- and the legislation that was recommended by the ones that -- the one that was headed by myself and other fine members and Angelo DelToro from the Assembly, but until we get to that -- until we get to that point, it makes eminent sense at this juncture to pass this legislation, and I would hope -- I would hope that we're earnest about restructuring, and the systems that have been suggested of bi house, if we have a bill here and they have a bill in the other house, that we can't compose them down the road. I don't want to see that process impeded and certainly not slowed forever.

We have to find ways -- I myself have advocated the system of bringing the vote to November where people really vote. They really turn out. I don't know the people that turned out that are turned out by someone, by

some groups, but we don't have the joinder of the greater public.

At this point, however, Mr. President, I do hope that -- and I'm grateful to the Senator over here for giving us -- for starting this and bringing us back to the genesis and the roots of the educational system in this state and especially the city of New York and describing it realistically in the terms that it exists, but I do hope that this bill does meet with the approbation of this body and that we keep our eye on an early rejoinder of the effort that had been made on the question of school restructure, so that a lot of the concerns -- and I haven't heard anything said here that wasn't said with sincerity. I haven't heard anything here that offended me in any way, because all of you were attempting, with great enthusiasm and intensity and commitment, to do something worthwhile for the people you represent, and whether any of us were accurate in defining the solution, certainly the effort that was being made in the spirit that it

engendered, I think is helpful to the school system of the city of New York.

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

SENATOR SKELOS: What time did the debate start on this?

ACTING PRESIDENT KUHL: I am informed by the Journal Clerk that it started at 4:18.

SENATOR SKELOS: Well, if we can wrap up in about three minutes, which I'm sure we can -- but, no, I know there are right now, I believe three more speakers scheduled.

ACTING PRESIDENT KUHL: That's correct.

SENATOR SKELOS: If we could try to -- we'll extend the courtesy. If we could try to wrap it up as quick as possible, it would be wonderful.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Mendez.

SENATOR MENDEZ: Mr. President, I will be very brief. The first question would be

why are we considering this bill here today? We recall that a few weeks ago, the chancellor of the -- of New York asked all of us to postpone the school board elections. We have done so three years ago, but out of sheer cowardice, we postponed it again and, therefore, in a hurry, this so-called compromising bill -- bill with compromises was arrived at. I think that - what is being claimed that the school system is, in fact, in a state of crisis, that is nonsense, nonsense.

What we're trying to do with this bill, Mr. President, is to give powers to the already existing powers that the chancellor has. We don't have to deny civil rights. We don't have to deny the voters rights to -- to elect whoever they want to. We don't have to do that. All that we have to do is put aside this bill, allow the elections to take place on May 7th, and then the chancellor, with all his powers, could go back and go through the process and suspend whoever he wants to.

What to me is very disturbing is

all these allegations about corruptions, about mismanagement of funds, that individuals whom I do not even know are being accused of, and based on allegations, to have the nerve to request something -- a bill like this that denies rights to everybody is something that, to me, is very difficult to understand.

So I know that this bill is going to pass. There is no justification at all in my mind for this to take place if we're talking about superseding, if we -- then we -- we, of the Legislature, we could supersede the Central Board of Education that has done such a very nasty, bad job in administering the billions of dollars that we send there, that has done such a very bad job at educating our children, all children because the public school system, Mr. President, that has 40 percent of its student body who drop out from school, there is something rotten in Denmark when that occurs.

So as was mentioned before by Senator Seabrook, ten days ago -- ten days ago, a big scandal in terms of the custodians; what

is going to be done about that? Nothing.

So this is a cop-out, like in many other instances, not from the chancellor's point of view, because the chancellor is truly and genuinely interested in the education of children, I believe, is a most decent and competent man, but we are copping out because we just did not dare suspend the school board elections for three more years until the time which it would come up with a good plan that will benefit or make it possible for the system to have teachers happily teaching in the school, in the classroom and everybody in the system working together, doing the most important thing which is increase the achievement level of all of the kids in the school system.

So this is sheer nonsense. Of the ten years that I have served here, I have never heard -- never known of such a nonsense, such a horrible cop-out involving all people related to the issue at hand. I vote no.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Leichter.

SENATOR LEICHTER: I'll explain my vote, Mr. President.

ACTING PRESIDENT KUHL: Senator Markowitz.

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

This afternoon, and I almost can say this evening, I have witnessed and heard a voice even louder than mine, Senator Seabrook. So it's a pleasure to have another high pitched voice here.

Secondly, as I look in the eyes of my colleagues, I know you're hungry, so let me be brief and say that District 17 is in the heart of my district, and it's one of those that the chancellor superseded.

Throughout the arguments, from the historical perspectives of Senator Marchi to the concerns that the Republicans challenged of Senator Waldon, I have to tell you that the thing I want to hear the most are the children. What's happening with the kids? And,

unfortunately, in some of the school districts in New York City, those children that need it the most, that need the best education are oftentimes getting the worst, and so there has to be an authority, someone that could step in and give direction, to give these children hope that tomorrow will offer them a better education than today.

In my district, District 17, I have to say that while corruption has not yet surfaced and may not, nonetheless three different political efforts were part, and so the school board was not able to come up with any working majority and, therefore, principals, assistant principals and everything else that a school board votes for went by the wayside and nothing got done, and what happens then? It translates into the failure of education delivery to children.

And so, Chancellor Cortinez superseded the board and appointed some residents of the community and some of his staff and they, in turn, appointed an outstanding

administrator by the name of Barbara Byrd Bennett. What has this wonderful woman done? She has brought order. She has brought educational excellence to a district that has been crying for her for years.

What this bill would do would allow her and others in a similar situation at least another year to set the groundwork so that when democracy is restored fully -- and it will be, and it should be -- when the parents begin voting, as they should be, when the parents begin paying greater attention to what's going on in the schools that they send their kids to -- and it should be, and it will be -- when that is restored, at least another year will be given to these boards to set the standards so that whoever is elected and takes office will work on excellence in education, and that's what I -- that is the reason why I support this bill.

ACTING PRESIDENT KUHL: Senator Pad... excuse me. Senator Connor.

SENATOR CONNOR: Mr. President, to close for the Minority.

Mr. President, I admit that at first reading of this bill, I was somewhat appalled. It does offend our usual concepts about democracy with a small "d". It's certainly extraordinary to have people elected in an election who will not take office for another year because their powers would be under suspension but, you know, compared to the alternative, Mr. President, postponing the election for all 32 districts -- which I would have remained in support if the chancellor had asked in early January, frankly, but I know that -- I know people running for school board, they have been out in the cold weather, getting petitions, filing petitions, they're in the middle of a process, and I think it would have been damaging throughout the City in every dis trict, damaging to the concept of participation that this whole community school governance scheme has worked so hard to increase. Parents out there who got petitions, lined up friends would have been told, "No. The election is postponed. All your efforts didn't matter", and

it seems to me that that would have been far more discouraging to people participating in school board elections, to people getting involved and more confusing to the voters than this rather extraordinary legislation which does put a kind of dent in the normal theory we're used to dealing with, and I know the press has talked about, well -- and perhaps the chancellor did mention it, "Oh, it's about corruption and rooting out corruption".

Mr. President, the whole problem with this governance system in New York City, we know it was conceived and birthed in Albany amidst great political turmoil and strife, much conflict between communities, very intense, emotional content to those debates, and we came up with this system of community governance, and frankly -- and I've seen community school board elections. In a past life I've represented candidates running for a community school board, and we've seen it never quite live up to its billing, and if I may, Mr. President, what we did in this system ultimately is we gave certain

powers to community residents and we didn't give them what it took to back it up.

You know, we say to parents, "Come forward. Get on a school board. Get involved", and when they get on a school board, we say, "Here, deal with this budget. There's 40- or $50 million in discretionary funds there. Figure out what to do with it", and we're handing it to people who perhaps have never seen a budget in their life, in some cases, and naturally depending on the level of sophistication and economic status, in some cases of different districts, there are districts where we say to people on the school board, "Go and interview. Pick principals - pick principals who will make 60-, 70-, 75,000 a year. Pick a superintendent who may make 100 some thousand a year. Here's a process. Interview, report, evaluate", but did we ever train these people how to interview, how to evaluate?

There are many, many of our citizens, fine people who could make a

contribution, but they may not have had any experience interviewing somebody, and they may have succumbed to the best salesperson in the interviews, the smoothest, most charming candidate.

I know I made mistakes in my early days when I first had to interview and hire people. You know, it takes a while to get a knack for it. We never gave the kind of training to these community school board people, and over the years we have had the horror stories. This district or that district has a reputation for corruption, and it pops up and it recurs. How do they get there? "Oh, gee, nobody votes in that district. It only takes a few hundred votes. Little cliques take control", and in other districts it becomes a war between politicians.

So redistricting was never accomplished. Paralysis -- political paralysis in governance. We had Senator Marchi's commission propose 50 more districts. We've had other proposals, abolish the districts. Do

this. Have school-based management. We have a proposal the Assembly put out this year. Nothing ever happens. Political paralysis in this Legislature. Why? Because there are political interests in the status quo. There are people who have their captive district or two and don't want to see things change, and we fight this in a political arena, but what's it really about? It's about the children. Generations of school children in some of these school districts have come into the schools and graduated from the schools and another generation has come in and graduated from the schools while these fights have gone on, and the second generation can't read or write any better than the first generation that went through the system. There is something wrong, Mr. President.

What about chancellors? Chancellors have come and chancellors have gone. Some have been great. Some have been good. Some have had the misfortune to leave us too soon because of illness. Some we've seen

chased out of town by a mayor. We now have a chancellor, Dr. Crew, seems to come in, wide respect. I've met with him several times. I am impressed. Parents report, they feel he is concerned and has taken the right steps.

My first reaction to this bill, Mr. President, was, No, we're not going to do that. We're going to have elections and suspend them, and then I met with Dr. Crew, and he made his case, and his case -- he didn't talk, Senator, about corruption, and I asked him the hard questions like, well, if you get nine brand new people elected to the board -- they weren't part of the crew that either were negligent or perhaps culpable or, as Senator Markowitz pointed out, just totally immobilized and neglectful because of their internal political conflicts. These are brand new people, in District 17, for example, and he said, "Well, I hope we do", and I said, "So they win election and you're going to tell them you can't take your seat", and he said, "Senator, do you really want to saddle a brand new school board of nine

new people with the job of picking a superintendent, 23 principals, 15 assistant principals, all these things that were left vacant?" It would take them their three-year term just to go through the interviews, and first they'd have to be trained how to conduct an interview, what to look for in a principal or a superintendent or whatever. He said, "I want to give these people a chance. I want to work with them for that year, but I want to have the power to make sure that the structure is rebuilt in that district so that these people can take over and have a healthy, thriving district."

Mr. President, I couldn't help getting the impression the four districts we're all focused on, because I notice that here, the members who represent the largest parts of these four districts support this bill.

I can't help thinking there might not be some other districts that will be subjected to this provision, and at first I thought, "That's terrible", and then I thought, "Wait a minute. We have a chancellor. We want

to hold him accountable. We want change. We have to give him the tools to build the educational infrastructure to have that kind of change."

Now, I don't like this idea of suspending these people after the election, but for this year, for this chancellor, under these circumstances -- and we all know he's only been in office a relatively short time, and he came in amidst a great deal of controversy. Frankly, I'm surprised we got someone of his qualifica tions, dedication and will to take that job because after the last chancellor was, I believe unfairly chased out of town, I thought no reputable educator will take that job, and as that so-called process that the Board of Ed' went on about who would be the next chancellor, I became even more convinced that we would end up with no one, but we got Dr. Crew, and he's doing a good job, and I say let's give him the tools. Let's hold him accountable. Let's give him his year to identify those districts that just aren't making it, to set goals, to build

that infrastructure and then to put the community school boards into power with something they can work with and deal with after they've been trained and they have been handed a working system in their community school districts.

And I said to Dr. Crew, "You know, I'm willing to go with you. What about some future chancellor, some future school board election", because I doubt in my lifetime this Legislature will ever develop the will -- I regret it but I doubt it -- will ever develop the will to deal with school governance in an appropriate way. I said, "What about some future chancellor", and then it occurred to me, I said, "Doctor, what if we sunset this? What if we make it just now? This is your chance, Rudy Crew's chance, to deliver for the people of New York, for the children of New York, but it's not a power we are going to invest in the permanent education law."

And I'm happy to say, Mr. President, he was receptive to the idea. Others

in this Capitol were receptive to the idea. I believe we shall see a chapter amendment that will limit this so that it's only this school board election it applies to, and under those circumstances, given the fact that the Board of Ed' for all those years failed to bite the bullet and do what had to be done about districting, that this Legislature, after studies and commissions and experts has failed to deal in any real way, in any serious way with the needs of this system for revisions of the governance, and the fact that through decades and in many cases, Mr. President, precisely those communities that the community system was supposed to empower have been the communities whose children have been cheated the very, very most and whose children need education and that -- and a good system the very, very most.

In view of all that, I'm prepared to say, let's give Dr. Crew his chance. Let's hold him accountable and let's do this bill. So I am voting yes, Mr. President.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Padavan to close debate.

SENATOR PADAVAN: Thank you, Mr. President.

Anything I would say probably at this juncture would be redundant, you all agree, but I do want to take this opportunity to thank Senator Lachman for his historical perspective. The newest among us sometimes contributes a great deal and, of course, Senator Marchi having been involved way back in 1969 with the decentralization law that we're now amending.

I hope that what Senator Connor -- and I agreed with 99 percent of what he had to say -- but I hope one thing that he said is not true, in that before this session is over, despite the fact that there are eight or nine different recommendations as to how we should restructure the Board of Education -- and this house having passed one of those proposals, the Marchi bill in '93, and I hope we do it again, but in any event, I hope that both houses and both sides and all of us and those down in the City, the Board of Education and the mayor, and

so on, can get together and do something that restructures the entire system, and I hope his prophecy fails in that regard because this bill is simply a measure to deal with a short-term situation that we're faced with. It doesn't improve the system beyond that. It's never been suggested. I certainly haven't, that it would. It's something we have to do as a matter of necessity.

So with that final point, Mr. President, I would ask you to read the last section.

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.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Smith to explain her vote.

SENATOR SMITH: Thank you, Mr. President.

I've heard it said today that this is an imperfect world and this is an imperfect bill, but we cannot continue to compound our mistakes.

I stand ready to work day and night on the restructuring of school governance. I pledge my support for reform - for reform which would provide for quality education for all of our children, but I'm not ready to give up on the empowerment of communities and the rights of people. I'm not ready to give up on due process and voters' rights which take precedence over expediency.

Therefore, I vote no.

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

The Chair recognizes Senator Leichter to explain his vote.

SENATOR LEICHTER: Mr. President, I am concerned that there's a lack of logic in this bill and that we are, in some respects, bending democratic and due process principles, but I don't know if we have an alternative

because we're dealing with a system that is so badly flawed, a system that is so illogical, I don't know how you correct it or how you deal with the situation we face of a school board election without taking an action of this sort, and I want to say I'm certainly influenced by comments of many of my colleagues, certainly Senator Lachman, Senator Espada, Senator Connor and others. I think we are dealing with a particular situation which is an election that is being held and with the responsibility that we have to the school chancellor of giving him the authority to act in districts where the educational level, for many reasons and not just due to the school board, is unfortunately extremely low.

One theme that certainly was true in all the comments of those that were for and against the bill is strong dissatisfaction with the present system and an agreement that I think every member, not only in this house but in the other house shares that this system that we have now must be swept away.

I was also here in 1969 and I voted against the decentralization bill, and since then I've seen all of the efforts to change it. The one thing that's clear to me is that there is no issue where fierce politics intrudes as it does in school governance of the city of New York and, frankly, I doubt -- I doubt very much that this Legislature could come up with a governance plan for the city of New York that will work and serve the children of that city.

I've urged for some time that we set up a commission, that we recognize just as the Congress did with school-based -- with military base closings, that the politics are so difficult that you need a commission to guide the Congress, and I think we need the same thing in school governance. I hope I'm wrong. I hope by the end of this year we will see agreement among the two houses; we will see a bill that will be supported by the broader community, by the mayor, by the chancellor. I doubt that very much, and I would really say, if we can't do it

this year rather than continue to fail the children of the city of New York, to embarrass ourselves by the inability to act in spite of the fact that we have people such as Senator Marchi and many others who have devoted so much time in trying to deal with the problem that we go the route of the commission, but to allow this election to go forward, Mr. President, I vote yes.

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

Senator Gonzalez to explain his vote.

SENATOR GONZALEZ: Yes, Mr. President. I think that much has been debated and it's -- part of this is that the whole system needs to be changed, and we have been passing it by, and we continue to pass it by, but I'm concerned with -- that for the 27 years, that we're going over on 30 years, that no reapportionment, no nothing, and we keep going, passing by and we're going to do a patch up work. I want to stop corruption. I want to do

what is necessary for the kids, but then let's not have voting. Let's have appointment so that we can remove people when we want to because the basic fundamental rights on people voting and having their rights protected. It is wrong to not have the due process on each person who is running for office or whatever they're doing, any one of us, due process should take on them if you stand accused and stand convicted, and with that, I will vote in the negative.

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

Senator Stavisky to explain his vote.

SENATOR STAVISKY: Whenever there is a frustration with regard to the delivery of educational services and unhappiness over the way that many children fail to avail themselves of their right to a decent education, the easiest thing in the world is to recommend that we change the system of governance. That becomes a distraction. That becomes an easy course of action, to distract from the main

point.

What is the relationship between the method of selection of school board members and a failure or lack of failure to deliver educational services in a manner in which children actually learn and improve their performance in basic and also in advanced skills?

That's the question we ought to be asking. What is the relationship between what we're doing tonight and what we hope to achieve? If anyone could demonstrate that there is a close relationship between school governance and the ability of children to learn, I would have no objection, but I think there are deeper or diversified reasons for failure.

Is the state education aid formula apportioned in a fair method by the Legislature? Do the children of New York City receive anything comparable to their numbers and to the special needs that they have with regard to families, in many cases, that are dysfunctional, children for whom English is not

the primary language, disabilities? What's the relationship of governance to those issues? What's the relationship of governance to the ability to hire and keep competent educators?

I noticed the groups that were supporting this bill. Would the groups supporting this bill like to have this standard of removal applied to them? I don't think that the teachers would wish to be removed on the basis of allegations that are not proven. I don't think the supervisors who also have their names identified with supporting this legislation would wish to have their future determined by an accusation that is not proven. I don't think the Central Board of Education members or the chancellor would wish to be retained or dismissed on the basis of a - flimsy reasons that have been cited.

I've looked carefully at Section 2590 (l), and there are no guidelines to speak of with regard to proof, with regard to wrongdoing and with regard to cause and effect. I would like to see specific guidelines spelled

out in the legislation which then would result in a finding of guilt, violation of the law or some other heinous lack of responsibility. That's what the legislation needs, the existing law. It doesn't need a blank check given to a chancellor to remove everyone else. Maybe the chancellor, in some case, at some future date should be removed. Maybe the Central Board of Education should be removed.

My colleague, Senator Lachman, had a good judgment not to continue, but maybe there are situations where the central board is at fault. Why don't we examine the fact that the Central Board of Education and the community school boards are competitors -- are competitors for scarce dollars, and it's in the best interests of the central board and the chancellor to have no competitor at the community level.

ACTING PRESIDENT KUHL: How do you vote, Senator Stavisky?

SENATOR STAVISKY: Under these circumstances -- and I hope I haven't been

reluctant to express my reservations -- under these circumstances, I wish to be recorded in the negative.

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

Senator Mendez to explain her vote.

SENATOR MENDEZ: Yes, Mr. President.

I happen to believe that regardless of how critical a situation is, as it has been alleged is the case in the public school system of the city of New York, many violating completely, those democratic ideas under which this country was born and has operated through the years, I think this bill and the rationalizations that have been given to sustain a vote in the affirmative for it brings to my mind a clear realization that it is - this is the process that is followed, unfortunately, in many instances where fascist governments are born.

So, once more, with great joy in

my heart, I vote no.

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

Senator Goodman to explain his vote.

SENATOR GOODMAN: Mr. President, for those Senators who were present at the Education Committee meeting, my views on this I think are now well-known, but I would like briefly to reiterate them.

The condition of our schools in certain school districts is lamentable. We have corruption and we have mismanagement of a very severe degree. Of that, there can be no possible question.

It seems to me that our principal task at this time is to equip the chancellor with a set of tools to enable him to use his good discretion and to try to clean up this mess, and if we fall short of that responsi bility, we're doing an enormous disservice to students who desperately need their education as keys to a better life which would otherwise be

denied them.

Mr. President, the fiction that this is a democratic procedure is at this point, I think, amply exposed by virtue of the fact that only five percent typically of the people turn out for school board elections in the first place. So this is an electoral system sadly in need of repair so that it can truly be democratic, but at this point it is certainly no rape of democracy to have an imposition of a good chancellor's discretion in cleaning up a district. It certainly does not bring about anything like a disjointing constitutionally of a system that is supposedly reflective of the will of the people.

The time is now, and the task is immense. We should get on with it. I vote aye.

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

Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, I'm not from the city of New York,

but I have to respond briefly.

I guess I'm frightened by two things. One is the notion that somehow the number of people that vote in an election determines the validity of the election.

Senator Goodman, we have school board elections in Monroe County in which 40,000 people are eligible to vote and 1,000, 1500 people show up. We have fire commissions in upstate New York that run fire budgets that have huge numbers of people that they serve. In my community, very politically active, we in many cases get less than 100 people to vote. It isn't so much how many people vote. It's the fact that people do vote and they abide by majorities.

It seems to me that what this is all about, this debate is all about, is something that I find scary, and that is the notion that's embodied in the Board of Education's memo, and it says that "the chancellor's efforts to stabilize school districts could be seriously jeopardized by

upcoming elections."

Last time I saw that same line was when Third World dictators were afraid of democratic elections. Despite the fact, how ever, that I believe that this is an experiment, what we're doing today is an experiment in anti-democracy, not an experiment in democracy, I'm nonetheless, I guess, convinced by Senator Connor, that under the unique circumstances present here, under the circumstances of this particular election, this particular circum stance, based on a carefully thought out sunset provision, I'm willing to do it for the kids even though, in my judgment, the danger that this poses is a very significant one.

Frankly, it may come back to Rochester in New York. We have several schools under review. We have had problems with our parent boards in the city of Rochester and a dispute between the parent boards which have the same kind of quasi-elected status in some cases, somewhat similar to these boards, but the notion of governance is something that we've got to pay

attention to.

Under the unique circumstances present here, I will vote yes, but I think we're marching down a road, Mr. President. We've got to be very, very careful.

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

Senator Onorato to explain his vote.

SENATOR ONORATO: To explain my vote.

I concur with a great deal of the principles that the bill is trying to accomplish, but I'm still concerned about the lack of the sunset in the bill, and until -- I'm one of the doubting Thomases that maybe it'll come along and maybe it won't, and until such time that it does, I will vote no on this bill, and I will vote yes when the amendment arrives.

ACTING PRESIDENT KUHL: Senator Onorato will be recorded in the negative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 513 are Senators Gold, Gonzalez, Mendez, Onorato, Seabrook, Smith, Stavisky and Waldon. Ayes 52, nays 8.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could please return to reports of standing committees, I believe there's a report from the Civil Service and Pensions Committee at the desk.

ACTING PRESIDENT KUHL: There is a report. I'll return to reports of standing committees and I'll ask the Secretary to read.

THE SECRETARY: Senator Trunzo, from the Committee on Civil Service and Pensions, offers up the following bills:

Senate Print 6378-A, by Senator Hoblock, an act to amend the Civil Service Law, in relation to volunteer transfer of state personnel;

6624, by Senator Hoblock, an act

to provide a retirement incentive for certain public employees.

Both bills directly for third reading.

ACTING PRESIDENT KUHL: The bills are reported directly to third reading.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar 434.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 434.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I hand up the following notice and ask that it be filed in the Journal.

ACTING PRESIDENT KUHL: The notice is received and will be filed.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: Yes. We need to return to reports -- or, excuse me - motions and resolutions.

The Chair would recognize Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on page number 25, I offer the following amendments on behalf of Senator Holland to Calendar Number 505, Senate Print Number 6171 and ask that said bill retain its place on third reading.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 505 are received and adopted. The bill will retain its place on the Third Reading Calendar.

The Chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, a few days ago, the house voted on Senate Bill 211, and had I been in the chamber, I would have voted no.

ACTING PRESIDENT KUHL: Senator Montgomery, the record will reflect that had you been in the chamber when the roll call was taken on Calendar Number 211, you would have voted no.

SENATOR MONTGOMERY: Thank you.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping?

(There was no response.)

Mr. President, for scheduling purposes, session on Wednesday will be at 3:00 p.m. There will be a Majority Conference tomorrow, Tuesday, at 2:00 p.m., and there being no further business, I move we adjourn until Tuesday, March 26th, at 3:00 p.m. sharp.

ACTING PRESIDENT KUHL: For the benefit of the members, scheduling for session has been changed on Wednesday, two days from now, from 11:00 to 3:00 p.m. Tomorrow there will be a Majority Conference at 11:00 -- excuse me -- at 2:00 p.m. Without objection, the

Senate stands adjourned until tomorrow at 3:00 p.m.

(Whereupon, at 6:55 p.m., the Senate adjourned.)