ALBANY, NEW YORK

April 2, 1996

11:03 a.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.

Will everyone please rise and join me in the Pledge of Allegiance.

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

May we bow our heads in a moment of silence.

(Whereupon, there was a moment of silence.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, April 1. The Senate met pursuant to adjournment. The Journal of Sunday, March 31, 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 Marcellino.

SENATOR MARCELLINO: Yes, Madam President. On page number 14, I offer the following amendments to Senator Lack's bill, Calendar Number 386, Senate Print Number 5954, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

Senator Skelos.

SENATOR SKELOS: Move that we adopt the resolution calendar.

THE PRESIDENT: All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Calendar is adopted.

SENATOR SKELOS: Madam President. At this time, I believe Senator DeFrancisco has a privileged resolution. I ask that you recognize him.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. Madam President, I rise to speak on behalf of this resolution, and it's pertaining to the Syracuse Orangemen and their success in the tournament, the NCAA tournament, including the Final Four, and I request that just the title be read.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution, honoring the Syracuse University's Men's Varsity Basketball Team and Coach Boeheim for their outstanding 1995-96 season culminating in a victory against Mississippi State in the Final Four of the NCAA Tournament to advance to the final game of the competition.

SENATOR DeFRANCISCO: I rise to commend this great basketball team which has really done some wonderful things for the City of Syracuse. The community has come together like I've never seen it before. Actually, I saw it come together before one last time like this back in 1987, when we lost in a last four second shot by somebody who will remain nameless. But on both of these occasions, this team has shown the spirit that we think all Central New Yorkers have.

Although the team last night came a little bit short, they certainly ran out of gas because of the onslaught of the Kentucky Wild Cats, but they didn't run out of heart. They played as hard as they could for as long as they could, and within four minutes to the end of the game, they were still within two points, what very few teams have done with this fine Kentucky team.

I am proud to be from Central New York. I'm proud to have participated in interscholastic sports at Syracuse University,

and I'm very proud to have attended and watched a wonderful team bring a community together, and I commend the members and also Coach Boeheim, and I am going to invite them to the State Senate to be honored, at a later date.

Thank you.

THE PRESIDENT: Thank you, Senator. I will bring a Mississippi mud pie to the team, the sweet spoils of victory in their Final Four.

The question is on the resolution.

All those in favor, signify by saying aye.

(Response of "Aye.")

All those opposed, nay.

(There was no response.)

The resolution is passed.

SENATOR SKELOS: With Senator DeFrancisco's consent, we can put all the members on the resolution.

THE PRESIDENT: All members will be listed as cosponsors.

Senator Skelos.

SENATOR SKELOS: At this time, there will be an immediate meeting of the Transportation Committee in the Majority Conference Room. Just for information, following that, Commerce, Economic Development, Small Businesses will meet; then Energy and Telecommunications; then Social services. But we will call each one individually as each meeting ends.

If we could take up the noncontroversial calendar at this time.

I believe we have a substitution.

THE PRESIDENT: Secretary will read.

THE SECRETARY: On page 5, Senator Volker moves to discharge from the Committee on Codes, Assembly bill 7545A and substitute it for identical Senate Bill 3785A.

THE PRESIDENT: Substitution ordered.

SENATOR SKELOS: Madam President. At this time, if we could take up

the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 11, Calendar Number 301, by Senator Goodman, Senate Print 1695B, an act to amend the Transportation Law, in relation to increasing penalties for violating the motor carrier certificate.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 569, by Senator Hoblock, Senate Print 6259, an act to amend the Vehicle and Traffic Law, in relation to changing the color of certain police vehicles offered for resale.

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 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 575, by Senator Seward, Senate Print 6336, an act to amend the General Municipal Law, in relation to revision of mass transportation services in the county of Tompkins.

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 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 576, by Senator Volker, Senate Print 6368, an act to amend Chapter 356 of the Laws of 1994, amending the Erie County Tax Act.

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 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 587, by Senator Hannon, Senate Print 6108, an act to amend the Tax Law, in relation to extending the tourism promotion fee in the county of Nassau.

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 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 589, by Senator Goodman, Senate Print 6283, an act to amend Section 7 of Chapter 587 of the Laws of 1995, relating to authorizing the conveyance of certain lands to the Brooklyn Academy of Music.

SENATOR LEICHTER: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 596, by Senator Kuhl, Senate Print 4010, an act to amend the Public Authorities Law, in relation to authorizing and establishing compensation for members of the Genesee Valley Regional Market Authority.

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 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 599, by Senator Wright, Senate Print 6206, an act to amend the Public Authorities Law, in relation to allowing the Town of Hannibal to contract with the Onondaga County Water Authority.

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 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 625, by Senator Marcellino, Senate Print 6686, an act to amend the Environmental Conservation

Law, in relation to authorizing cities within the County of Nassau to qualify as a planning unit.

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 47.

THE PRESIDENT: The bill is passed.

That completes the noncontroversial calendar.

SENATOR SKELOS: Madam President. At this time, if we could take up Senator Goodman's bill, Calendar Number 589.

THE PRESIDENT: Secretary will read.

THE SECRETARY: On page 29, Calendar Number 589, by Senator Goodman, Senate Print 6283, an act to amend Section 7 of Chapter 587 of the Laws of 1995, relating to authorizing

the conveyance of certain lands to the Brooklyn Academy of Music.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Would it be appropriate before Senator Goodman takes up his bill if I did a bit of housekeeping?

SENATOR SKELOS: We're on the bill now, Senator. We have to wait a minute.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Madam President. This bill relates to the Brooklyn Academy of Music's desire to obtain a piece of land. A bill regarding this transaction had previously passed in this house. Chapter 587 in 1995 was enacted to enable BAM, a not-for-profit organization, to enter into discussion with the Office of General Services and the Office of Mental Health for the purchase of the real property in question. At this time, it appears that the parties involved will require longer than the one-year period granted by the original bill to work out the particulars of the purchase. This legislation would merely grant

the parties an extra year in which to come to an agreement.

THE PRESIDENT: Thank you, Senator Goodman.

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.

Senator Saland.

SENATOR SALAND: Thank you, Madam President. Please remove the sponsor star from Senate 2575A, Calendar 391.

THE PRESIDENT: The star is removed.

SENATOR SALAND: Thank you.

SENATOR SKELOS: Madam President. If we could stand at ease now for a few moments, we can get the committee meetings going. Commerce Economic Development will not

be meeting. If the members of the Energy Committee could start moving over to the Majority Conference Room, we could commence that meeting as soon as Transportation finishes.

Then there will be a Social Services meeting, and then after that a Tourism Committee meeting.

So, temporarily, we will stand at ease.

THE PRESIDENT: The Senate will stand at ease.

(Whereupon, at 11:14 a.m., the Senate was at ease.)

(Whereupon, at 11:21 a.m., Senate reconvened.)

ACTING PRESIDENT WRIGHT: Recognize Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of Senate Energy Committee in Room 123 of the Capitol and the Tourism Committee is going to meet in the lobby right outside our chambers right here, for a very important matter.

ACTING PRESIDENT WRIGHT: Senator Skelos, we have a motion at the desk.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. I wish to call up Senator Johnson's bill, which is 5830, which was recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: By Senator Johnson, Senate Print 5830, an act to amend the Environmental Conservation Law, in relation to permitting certain additional persons to obtain commercial lobster permits.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT WRIGHT: The

bill is before the house.

Senator Farley.

SENATOR FARLEY: I now offer the following amendments.

ACTING PRESIDENT WRIGHT: Amendments received.

Senator Skelos.

SENATOR SKELOS: Mr. President. The Social Services Committee will meet in the Majority Conference Room following the Transportation Committee meeting.

(Whereupon, at 11:22 a.m., the Senate was at ease.)

(Whereupon, at 11:24 a.m., the Senate reconvened.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT WRIGHT: Recognize Senator Skelos.

SENATOR SKELOS: Just as a reminder to the members. The Transportation Committee is meeting now in the Majority Conference Room. Following that meeting, the Social Services Committee will meet in the

Majority Conference Room. Tourism is meeting out in the lobby right now on a nomination, and Energy Committee is meeting in 123 of the Capitol, and the Senate will stand in recess until 2:15 this afternoon.

ACTING PRESIDENT WRIGHT: Thank you, Senator Skelos.

The Senate is in recess until 2:15 this afternoon.

(Whereupon, at 11:25 a.m., the Senate recessed.)

(Whereupon, at 2:55 p.m., Senate reconvened.)

ACTING PRESIDENT KUHL: Senate will come to order.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President. If we could return to motions and resolutions, I believe Senator Farley has a motion to make.

ACTING PRESIDENT KUHL: Return to motions and resolutions.

Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr.

President. On behalf of Senator Libous, on page 33, I offer the following amendments to Calendar 191, Senate Print 5724, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 191 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President. If we could take up Calendar Number 170, Senate 2964A, by Senator Cook.

ACTING PRESIDENT KUHL: We will go to the order of the Calendar.

Secretary will read Calendar Number 170.

THE SECRETARY: Calendar Number 170, by Senator Cook, Senate Print 2964A, an act to amend the Tax Law, in relation to imposing a sales and compensating use tax on commissaries in correctional facilities.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Cook, an explanation, a very long one, has been asked for by Senator Paterson.

SENATOR COOK: Mr. President. This bill which is Senate Bill 2964A -- it's an "A" because it's been amended -- is cosponsored by Senators DeFrancisco, DiCarlo, Farley, Hannon, Kuhl, Larkin, Libous, Maltese, Present, Saland, Sears, Seward, Trunzo and Velella, and it provides that the State of New York and the other municipalities would benefit from collecting sales tax from taxable items which are sold in prison commissaries and in commissaries of jails that are operated by counties and/or cities within the State of New York.

That tax generally is 4 percent state tax, and varies somewhat from one county to another, and some counties being 4 percent or other counties being 3 or 2 percent, and in some counties it's even higher than 4 percent, so it does vary a little bit on the way that it would

impact on different counties.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. I would wonder if Senator Cook would yield and be willing for me at this time to ask a couple of questions that have been just kind of -

SENATOR COOK: Senator, probably for an hour or so, if you would like.

ACTING PRESIDENT KUHL: Senator Cook yields, Senator Paterson.

SENATOR PATERSON: For an hour?

Mr. President. I hope that will be enough time because I have a lot of questions.

SENATOR COOK: I admire you, Senator, for being able to find that many questions to ask in an hour.

SENATOR GOLD: I'll help you with the -

SENATOR PATERSON: Thank you. So if there's anyone not only within this chamber

but within the sound of my voice that wants to share as much about this issue as I do, people who are in offices listening on the box or people here, gather around. Get closer together.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Will the Senator yield?

SENATOR COOK: Mr. President. Point of order.

SENATOR GOLD: Senator Paterson, are you speaking for yourself or everybody on that side?

ACTING PRESIDENT KUHL: Senator Paterson, excuse me. Senator Gold is rising and I'm not going to recognize him because he's not in his chair, and that will settle that.

But in any case, are you through with your answer to Senator Paterson's question, Senator Cook?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: Senator Paterson, you do have the floor.

SENATOR PATERSON: I was saying that we should all get closer together to think about this issue, so all of you who are listening and all of you who are concerned welcome to Senate rehab. All you need do for the next hour is get up. You don't have to engage in the regular formalities. Just get up and say your first name, like, "Hi! My name is Manny. I can't think of anything else to do right now, so I'm just going to walk around the chamber."

Actually, Senator Cook, I do have some questions and let me get started right now.

I would like to know how many - how much revenues do you think that this piece of legislation that you either thought up or took from Senator Nozzolio because I see he has a bill of similar virtue -- how much revenue do you think that this will bring into the state?

SENATOR COOK: Mr. President. I trust that the good Senator isn't accusing me of

larceny on this bill. But that -- being that as it may, our numbers from the State Corrections Department indicate that it would generate about $640,000 in revenue for the state. Our estimates for localities is it would be about $480,000. Now, that's only the numbers that relate to the state facilities themselves.

The bill also applies to local facilities, and we have attempted to get estimates. The Corrections Department can not supply us with that information. They say they don't have any aggregate numbers of how much is sold in the local commissaries, but we're guessing that it may be a comparable amount. There are -- the population -- the aggregate population of the local facilities is somewhat larger than the aggregate population of the state facilities; but, on the other hand, the prisoners are there for shorter periods of time so we're assuming they may not be purchasing the same quantities of goods as would prisoners in state facilities.

So all things being equal, we're

assuming that the amount of sales tax collected from inmates in local facilities would be rather comparable to what is collected in state facilities which, as I said, is $640,000 from state facilities. Now, if you double that, that's a $1,280,000 that we would be collecting at the state level. It is double of $480,000 or $960,000 that would be accruing to the benefit of local governments.

And I would say, Senator Paterson, and this I assume would be something you would be quite interested in, New York City, since it has a higher sales tax than many other municipalities and also since its prison population at its local facilities is higher per capita, perhaps, than other municipality, would probably collect a larger proportion of that roughly two million dollars than would other municipalities in the state, so it would be beneficial to the City of New York, as well.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Oh, thank you,

Mr. President. If Senator Cook would continue to yield?

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

SENATOR COOK: Of course.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Cook, how are the funds that inmates in our correctional facilities -- how do they get in the hands of the inmates right now? I would assume, from different tasks they perform, work that they do that is within the actual facility.

And I guess I would like to add to that is who determines how much money they receive for performing these functions?

SENATOR COOK: Mr. President. I believe -- and I stand to be corrected on this, but I believe it's about a 50 cents an hour payment that's made to prisoners for work that they perform while in prison. It is, of course, and unfortunately, I might add, a minority of

prisoners who are perhaps not of -- perhaps it's not their fault, but it's only a minority of them who are actually employed in the prisons, so most of the prisoners who would be spending money in the commissaries would be deriving their funds from some source other than from work they actually do within the prison system.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

While I was listening to your answer, Senator Abate was by to tell us that when she was in prison, it was 16 cents to 50 - I'm sorry, when she managed the facilities, it was 16 cents to about 50 cents.

The reason I ask you this question, Senator Cook, is that I would assume that the heads of the facilities in concert with criminal justice experts and people who are familiar with Corrections would set the amount that they feel it would be appropriate for the inmates to receive so that they can make certain

purchases right within the system and that they don't have an excess of money, so, in other words, it's kind of a regulated amount of money that they would have; is that not correct?

SENATOR COOK: Senator, I think that there is an effort, has historically been an effort to set the compensation in such a manner that it gives some return to the prisoners, recognizes, of course -- and I say this almost tongue in cheek that they have free room and board, but that they have an amount of money which they can utilize in some reasonable manner to make purchases, small purchases. At the same time, we're not paying them $12 an hour so that you can to go prison and have a great job so that you can support your family on it. That's not really the purpose of prison.

The purpose is to simply compensate the prisoner, to some degree, for the work that they perform, and, fortunately, I would say there is a certain amount of rehabilitative value to the work that the prisoners do. I think that not only do they

perform very useful functions but they also learn job skills while they are doing it.

And I would say that we had one very interesting situation at Eastern where these folks learned something quite valuable, because they worked on the electrical system and learned where the tunnels were and found out how to get over the wall, so in the process of their employment they indeed picked up some very useful skills.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: That's quite interesting, Senator. If you would continue to yield, I have another question.

SENATOR COOK: Yes, I will yield. Yes, sure.

SENATOR PATERSON: Senator, you are aware that some inmates -- the monies that they collect actually goes into the crime victims system and that they actually make payments into that whole institution, as well. Is that not correct?

SENATOR COOK: Senator, I -- I am assuming that since you say that that it's correct, although I must confess out of my own knowledge, I don't know that.

SENATOR PATERSON: Thank you.

Therefore, Senator, what I guess I'm leading up to -- and I'm sure everyone here is guessing what I'm leading up to -- is that with the amount of resources that could be returned to the state with the adoption of this law, the fact is that since this is a regulated, in a sense, payment system and we've determined that this is about the amount of money that inmates should have, then would it not be very possible that after we adopt this law there will be, in a sense, another change that would be made to increase the amount of money that is in the pockets of inmates to, in a sense, offset the amount that would be paid back into the state for sales tax?

SENATOR COOK: Senator, that may well be, but I think we have to understand that this is an institutional store; that it does not

have the usually costs that are connected with running a business. Obviously, they don't have rents and other kinds of business costs associated with running a business. They also -- since there usually are inmates who are running the store, their labor costs are relatively modest, so they already are getting a pretty good bargain on this material. If, for example, they had to rely upon their families to purchase these items and bring them in to them, it would cost the families much more than that if they had to buy it on the market outside and bring it in to them than it cost them.

Incidentally, Senator, there's a very interesting -- something -- you might be interested in a little aside on this, since we're trying to find something to talk about. I understand that in certain European nations that used to be behind the Iron curtain -- and I don't know whether this is still the practice - that families actually had to bring the food into the hospitals, so that if you were a patient in a hospital, your family had to

provide you with the food. So I guess we're pretty liberal and pretty generous in our prison institutions because we don't require the families to bring the food to the prisoners while they are there.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Yes, Senator, we were thinking of Dickens and Tale of Two Cities where that same situation happened, except in my case if I were in the hospital, it might have been the food that my family gave me that put me there, so that just would have exacerbated the problem.

But one of the items that prisoners often seek when they are going to the store right in the facilities are cigarettes, and I was just wondering with the sales tax on cigarettes but also the additional taxes that we have, kind of a sin tax for the purchase of these items, is there any provision in the legislation that would add to the tax on some of these items that were already -- for individuals

who are outside of a facility who are not incarcerated that we are trying to in a sense through our tax system discourage this kind of activity, that perhaps we might be including a provision in this bill to do that, particularly with individuals we're trying to rehabilitate?

SENATOR COOK: Senator, I'm not altogether clear on exactly the question, but I think I got the drift of it, which is, should we add an additional tax to what we charge for cigarettes within the prison in order to discourage use by prisoners of tobacco? Is that kind of the drift you're going?

Well, this bill doesn't address that issue, Senator. Obviously, it is a health concern, and it does seem a little bit ironic that we spend a great deal of money on our health systems within the prisons to help rehabilitate the prisoners who are ill and at the same time we sell them something like cigarettes which cause them to be ill, so it is a little strange. But, quite frankly, even though that's an issue, it's not the issue of

this bill.

ACTING PRESIDENT KUHL: Senator Paterson.

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

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

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Just looking at the issue of sales tax in general, Senator, would it not be a correct statement that sales tax by its nature inherently is regressive and, therefore, would hurt those who are least able to accumulate wealth?

And since we have a regulated system in our incarcerational facilities that, therefore, the sales taxes, in a sense, being applied disproportionately because of the meager wages that these individuals are actually able to obtain, not that we have to be fair to them,

but the fact is that it is going to garner a higher percentage of the value that they are able to accrue and, therefore, in a sense are not going to be able to have the resources that they had before, much the same as it would be with individuals who are at the lower income scales.

Do you think that there is an apt comparison with people who are being incarcerated in our state penitentiaries that the sales tax acts in a disproportionate and regressive manner?

SENATOR COOK: Senator, fortunately, the prison system is probably as close to a pure communism as has ever existed in the world because everybody gets paid the same regardless of what they do, as long as they work, at least that's my understanding. So since the wage of everybody is the same, I guess the sales tax is the same on everybody who pays it, so it's not regressive within the context of the prison population itself.

SENATOR PATERSON: That raises a

question, Senator. Are prisoners allowed to have any other resources than just the ones that are awarded due to this work that they perform while in the facility?

SENATOR COOK: Well, we don't confiscate, except in certain cases -- depending upon the crime for which the person has been convicted, of course, we don't confiscate their resources; and, in fact, there are within the prison system, as you know, some rather wealthy people and, presumably, they could have resources to spend in the commissary that would go beyond what other people would have. I think we have to concede that.

SENATOR PATERSON: Senator, I wasn't actually speaking to the net worth of the inmate. I was thinking more in terms of what we allow them to have at the actual facility itself.

SENATOR COOK: Do you mean are prisoners permitted to have possessions?

SENATOR PATERSON: Correct. Other than the ones that they might receive as

wages for the work that they perform while -

SENATOR COOK: Yes, a prisoner - Senator, some prisoners, as you tour prisons, you find that their cells are rather handsomely furnished, and this is not something that they have particularly purchased at the prison commissary, but they are things that they have gotten permission to bring into the prison, and, after all, if somebody is there for the major part of their lifetime, they do accumulate a few items of personal property.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Actually, Senator, I'm informed by counsel, quite learned counsel, that any excess funds that are in the possession of the inmate at the time the incarceration commences are actually deposited into the commissary account, so there are no extra funds. So, actually, your earlier statement is exactly correct that it is close to a pure form of communism, not that you nor I should be accused of advocating for it here, but

the point is that just -- this is -- is an issue I was just asking in terms of what the total resources of the inmate -

SENATOR COOK: We're talking about cash resources, Senator, as opposed -- I was interpreting your question as meaning whether they were able to possess items, and I have seen prison cells which had various kinds of furnishings that were apparently brought into the prison with the permission of the facility.

SENATOR PATERSON: Senator, do you think that this system that we would adopt by which we charge sales tax to the inmates would encourage cash-only transactions in the institution?

SENATOR COOK: I would assume so, Senator. It might actually create a situation in which, when you purchase something for a dollar, you might actually have to give them either the nickel and the three pennies or the eight pennies to go into a special container for payment of the sales tax.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Actually, what I was getting at, Senator, was the fact that since the wealthier prisoners would be able to add money to their commissary accounts through their family's deposit and through other outside resources, it would create in a sense sort of a black market account, whereby those prisoners would probably work in concert with the prisoners who have lesser resources to create the situation to, in a sense, go around the sales tax. Since the prisoners who have lesser value because they are only deriving it from the work that they do, they would then have to interact with those who could fund these accounts on the outside. Now, that's a possibility, but maybe your bill addresses it by taxing the commissary account, and I was wondering if you did have a solution for that.

SENATOR COOK: Senator, it doesn't tax the commissary account. It only taxes the actual purchases that are made from the commissary. As I understand, the commissary

account is like a debit card. It's an amount - it's an amount against which purchases can be made, and the account is actually credited each time a purchase is made against that amount.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: You know the reason that I raise that question, Senator, is because since there are limited choices in the commissary account and we think that the commissary account may become, in a sense, the foil of this entire legislation because it becomes almost a viaduct to avoidance of the actual intent of the legislation, it leads me to believe that perhaps there would be added pressure exerted by the inmates to widen the variety of opportunity in terms of sales in the commissary account which could have greater cost to the state and cut into the $640,000 of resources that would be provided for in this bill.

SENATOR ABATE: (Speaking to Senator Paterson) Instead of one kind of

shampoo, they may have to offer now twelve.

SENATOR PATERSON: You know, Mr. President, I don't mind being the puppet, but I don't want the strings to show.

(Laughter.)

The point is that -- this has really been bothering me, Senator, and I need to know if there's any way that this legislation will cause the correctional system to spend more money that would diminish from the total resources that would be derived from passing this bill, and I need to know that as soon as possible, Senator, because it's really bothering me.

SENATOR COOK: Mr. President. I think we have to stop for a moment and clarify the difference between a commissary account and the actual sales made by the commissary.

As I understand it, Senator, as I enter prison, I may have $100 and I may surrender that at the time I enter the facility and it goes into my commissary account.

I then buy ten candy bars, and I

pay the sales tax on the ten candy bars, so that entire amount of the purchase is then credited against my $100.

So that the $100 in my commissary account doesn't have anything to do with how much I spend and how much sales tax I pay when the item is purchased.

SENATOR PATERSON: Well, Senator, it seems to me that one of the possible detriments of the legislation is that it enhances and continues a circumstance that has continued in prisons all through the years -- it was written about in Fleeta; it was written about in Blackstone -- this whole idea of survival of the fittest, that those who have the greatest resources bully and victimize those who have the least. And this sales tax system, since it will cut deeper into the wages of the inmate will allow those inmates who have greater resources and greater contacts outside to control the flow of barter within the institution through the use of cigarettes and shampoos and other mechanisms of conversion to

actually avoid the sales tax and, in a sense, go around the prison store and subject those who have the lesser to a greater type of victimization, because now what we're really allowing is a sort of preferential treatment for those inmates who have greater resources, and I was wondering if that is something that actually, you know, is a possibility.

SENATOR COOK: Senator, I'm not clear on exactly the point you are trying to make.

SENATOR PATERSON: Neither am I, Senator.

SENATOR COOK: Is your point that -

SENATOR PATERSON: That's why I'm asking. I want you to clarify my point.

SENATOR COOK: Okay.

SENATOR PATERSON: And then I want you to answer.

SENATOR COOK: I'll clarify your point, Senator. If your point is as I think I understand it that persons who are -

(There was a pause.)

Senator, while you scratch your head, you have to also rub your belly. If you can do that, you're all right.

SENATOR PATERSON: Senator, this question comes to us from a viewer very close by.

SENATOR COOK: Is that a viewer or a voyeur? A viewer?

SENATOR PATERSON: And we were wondering, just to make sure, that the revenues that are going to be derived from this bill are going to go directly to the counties from which the court action that convicted the inmate in the first place. So, in other words, this will not be something that will realize revenues disproportionately to certain regions but, rather, will return the resources to the areas where the crimes were committed; in other words, the home county that the individual inmate was inevitably convicted. Is that correct?

SENATOR COOK: Senator, that's a very good question because -- and I'm really

glad you asked it.

You may remember I have another bill which requires that the state pay to the locality a dollar a year for each of its inmates to cover the cost of fire protection. There are, in fact, certain services that local governments have to provide because there is a prison within their boundaries and for which they can derive no revenue; and while the argument is sometimes made that the prison in itself constitutes an economic benefit for the community, the fact is that there is on the part of the local government a lay out of certain funds for which they are able to get no return.

One of the things which this bill would do, since the local sales tax revenue would go back to the county in which the facility is located, would be to help reimburse them to some degree for the outlay of funds which they have to make to support the fact that there is a prison located within their community.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Senator, in terms of the amount of sales tax, we are going to charge the state rate, are we not?

SENATOR COOK: We're going to charge the state and local rate.

SENATOR PATERSON: Earlier, you said what was interesting about the whole institutional process when it comes to the penitentiaries is the fact that we have a kind of regulated system where some of the items that are purchased are actually less. In other words, as you said, and I think quite correctly, the inmate is getting a pretty good deal. In other words, these items are being purchased for far less than they would be on the outside; correct?

SENATOR COOK: Correct.

SENATOR PATERSON: Then I was wondering why wouldn't we make the similar adjustment in the sales tax to, in a sense, equalize the system? In other words, there must have been a reason that we're charging less

because there is a certain amount of control since we're acting within the institution. So if we want the sales tax to demonstrate to inmates that they have to be part of society, then this is a good way for them to understand they shouldn't just buy things off the shelves without paying any tax. They should pay some form of tax as any other consumer would, thus influencing whether or not they want to buy or at least letting them know that other taxpayers' dollars are even supporting their custodial care while they are in the penitentiary. So, then, wouldn't it follow that we would have a sales tax that would be adjusted to the items that are received? Otherwise, we would be charging a greater amount of tax for a lesser amount in the item.

SENATOR COOK: Senator, that's an interesting point. Frankly, I'm not sure how you would adjust to that because you do charge sales tax based on the selling price of the item. But it does address an earlier point which I thought you were making, which was the

fact that in some cases where families might be able because of their economic circumstances to make certain purchases on the outside that they would then bring into the prison and create a sort of a black market situation.

The fact is that the sales tax on the outside would be higher than the sales tax on the inside, so that, not by intent but actually by operation, this bill would discourage that type of black market operation, because even with the sales tax the items would still be less expensive inside the prison than they would be outside.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: With Senator Paterson's permission, could I just ask the gentleman question one question?

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

SENATOR PATERSON: Well, Senator Gold, you know, I was really just getting to the

apex of my examination, and it's very difficult -- I don't want to lose my place-- but because of our long friendship and my admiration for you as a Senator and also as a thinking person, I yield the floor at this time.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Thank you.

As a thinking person, you probably made the wrong decision.

Senator Cook, if we are trying to give them a real life experience, is there a provision in the bill which says that they can avoid the tax by paying cash?

SENATOR COOK: Senator, if they pay cash, they pay the sales tax.

SENATOR GOLD: Well, then - Senator, what I'm getting at, shouldn't it be a real life experience as if they were buying on 42nd Street in New York or dealing with a merchant in some of our small communities?

SENATOR COOK: Do you mean if they were able to walk out onto the street in

front of the prison and buy the material, instead of buying it in the prison, they could avoid paying the sales tax? Is that what you're getting at?

SENATOR GOLD: You're talking about making this a real life experience, so I was just wondering if they could avoid the tax by paying cash -

SENATOR COOK: Your point is well taken, Senator.

SENATOR GOLD: -- which is the practice of most of the small merchants who say they don't charge sales tax, they only collect it; and, actually, it's an increase in their income. I didn't know if there was a correlation.

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

SENATOR ABATE: I'm confused.

SENATOR COOK: Congratulations.

SENATOR ABATE: Although I think Senator Paterson did his best to clarify the issue, with all due respect, there are a couple

issues, I think, left, not clarified, that I would like to pursue.

My first issue, Senator, if the Senator would yield.

ACTING PRESIDENT KUHL: Senator Cook, do you yield?

SENATOR COOK: Yes.

SENATOR ABATE: I see before me that there's another piece of legislation, which is introduced by Senator Nozzolio, and it's 2818. What's the difference between your legislation and his legislation; and why do you support yours over his?

SENATOR COOK: Senator, you know, I have to make a confession to you. I know word for word every one of the 10,000 bills that is introduced in this chamber except that one, and I'm really not familiar with Senator Nozzolio's bill.

SENATOR ABATE: You are probably better than the rest of us. We usually don't know the language of the bills that we sponsor.

SENATOR COOK: Beg pardon.

SENATOR ABATE: But let me read the language proposed, and maybe you can tell me what the difference is and why you support yours over Senator Nozzolio's. He has a section that reads, "Any institution authorized by the commissioner to establish a commissary or a canteen shall assess the appropriate sales and use taxes on the items sold."

So it would leave to the discretion of each jail in a county or to the statewide prison system the ability to determine what the sales tax or use tax should be. Now, why is that a worse solution compared to your legislation?

SENATOR COOK: Senator, I have been rescued by a staff member who has brought to me a memorandum from the Tax Department that, with all due respect to my colleague, indicates that my bill amends the correct section of law and his does not.

SENATOR ABATE: I see. But it's my understanding, and please correct me, Senator, that both bills are going to be passed

by the Senate today. Wouldn't that be an inconsistent -- although we have never taken any inconsistent actions in the past. Wouldn't that be an inconsistent action by this Legislature?

SENATOR COOK: As I indicated before, I know exactly what's going to happen with 9,999 bills, but, unfortunately, Senator Nozzolio's bill, I'm not aware what's going to occur with that, so I really can't answer your question.

SENATOR ABATE: I guess many of us are in a dilemma because we're not sure whether we're going to be voting on this bill today and we have to choose between one and the other and we're just not sure which bill to support.

SENATOR COOK: Life is full of tough choices, Senator.

SENATOR ABATE: Right. If the Senator would yield to another question?

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

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: There seems to be a point made by Senator Nozzolio's bill that your legislation does not address. If the goal of the legislation is to create revenue, additional revenue for counties -- because my understanding is the county would be the recipient of this revenue. It wouldn't go back into the state coffers; am I correct?

SENATOR COOK: Under my bill, Senator, the proportion that is due to the state goes to the state and -- you know, render unto Caesar that which is Caesar's.

SENATOR ABATE: I see. So the portion that is state taxes go back to the state, the local taxes go back to localities.

SENATOR COOK: Exactly.

SENATOR ABATE: But, clearly, the intent of the legislation is to produce additional revenue for the state and the localities.

SENATOR COOK: Senator, in

reality, that's not the point. The point is that we have for one class of citizens in the state a subsidized system in which they can make purchases of certain materials and do not pay sales tax which is paid by everybody else in the state, and this bill is simply a statement of equity, that, in fact, you should not reward someone who is incarcerated by forgiving them the sales tax that they would have to be paying if they hadn't been put in prison.

SENATOR ABATE: Senator, that's very interesting. So the intent is not to produce additional revenue. It's to teach the inmates another very good lesson.

SENATOR COOK: It's to establish equity among all the people in the state. I think it is really kind of ironic at this moment -- if we can go back to that earlier situation -- that if the family made the purchase on the outside and brought it in to the prisoner, they would have to pay sales tax, but if the prisoner buys it in the prison commissary, he doesn't pay sales tax.

SENATOR ABATE: But, Senator, wouldn't you say that the equity that we're trying to put in the correction system is another way of showing the inmates this is how society should operate? This is one way of paying back their debt to society?

SENATOR COOK: That's a fair statement, Senator.

SENATOR ABATE: And then, secondarily, is the opportunity to produce additional revenue.

SENATOR COOK: Sure.

SENATOR ABATE: You would put the teaching the lesson first and teaching - collecting revenue as a corollary, a secondary goal of the legislation.

SENATOR COOK: Only if you amended the first statement to say that it is a matter of statement of establishing equity, as well, because I think there is a signal out there, that when my children went into the college book store they paid sales tax on items that they purchased, but if they had gone into

the prison commissary they wouldn't have paid sales tax. I think that's a wrong statement for society to make.

SENATOR ABATE: I'm glad you said that, because if you saw the revenue production was the primary goal of the legislation, you'd probably support Senator Nozzolio's legislation.

SENATOR COOK: I probably do anyway, Senator.

SENATOR ABATE: So you are willing to lay this aside.

SENATOR COOK: No. I say I probably would support Senator Nozzolio's legislation, if you're telling me that it's a matter of trying to enhance the fiscal situation of the state.

SENATOR ABATE: Right.

SENATOR COOK: I think that's something which today as we meet here we're all very conscious of; and, certainly, if Senator Nozzolio has a means by which we can improve the State's fiscal outlook, I have enough trust in his judgment and knowledge and ability that I

would be very supportive of his efforts to do that, yes.

SENATOR ABATE: I haven't reached the point that his bill is better than yours, but I guess I raise the question if the price of these goods -- and what's sold are shampoos and soaps, potato chips, cake. If you look at most inmates, they gain a lot of weight because of the amount of carbohydrates they eat, and they love going to the commissary to get - particularly the women, to get these kinds of things that they can't get as the shampoos, and then the extras like the potato chips.

There are two things that could happen. We might produce a skinnier inmate, a leaner inmate, because the cost of the goods might get so high that they can't buy the potato chips.

SENATOR COOK: That would be a problem, too, because where they have bars and if they get so skinny they can get between them, we might actually have an escape problem.

SENATOR ABATE: That's a very

good point. So they either don't buy it because they can't afford it or -- would that contribute to unrest if the inmates are used to buying the cakes and potato chips? The sales tax is added on and they no longer can afford to buy the goods in quantity so the state and localities don't get this revenue. The inmates are angry. They then have to buy the potato chips from the inmate that actually has enough revenue and stores up these potato chips. They stash the potato chips around the jails and prisons. Aren't you concerned that this bill might create undue unrest in the jails and prisons?

SENATOR COOK: Senator, I have that same problem with my kids. You know, you give them a dollar, and they go and find out there was eight cents sales tax, and they couldn't buy what they wanted, and they would come home, and we had all kinds of problems with them because of that.

SENATOR ABATE: Would the Senator yield to another question?

SENATOR COOK: Yes.

SENATOR ABATE: I was so pleased, Senator, that you talked about inmates learning a lesson because people go to jail and prison not just for punishment but, hopefully, when they get out of prison they become more productive citizens. They learn how to read and write. They learn to take responsibility for their acts, to be accountable for what they have done and become better citizens. Do you think this is one plan in a long plan of what we should be doing in the state as far as making prisoners more accountable for their crimes, so when they leave they have become better citizens?

SENATOR COOK: Senator, I'm not sure whether it makes them more accountable. It does help them know that they have to add 8 percent to whatever the posted cost of an item is; and, certainly, if they learn to calculate that 8 percent of 59 cents is 4.8 cents, roughly, it helps train them to do a little bit of arithmetic, and sometimes they even get the right answer.

SENATOR ABATE: And I agree with you. Don't you think there's another way that we can drive home this lesson, if we teach inmates how to read and write so they can begin to calculate, and maybe we need to restore some education programs?

SENATOR COOK: Well, Senator, if we pass this bill and we have that extra million dollars, perhaps we'll be able to do some of those things.

SENATOR ABATE: So you would agree that this might be a first step in a plan of holding inmates accountable and making sure they have the skills, so when they leave they don't revictimize again? Hopefully, this is the first step of a plan.

SENATOR COOK: I find that a very interesting nexus that you have created, Senator.

SENATOR ABATE: I believe Senator Paterson -- I'm going to yield to Senator Paterson. I believe he has some additional questions?

ACTING PRESIDENT KUHL: Senator Abate. Senator Abate. The chair has usually taken upon the responsibility of the chair to recognize the next speaker, and there already has been a member of our body, a distinguished colleague on your side of the aisle, who has indicated to the chair that she would like to speak on the bill.

So while I recognize your congeniality with Senator Paterson and your wish to try to appease his request, the chair would take it upon itself to recognize Senator Montgomery now that you have finished your -

SENATOR ABATE: Oh, I think that's fine. I would love to hear from Senator Montgomery.

ACTING PRESIDENT KUHL: Thank you.

SENATOR MONTGOMERY: Thank you, Mr. President, and my colleagues. I would just like to ask if the sponsor would continue to yield to a question?

SENATOR COOK: Sure.

SENATOR MONTGOMERY: Senator Cook, I note in recent weeks there have been several articles in local papers where a local mayor is applauding the possibility of there being a new jail in his town and, in fact, offering land and saying that this is a most welcome occurrence and that it is an economic boon to his area.

And I'm just wondering if you have any calculation of what a prison brings to a locality in terms of resources, including the jobs and construction?

SENATOR COOK: Senator, I don't have a calculation of that, and, obviously, the easiest calculation would be the payroll of the institution, which is really about the only direct benefit that the community receives because most of the purchases, of course, come through some central agency. In fact, in the prison system, a good bit of what they use is actually produced within the prison system. There is an effort to try to do that. But there is of course a payroll.

One of the ironies is that the economic benefit doesn't necessarily accrue directly to the locality in which the prison is located; and if the mayor sees this as a real boon to him, I suggest he might look at some of the communities where prisons already exist. It certainly does have an effect on the larger area, but often the municipality, the smallest municipality in which the prison is located, because it has to provide fire coverage, because it does have a certain amount of traffic and in some cases they consider they may need additional police coverage and in some cases emergency medical coverage, that the actual host municipality incurs a fairly considerable cost.

The municipalities which surround it which don't contribute to that cost -- and maybe that should be one of the things we should be dealing with here -- do benefit very considerably because they do have the incomes, of course, of the folks who work at the prison.

SENATOR MONTGOMERY: Do we have a figure for the average number of people employed

in a local prison with 1,000 to 1200 inmates?

SENATOR COOK: No, we don't, Senator, but I'm assuming it probably would be very close to the same number of employees. It is quite labor intensive.

SENATOR MONTGOMERY: So we can assume based on a 24-hour staffing of any facility -

SENATOR COOK: Twenty-four hour staffing, corrections officers, all the support staff, the kitchen folks, everybody who is involved in maintaining a prison facility, and that's why the cost of incarceration is so high is because it's very labor intensive.

SENATOR MONTGOMERY: Absolutely. Senator, now, about the construction cost of a local facility. It is my understanding that we spend somewhere around $180,000, $185,000 per prison cell to construct. What does that mean in terms of the revenue that is generated to local contractors who build prisons, given a 1500-bed facility?

SENATOR COOK: Again, Senator,

the contractors who are building prisons are a relatively small number and, in most cases, are probably not located -- their place of business is probably not located in the municipality in which the prison is located.

SENATOR MONTGOMERY: Do they use local contractors and workers on the projects generally?

SENATOR COOK: Probably not because they use union labor, which generally is regionally based, and the contractors may come from -- in my area, for example, they may be building a facility in Ellenville. The contractor may be located in Yonkers. The union headquarters may be in Newburgh, none of which is even in the same county where the facility is being constructed. So that actual revenue that would accrue as a result of that activity very often does not go to the very municipality that is incurring these costs we've been talking about.

SENATOR MONTGOMERY: So they are not inclined to use local people to work when

they are doing these major construction projects?

SENATOR COOK: Well, there is a regional benefit, Senator, and I'm not denying that. I'm simply saying that the host municipality somehow doesn't derive the benefit that one might assume from having a prison there even though there is a regional benefit.

SENATOR MONTGOMERY: All right. So, Senator, I just wanted to clarify, if you will, the issue of revenue and who is looking for some revenue to come back to them and how it's going to come. So, clearly, when we talk about the benefit to the locality, we're certainly not talking about the taxes that you are going to collect in the commissary because that doesn't begin to satisfy anywhere near the kind of revenue that is generated by the fact that that prison is located in an area where there are at least a thousand or so jobs that come with it that are created for eternity -- in our life.

SENATOR COOK: Senator, I think I

indicated in an earlier discussion, revenue is really not the issue here. It is in the case of -- as in my other bill, which is a dollar per inmate. A thousand dollars which goes to a fire district is a pittance, but it is at least a recognition that there is a cost being incurred by the local taxpayers that somehow you mitigate by the revenue you derive.

SENATOR MONTGOMERY: Thank you, Senator Cook.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery on the bill.

SENATOR MONTGOMERY: I understand Senator Cook's stated purpose in the legislation. I would, however, question his stated purpose, given the fact that -- I believe it was Senator Cook who also introduced legislation which would deny access to inmates of higher education or being eligible for TAP for reimbursement. So while Senator Cook says that he wants to teach them a lesson, I think Senator Cook wants to punish them it sounds to

me like, because teaching a lesson, as pointed out by Senator Abate, means you want to educate people; and if you want to educate people, I think you think in longer terms. Education means learning, and this is clearly not necessarily learning something. It is just a punishment and a further punishment for inmates, and so that's my honest assessment.

And as it relates to revenue and wanting to make sure that they give back to the locality, inmates in this state give back to the localities and they give back tremendously in terms of the resources that they generate, and they give back to the extent that people in the localities have said over and over, over the years, that if there is going to be a prison built in the state, I want it in my district. And every Republican Senator, I believe, in this house has at least one and in the case particularly -- specifically, I don't -- yes, Senator Marchi has one, too. That maybe in the case of Senator Cook, he has a number of prisons in his district.

And people in his district, the localities, want those prisons not because they like prisoners but because these are economic generators Upstate New York, and we all know and understand that, those on this side and those on that side. So it is not to be denied. What happens to the prisoners inside those prisons, obviously people have very different perspectives. So I say to Senator Cook and all the people who have prisons as well as those who don't have prisons but have constituents who are in those prisons, we owe it to ourselves to know and to be concerned about what's happening to the prisoners while they are in because they are coming out, for the most part.

We only just recently passed the life without parole bill. So if we're going to have prisoners coming back, they are coming back to someone's community, and my community is one of those communities, and I want them to come back with being, hopefully, more positive, more educated, more humane individuals and not having been brutalized to the point where they can't

live in society any more unless they are in prison, because we can't afford to continue to escalate our prison system to the point where we are going to have two-thirds or half of the men and women in certain areas in prison. How are we going to support that? And then they come out and have to go back in and et cetera.

So, Senator Cook, I think this is a very bad -- it's a bad bill because, one, it doesn't do anything in terms of revenue. It has nothing to do with revenue. You admitted that yourself. Two, you say you are teaching a lesson, but you really don't want prisoners to have any learning experiences. You want them to be further penalized, brutalized, and I just think that this bill says absolutely what we should not be saying if we care about what happens to prisoners not only while they are in prison but when they come out.

So I will be voting no on this legislation, and I hope my colleagues will join me in the interest of people in this state who will have to live with prisoners when they come

out of prison.

Thank you, Mr. President.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 170 are Senators Connor, Leichter, Montgomery, Paterson. Ayes 55. Nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President. Would you place a sponsor star on Calendar Number 255, Senate 2337D.

ACTING PRESIDENT KUHL: At the

request of the sponsor, Calendar Number 255 will be starred.

SENATOR SKELOS: Would you recognize Senator Mendez, please.

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

SENATOR MENDEZ: I voted no on 170.

ACTING PRESIDENT KUHL: Without objection, the request by Senator Mendez to be recorded in the negative on Calendar Number 170 is granted. Senator Mendez will be recorded in the negative.

Senator Seabrook. Senator Seabrook. Is it your request to be recorded in the negative on Calendar Number 170?

SENATOR SEABROOK: Yes, Mr. President.

ACTING PRESIDENT KUHL: Without objection, Senator Seabrook will be recorded in the negative on Calendar Number 170.

Senator Skelos, may we return to motions and resolutions? We have one piece of

housekeeping we would like to take up.

Senator Marcellino.

SENATOR MARCELLINO: Yes, let's return to motions and resolution. He told me to say that.

ACTING PRESIDENT KUHL: Senator Maziarz. We've returned to motions and resolutions.

SENATOR MAZIARZ: Mr. President. On behalf of Senator Volker, on page number 12, I offer the following amendments to Calendar Number 232, Senate Print Number 2957B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT KUHL: Calendar Number 323, the amendments will be received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President. Can we take up at this time Calendar Number 461, Senate Print Number 5965B.

ACTING PRESIDENT KUHL: Secretary

will read Calendar Number 461.

THE SECRETARY: Calendar Number 461, by Senator Nozzolio, Senate Print 5965B, an act to amend the Correction Law, in relation to the custody and supervision of persons in correctional facilities.

ACTING PRESIDENT KUHL: Senator Paterson, were you asking for an explanation?

SENATOR PATERSON: Yes, Mr. President.

SENATOR GOLD: We are asking for a very, very slow but accurate explanation from the distinguished gentleman from Cornell.

ACTING PRESIDENT KUHL: Senator Nozzolio, an explanation of Calendar Number 461 has been asked for.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President. My colleagues. The measure before us amends the Correction Law relating to the custody and supervision of persons who are committed into the custody of either a sheriff or Commissioner of Corrections

or sentenced to state or local correctional facilities. The measure is designed to specifically preserve the responsibility, the duty of maintaining the custody and supervision of those persons committed to insure that that responsibility is going to be continued by those people most directly responsible to the people, the local and state correction officers, as opposed to private security forces.

The bill says that security functions should be left up to those who are responsible to the people and not linked to a private sector profit motive. The legislation can be termed stopping the wholesale privatization of the correctional component of our state prison facilities.

I may go further, Mr. President, that a disturbing trend is developing across the nation which I believe and those who have joined as cosponsors of this legislation believe could very well endanger the safety of our citizens and place those citizens in jeopardy. In an effort to cut costs, we see a misguided approach

that turns to the privatization of the security function of our jails and prisons.

Security is a fundamental responsibility of government. Putting that responsibility in the hands of questionably trained and perhaps unqualified guards and companies who employ them, which don't measure up to the intense qualification, training, commitment that we see in our correctional facilities is something that I -

ACTING PRESIDENT KUHL: Excuse me, Senator Nozzolio. Could you suffer an interruption.

Senator Marcellino, why do you rise?

SENATOR MARCELLINO: I seek the apology of Senator Nozzolio for the interruption, and this chamber, but we need to call an immediate meeting of the Education Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Education Committee in Room 332, the Majority Conference

Room.

There will be an immediate meeting of the Education Committee in the Majority Conference Room, Room 332.

Thank you for allowing the interruption, Senator Nozzolio. Please proceed.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, as I was saying, it is my strong belief that public protection is a fundamental responsibility of government; that putting the responsibility into hands that do not have the accountability to our people is something that is extremely, extremely problematic and could be dangerous.

What our measure does is preserve the correctional component as a nontransferable responsibility to government. The duty to maintain custody and supervision of persons committed or sentenced to the state or local jails is a responsibility that will prohibited to be transferred to placement with private security guards.

That there is no question that privatization is a good idea in some areas of government. The profit motive could be a best incentive to achieve a goal in an efficient way possibly under certain circumstances, but protecting the public is not one of those circumstances, and I don't believe any of us here -- any of us, on either side of the aisle, would want to put their families' lives in the hands of companies whose first and foremost objective is to turn a profit. I believe that is something who we -- we very much wish to avoid and this measure would insure that that will not happen in this state.

Also, we should take this moment to reflect that those men and women who work in our correctional facilities throughout New York State are highly trained, thoroughly screened and have the safety of the public as their top priority. We should pause and give those men and women, those very brave men and women, our thanks and admiration for what they do day-in and day-out under the most stressful conditions

in the best of times.

This is something we should certainly thank them for, and I know members of both sides of the aisle in this chamber do just that, respect and admire the work of our correctional officers, our nurses, our other personnel in correctional facilities.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you. Would the distinguished gentleman yield to a question or two?

ACTING PRESIDENT KUHL: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: I would be honored to yield to Senator Gold.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator Nozzolio, is there any experience that we're drawing on where there have been other states or prison systems where they involve themselves with

privatization such as you want to ban?

SENATOR NOZZOLIO: Yes, Senator.

SENATOR GOLD: Can you tell us a little bit about where it was and what their experiences were?

SENATOR NOZZOLIO: Just last year, Senator Gold, the Immigration and Naturalization Service was forced to cancel its contract with a private company after a riot in its New Jersey facility.

A government investigation found that the company had achieved a cost savings by hiring guards at $8 an hour who had not been trained in handling emergencies. As part of the efforts to achieve profits, the facility I mention was understaffed, and its detainees were denied even the most basic of services. In addition, I believe there are other examples that we would like to give that -- I know that there are other stories, but that's the one that comes most immediately to mind.

SENATOR GOLD: Will the Senator yield?

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR NOZZOLIO: Thank you, Mr. President. I will be honored to yield to Senator Gold.

SENATOR GOLD: Senator Nozzolio, is that the only situation in America where we have had privatization or have there been others?

SENATOR NOZZOLIO: Senator, I believe there are a number of others. I don't have as much date, time, location, performing. I didn't know I would be debating this bill, but there are others that I have been told exist in the Southwestern part of the United States. I'm not sure exactly what state, but I heard that there were similar type occurrences in the Southwest.

SENATOR GOLD: Senator, are there any experiences as far as we know where any of the larger metropolitan areas in America, such as Chicago or Pittsburgh or Los Angeles, et cetera, have tried privatization, as far as you

know?

SENATOR NOZZOLIO: Not to my knowledge, Senator.

SENATOR GOLD: Senator, let me ask you a different question. You made the comment that privatization might have its place. You know, there might be places where it's appropriate. Can you give me an idea the kind of a situation where you think privatization would be appropriate?

SENATOR NOZZOLIO: Mr. President. I'm not sure I understood all of Senator Gold's question.

SENATOR GOLD: That's fair. Sometimes I ask questions that aren't understandable. Let me redo it a little bit. All right?

SENATOR NOZZOLIO: Thank you, Senator.

SENATOR GOLD: For example, you indicated that you are against privatization in the area of your bill -- which I may agree with you -- but you said you are against it because

there are issues of people's safety, there are questions of people being properly trained to do that. Do you think that that kind of an argument would apply to the issue of privatization of, for example, some hospitals? That I understand in one part of the state there is a thought of selling off the public hospitals.

SENATOR NOZZOLIO: Senator -- Mr. President. In response to the Senator's question which I think is an important question, but one that I am not qualified to answer.

SENATOR GOLD: That's fair.

SENATOR NOZZOLIO: Because the foursquare review that we're providing here is dealing just with correctional facilities, and I really don't believe the hospital question is certainly within this purview, and I'm not attempting to privatize anything beyond -- or prevent privatization of anything beyond the security function at our jails, and hospitals are totally another story, and I just would refrain from exercising the debate in those

areas.

SENATOR GOLD: Mr. President. I know that Senator Abate and others have some questions, but if I could just make a comment on the bill.

ACTING PRESIDENT KUHL: Senator Gold on the bill.

SENATOR GOLD: I think that the concerns that have been raised by Senator Nozzolio and the concerns that have been raised by Senator Abate, who has extraordinary experience in this field, are really very genuine. I believe that saving taxpayer money is a legitimate concern of everybody in this chamber and in this body, but I do think there are some situations where the expression "penny wise and pound foolish" really comes into play, and the concept of taking these institutions, which are difficult enough to manage, and looking to save money in a dangerous way, I think is very ill-advised and, therefore, I would tend to be supportive of this legislation.

There was a study, and the study goes back a long time, it's not a recent study, but -- it was an experiment, perhaps, more than a study. But some students at Harvard had an exercise where a number of the students were given the role of being incarcerated for a short period of time, and some other students were begin the role of being the guards, and then they after a period of time redid the experience with it being reversed; and the study indicated that those people who were the guards were acting out and being as difficult as those people who were at the time in the prisons, and the feelings I had from that is that that is perhaps the way untrained human beings would react in a situation.

And if I had my druthers as to picking other kinds of employment for myself, I think being a prison guard is very far from the top of that list. It is a very difficult job. It's a job where there are perhaps natural human emotions that have to be restrained. I respect very much, for example, the police department

and police officers, but each day as people get out in the streets more and more with their camcorders, we see evidence of how human beings act in a way that's human but yet nothing to be proud of.

So, again, yesterday, I think there were films from California where there was a highway chase and the chase ended with the pulling over of a truck, the apprehension of the truck driver who was driving illegal aliens and his being beaten by police officers without there being any resistance. Certainly there is no justification for dealing in illegal aliens. The individuals who do that are certainly people that I do not respect, but it is not the greatest sign of what our society is that police officers when they think they are not being observed would engage in that kind of conduct.

Therefore, I think that being a prison guard is very, very difficult, and there's some human reaction to want to act out and want to do things which hopefully we train people not to do, and we like to think that

under the system we have now we get a good quality individual who is a prison guard and does that difficult job.

I'm very nervous about privatization as it comes to a lot of areas. There has been talk of privatizing some hospitals in the City of New York. That has raised some serious questions with many of us, and there has been the question of privatizing within the prison system, and I think that certainly, while you can have a debate on hospitals where there are in fact private hospitals that are operated even today and we have public hospitals, I think there is a great intellectual burden upon anyone who suggests that we privatize prisons.

The example given by Senator Nozzolio certainly is a deterrent towards doing that. But as Senator Nozzolio says, there are other examples and he didn't have that background with him, except I do not believe that anybody has tried this in the kind of situations we have in New York State, and that

would be relevant. If somebody did something in the Southwest in the middle of the desert, I don't know whether that translates to a successful operation in the City of New York, who are dealing with some of the kinds of people we have to deal with in the prison system in New York.

So it would take an awful lot of data, evidence, precedent to convince me that this was a good idea in the jail system, and I intend to support the Abate-Nozzolio bill -- I mean the Nozzolio-Abate bill, and I'm glad we have a chance discuss it.

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

SENATOR MAZIARZ: Mr. President. On the bill.

ACTING PRESIDENT KUHL: Senator Maziarz, I do have a list going up here, and Senator Abate was next.

SENATOR MAZIARZ: Oh, I'm sorry. I apologize.

ACTING PRESIDENT KUHL: I appreciate that.

Chair recognizes Senator Abate.

SENATOR ABATE: Before Senator Nozzolio leaves the chamber -- Senator Nozzolio leaves the chamber.

On the bill, before the Senator leaves, I wanted to be able to compliment him for sponsoring the legislation, and I am very pleased to be able to be a cosponsor of this legislation.

When we talk about privatization in the jails and prisons, this bill only addresses one piece of privatization. It says that the security function of the correction officers should not be privatized and that security function are the officers, the captains, the assistant deputy wardens, the wardens, whatever you call them in the state system, the superintendents, should not be contracted out for hire to a low bidder to a private firm, but it does not say that privatization can not take place for non

security functions.

It doesn't say that food services can't be contracted out or laundry services or transportation or drug treatment or other kinds of civilian functions. What this legislation deals with -- and it's a very important piece of legislation -- deals with those things that are carried out now by peace officers. Let me stress: Peace officers.

And I believe, as well as Senator Nozzolio and other cosponsors of this legislation, there are certain core functions of government, whether that be a correction officer or whether that be a police officer, because they are both law enforcement officers, should not be contracted out for hire, should not be contracted out for the lowest bidder, nor should we then jeopardize our public safety. We would never think twice about whether we should contract out for police services. Would we go back into our communities and say we don't want a police force accountable to the mayor, to the county executive, to the locality, and we're

going to let a private firm police our communities? We would never think about doing that.

Well, the jails and prisons are like local precincts. The problem is many of us have never had an opportunity to walk a jail and walk a prison and understand how difficult a job of a correction officer is. Let me give you a sense of how difficult that job is and why that person has to be highly trained, needs to be a peace officer, needs to be held accountable and needs to be the most professional person we can get.

That officer is in that prison and jail every day without a weapon. They don't carry guns. They are there and some people say running the toughest precincts in New York State. You have convicted felons there. People who have been recidivists. Some are lifers.

And they need to control that jail or prison not with weapons which they don't possess but with their ability to mediate, with their ability to think quickly when there is a

crisis, with their ability to negotiate -- all the skills that are acquired by highly trained law enforcement officers.

This is not a job that can be done by a security guard that's paid $8 an hour that is a temporary job. When they lose their job because they misbehave or do not follow the rules through misconduct or malfeasance or mis feasance, to them, it's a loss of a job. To a correction officer, it's a loss of a career. There are many families that dedicate their lives to correction as a career. Generations of families have gone in and out of the prison and jail system. We do not want to lose that career path.

If we privatize the career function that's what we will get. If we want low-paid, unskilled, untrained workers, we'll contract out. If we want to preserve the integrity and the security and the stability of our prison and jail systems, we must recognize the job of a correction officer is a core function that must be done by peace officers and

cannot be privatized.

As Senator Nozzolio said, there is a recent example and that was Esmore. It's a private firm that was contracted with by the federal INS immigration services to oversee the federal detention center. It was a disaster. Within a year, the contract was ended. They thought they could do it cheaper. Sure, they did it cheaper but at a higher cost. More contraband was coming into the system. There was increased violence. There was excessive use of force; and when you have increased violence, excessive use of force and more contraband, that costs a lot more dollars in terms of operating that system.

So what they did was: We will pay these security people less dollars, $8 an hour. We won't pay them overtime. They didn't pay overtime. And, they said, we won't train them.

It created a disaster. It created enormous dangers in that system. And what they learned, because they contracted out,

they also lost accountability. They lost the ability to provide adequate oversight. There was little or no communication, nor would you want to lose that communication if you ran a precinct in your community. You shouldn't lose that communication when you are running a jail and prison system.

This is an important issue, because as we're looking for scarce dollars, people will be looking to see more and more how we can provide services more cheaply. But I'm suggesting that if we privatize this function we get what we pay for. We will get an unskilled, not career path, not a professional peace officer, which is what we have now. That is a very dangerous course. We should not even consider pursuing this now or in the future.

This is, I believe, an issue that is supported by most correction professionals when they can speak off the record. They know there is a lot of other ways to save dollars in the system. When I ran Correction, I was given the task of saving $100 million in a given

year. There's ways of cutting costs but not cutting security or safety and, yes, it's the responsibility of prisons and jails to look at how they can deliver services more economically, do what everyone else is doing in the system, but not jeopardizing the system itself.

So I urge all of you. This is a bipartisan effort. There are people on both sides of the aisle supporting this legislation. It makes sense in terms of dollars. It makes sense in terms of preserving the integrity of the system, and I urge all my colleagues to support this bill.

And just remember. If you are not sure about this bill, ask yourself, would you ever contemplate privatizing the police force in your community? I know all of you would say with a resounding no, "Of course not." If you say of course not to police, you must say of course not to correction officers.

ACTING PRESIDENT KUHL: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr.

President. On the bill.

I want to join my colleagues, Senator Gold and Senator Abate, in commending Senator Nozzolio and the Crime Victims, Crime and Corrections Committee for their work on this bill.

I've had the occasion in the last year to visit two correctional facilities located in my district, the Albion Correctional Facility and the Orleans Correctional Facility, and I have never seen a finer group or a better trained group of individuals, men and women, than the corrections officers who served in those particular facilities.

And just as a further example, Senator Nozzolio noted a couple of times about the importance of training in this profession. One of the counties that I represent, Niagara County, just graduated its first class of correction officers for its county jail, and I would think that anything less than completely, fully-trained -- and not only a onetime type training but repetitive type training. As

conditions change, as society changes, I think we see the inmates within those facilities change, and I think there has to be a consistent updating of that type of training.

And as Senator Nozzolio I think aptly pointed out, you are just not going to get that type of commitment from a private company whose only motivation is a bottom line profit.

So I just want to join my colleagues, Senators Abate and Gold in commending Senator Nozzolio.

Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Nozzolio to close debate.

SENATOR NOZZOLIO: Thank you, Mr. President.

I thank my colleagues, Senator Maziarz, Senator Abate, Senator Gold, for their discussion of this very important issue. That, I ask my colleagues to focus on the central effort here which is to insure security; and when security is left to those who do not have the first and last responsibility to the public,

to the people of this state, that causes grave concern.

Our correctional personnel across this state in every corner of this state have labored under very, very stressful, difficult conditions and we reach out to them and thank them for their efforts day-in and day-out on behalf of the people of this state to keep them safe and secure.

There is a commission on privatization in this state, that's studying privatizing a number of entities. That privatization effort makes a great deal of sense, but what we're doing with this measure is not swimming upstream to that effort, not in any way being contrary to that effort, rather we're seeking out an area we believe strongly should remain in government hands. Governor Pataki in meeting with corrections officers a few summers ago and discussing this issue with corrections officers stood foursquare on this effort, which is to insure that security remains in government hands in an effort to insure that security is

never subject to dollar signs, to profit motive, and it is only concerned with the best interests of the public.

That, we stand united in insuring that the security function of correctional facilities does remain secure and that we will do all we can to work on behalf of those courageous men and women to upgrade their conditions, to make sure that there is safety in the workplace, and do the kinds of things that we should do as representative of this fine group.

Mr. President, I appreciate the opportunity to discuss this measure today, thank my colleagues for engaging in the discussion and ask for their full support in enacting this measure.

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.)

Senator Leichter to explain his vote.

SENATOR LEICHTER: Mr. President. When the bill was called, Senator Paterson got up and he didn't just ask for an explanation, he asked for a plausible explanation and, frankly, I'm a little skeptical. Was that an unfair burden?

But I just want to assure Senator Nozzolio that he indeed gave a most plausible explanation for the bill, and I want to identify with his words that privatization is not the answer to all governmental functions, that, indeed, there are many functions that government should never privatize.

It tended I think the whole notion of privatization to be sort of a facile solution. Privatize and we're going to save a lot of money, and government will be less expensive.

I think as Senator Nozzolio realizes, and he's told us, and Senator Maziarz

also was very eloquent on this point, that there are things that government can not and should not privatize, and I submit it is not only Corrections but that most functions that governments perform need to be done by government with the accountability and responsibility that only government can impose.

Mr. President. I vote in the affirmative.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Maziarz, we have a motion we could take up at this time, if you would like to, if that's permissible.

SENATOR MAZIARZ: Fine.

ACTING PRESIDENT KUHL: Okay. We'll return to motions and resolutions.

The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr.

President, or Madam President as the slant may be.

On page 25, on behalf of Senator Oppenheimer, a distinguished member of this body from the great county of Westchester, we move the following amendments to Calendar Number 560, Print Number 1338-A, and we ask that the bill retain its place on the Third Reading Calendar. You want an explanation? This bill changes some of the prior wording.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 560 are received and adopted.

SENATOR GOLD: I have just been what we call "Velellaized".

ACTING PRESIDENT KUHL: The bill will retain its place on the Third Reading Calendar.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, at this time, we would like to return to reports of standing

committees for the Education Committee report.

ACTING PRESIDENT KUHL: There is a report from the Education Committee at the desk. I'll ask the Secretary to read.

THE SECRETARY: Senator Cook, from the Committee on Education, offers up the following bill directly for third reading: By Senator Connor, Senate Print 6811, an act to amend a chapter of the Laws of 1996 amending Chapter 399 of the Laws of 1995 amending the Education Law.

ACTING PRESIDENT KUHL: Without objection, the bill is ordered directly to third reading.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, at this time we would like to call up Calendar S.6811, please.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 645, by Senator Connor, Senate Print 6811, an act to amend a chapter of the Laws of 1996

amending Chapter 399 of the Laws of 1995 amending the Education Law.

ACTING PRESIDENT KUHL: Senator Maziarz.

SENATOR MAZIARZ: Is there a message of necessity at the desk, Mr. President?

ACTING PRESIDENT KUHL: Senator Maziarz, there is.

SENATOR MAZIARZ: Move to accept it.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity at the desk, the bill before the house. All those in favor signify by saying aye.

(Response of "Aye".)

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Opposed, nay.

SENATOR PADAVAN: Mr. President, is this on the message?

ACTING PRESIDENT KUHL: This is on the message. All those opposed, nay.

(There was no response.)

The message is accepted.

Senator Padavan, did you wish to speak on the bill?

The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall -

SENATOR PADAVAN: Yes, I do.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: Mr. President, this bill amends a law we passed -- or a bill we passed last week which most of you will recall because we had a considerable amount of debate relevant to it. That bill dealt with the issue of the chancellor's authority to suspend or supersede community school boards beyond the election of May 7th of this year and in subsequent years, the logic being very simple, namely that it would be inappropriate for school boards that had been superseded or suspended for valid reasons to be allowed to continue beyond

May 7th by virtue of an election and automatically to have those suspensions or supersessions repealed.

Now, what this bill does, it sunsets that law in three years, and what that means basically and fundamentally is that three years from now, should the situation replicate itself, namely should there be a pending election, and at that moment preceding it, school boards that have been superseded or suspended by the chancellor within his authority to do, that we would have to revisit and do this all over again. Now, obviously the sponsor of this bill, the supporters of this bill, want that to happen.

My attitude and feeling is opposite to that view. It seems to me that irrespective of when, this year or three years from now or six years from now, a school board has been superseded or suspended for valid reasons within the authority and scope of the chancellor as authorized by the decentralization law in existence for 26 years, that an election

of a community school board should not automatically repeal that suspension.

And so for that reason, Mr. President, I will be voting against this bill.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

As we were all aware, we enacted a bill a week or two ago to confer some extraordinary power on the chancellor, and some members of this house were against it and some of us voted for it with great trepidation. We were willing to go and give -- under the circumstances that have beset the New York City school system in these past couple of years in terms of governance, we were willing for this chancellor, to give him the responsibility and the accountability to do something about it over the course of the next year, in certain specified circumstances.

What made it extraordinary was

the concept that where a board was superseded that newly-elected board members elected this May 7th could, in effect, be kept from taking office for up to one year at the discretion of the chancellor.

This chapter amendment which I'm happy to sponsor will ensure that that extraordinary power conferred upon the chancellor only applies to this year's election, and that before there's another school board election three years hence, it will expire, and if there's to be any other tinkering with the election process, that this Legislature would have to revisit the issue and at that time could say, "Wait a minute. What good -- what good for the children of the city of New York came out of the tinkering that went on last time? Why would you ever need this power again?" It either worked, was successful in those certain districts and we don't need this law, or it didn't work and what's the purpose of a law like this? So the effect of this sunset will be to ensure that that power can only be used this

year, one-time only chance -- a one-time only chance for the students of New York City, but not a permanent part of the law.

I would urge its adoption, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Mendez.

SENATOR MENDEZ: Mr. President - thank you, Mr. President.

Would Senator Connor yield for a question?

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

SENATOR CONNOR: Yes, certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MENDEZ: Senator Connor, I understand that the chapter amendment was supposed to sunset after one year of us providing the chancellor with the new powers, but isn't this bill -- doesn't this bill state that if the powers will last for three years, why the change?

SENATOR CONNOR: Senator, there was no change. The idea was to sunset it after one election. Actually, as a practical matter, whether this sunsets in one year or two years or three years, doesn't matter, since in that three-year period, there's only one school board election this May. So, I mean, it really - it's really a difference without any substance or without any effect.

As I understood the agreement that I had, it was that this law that we passed a week or two ago would only apply to this year's school board election, and this chapter amendment accomplishes that.

SENATOR MENDEZ: Will the Senator yield for another question?

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

SENATOR CONNOR: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yields.

SENATOR MENDEZ: Senator Connor, does -- this chapter amendment then means that

the chancellor will have these extraordinary powers for another three years and in the event that there is another election, he would also be able to supersede the board or not.

SENATOR CONNOR: No.

SENATOR MENDEZ: So it will last for three years.

SENATOR CONNOR: It lasts for this election only. The law will remain on the books for three years, but the only -- the law that was passed only applied to an election year, which is this year.

SENATOR MENDEZ: I see.

SENATOR CONNOR: Before the next election, the powers will expire under this. So it can never apply again.

SENATOR MENDEZ: Thank you, Senator Connor.

I was very distressed, Mr. President, when we passed that legislation a couple of weeks ago, providing the chancellor with extraordinary powers. I mentioned at the time, Mr. President, that those extraordinary

powers were not necessary at all because, according to election law, the chancellor did, in fact, have the power to start all over the process and supersede whichever school board he wanted to do, and that he felt it was necessary to supersede.

I am sorry I am going to be consistent. I voted in the negative for that bill, and on this instance, I am voting against this chapter amendment because I truly believe that it is not necessary at all and that the miseducation of the kids -- of the children in the school system of New York is not -- is not the -- the -- is not due to the policy-making bodies that are the school boards of the community school boards.

So, Mr. President, I vote in the negative. Besides, I note for the record that, although we're talking here about one election, if I recall distinctly well, at the time of the debate last time, it was supposed to be for the chapter -- the chapter amendment was supposed to last for one year, the powers to the chancellor

for one year.

So, regardless, it doesn't make any difference at this point, but I think it's that we have embarked on a course that is - that does not provide solutions to the -- to improve the education of the children in the schools of the city of New York.

Therefore, Mr. President, I'm voting in the negative.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Mr. President, I voted against the original bill and, therefore, I really am compelled to support this bill because if I don't like the idea, I don't know why I would want it to remain on the books forever and, therefore, I would vote for it.

At the time that we took the vote, there were comments made that there would be a chapter coming, and while I never, in my mind, ever questioned the sincerity of Senator Connor wanting to have this on the floor and passing it, since there are others involved and

without demeaning anybody else, the point is there are processes here. I was concerned that we didn't do it at the same time.

I also feel very comfortable in the fact that this bill is only affecting one election, and the reason that I am so confident is that while Senator Marchi and others have really led the way to open up this process of looking at the school boards and the elections and to see what goes on, if we were to redo this, if we were to have new elections, it can only be by way of a process that required us to pass a new law, and that law would either undo this or include it, but the Legislature would be involved in the process.

So I'm very comfortable in voting for this, and I'm glad that since Senator Connor was put out there on the limb, that the Majority Leadership in the house has seen fit to take my distinguished leader off that limb, and I hope this passes.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask my leader if he would answer a clarification question.

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

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

SENATOR MONTGOMERY: Senator Connor, in the legislation that we passed was included the provision that any school board member who was convicted of a crime, I believe -

SENATOR CONNOR: That's part of the permanent law. That's a different section of the law. This doesn't deal with that.

SENATOR MONTGOMERY: Okay. So this does not -- that does not sunset.

SENATOR CONNOR: This only deals with the supersession. Someone convicted of a crime is removed and based on other legislation that passed earlier, they are barred from re-election.

SENATOR MONTGOMERY: Okay.

Because we included that provision, we -

SENATOR CONNOR: That will remain part of the permanent law. This bill doesn't deal with that.

SENATOR MONTGOMERY: That was what I wanted to know.

Thank you.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

(There was no response.)

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 Marchi to explain his vote.

SENATOR MARCHI: Just to explain my vote. I'm not wedded to the concept in perpetuity and if there is a restructuring, as Senator Gold pointed out, I believe that the

approach and the rationale would be changed and it would be treated somewhat differently, but under the circumstances as they exist today, I'm compelled to support this legislation and looking forward to the day when we tackle this thing on a broader basis, but I identify myself with Senator Padavan's position until we come to that point.

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

Senator Marchi, you wish to be recorded in the negative.

(Senator Marchi nods head.)

Senator Marchi in the negative. Excuse me. Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 645 are Senators Marchi, Mendez, Padavan and Velella. Ayes 55, nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Sears, why do you rise?

SENATOR SEARS: Mr. President, I wish to call up my bill 210-D having passed both houses and not delivered to the Governor.

ACTING PRESIDENT KUHL: We'll return to motions and resolutions.

The Secretary will read the bill.

THE SECRETARY: By Senator Sears, Senate Print 210-D, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: Senator Sears.

SENATOR SEARS: Mr. President, I now move to reconsider the vote by which this bill passed and ask that the bill be restored to the order of third reading.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: Senator

Sears.

SENATOR SEARS: Mr. President, would you please place a sponsor's star on the bill.

ACTING PRESIDENT KUHL: At the request of the sponsor, the bill will be starred.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Nozzolio, please place a sponsor's star on Calendar Number 304.

ACTING PRESIDENT KUHL: At the request of the sponsor, Calendar Number 304 will be starred.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, at this time, I would like to call up Calendar Number 201, Senate Bill 1728, sponsored by Senator Johnson.

ACTING PRESIDENT KUHL: The Secretary will read 201, Calendar Number 201.

THE SECRETARY: Calendar Number 201, by Senator Johnson, Senate Print 1728, an

act to amend the Penal Law, in relation to chemical agents and chemical agent weapons.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 201 has been asked for by Senator Paterson.

SENATOR JOHNSON: Mr. President, this bill would legalize the possession of chemical agent weapons for self-defense. We're talking about mace and pepper spray. Not to be redundant, but we've had this debate for about six years now, and it's been approved overwhelmingly every time. It hasn't passed the other house yet.

Maybe some people feel because crime is declining in New York City that we don't need to be able to defend ourselves anymore, but we do. There's still a million and a half crimes each year in this state. About 40 percent of them are assault, rape, robbery. People have no effective way to defend themselves and -- unless they happen to have a weapon. A lot of people don't want to use a

weapon. Many people, particularly women, would prefer to use mace to defend themselves, and some have successfully done so and been prosecuted. I don't think that's right. I don't think anyone ought to be prosecuted for trying to defend themselves.

You know, when I first started this discussion, there were three states that were not allowed to possess mace or chemical spray for self-defense. Well, we hung in there long enough and now we're the only state in the Union, including D.C., which does not permit you to defend yourself with a chemical spray weapon. This is, of course, worse than obscene, the fact that we're not permitted to defend ourselves in this state. In fact, it's kind of interesting. I guess it would be easier for a lady, if she wanted to defend herself or another person for that matter, to get a license for a pistol. They could defend themselves with a pistol because that is permitted under a section of the law. It's difficult but not impossible, but it's impossible legally to possess a can of

mace.

I think this has to change. This bill will change that, and I think everyone ought to vote in favor of it.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. -- if - Mr. President, if Senator Johnson would yield for a question.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Johnson, do you think this remedy is enough when Congressman Solomon believes that his wife needs an AK 47?

SENATOR JOHNSON: Senator, I don't have my hearing aid on today. Could you say it a little louder and more clearly, please.

SENATOR PATERSON: Well,

actually, Senator, I have another question. I wanted to know what is available on the market right now that would actually not entail the passage of this bill. Are there actually any sprays that a person could use for their own defense that are on the market right now?

SENATOR JOHNSON: Oh, I guess oven cleaner, you know, yellow jacket spray, all sorts of thing you could spray in someone's face, but you might really do them a lot of harm and they're not very compact or easily handled in your handbags. So I think this is probably the best possible solution, Senator.

SENATOR PATERSON: Very good, Senator.

By the way -- on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: Last year in engaging in discussion with Senator Johnson on this piece of legislation, I referred to it by its commercial name, and counsel has been

contacted by the counsel for the company - which I won't say here, but it could be mace - and we would just like to correct the record, since there is no liability for statements made here on the Senate floor, but actually we are talking about what are really chemical agent materials or pepper-based sprays. Those are what may have a commercial name by that but also carry other names of other companies who provide this product, and I just wanted to set the record straight for last year's debate and for this one as well.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I feel I have to speak on this bill because a few years ago, I put in one of my newsletters, as we all do sometimes, a question about the legalization of mace, and the fact that I think at that time all 49 states had allowed the sale of mace and the District of

Columbia had not. Now the District of Columbia has, but let me just say this: I received a possible inundation of mail, particularly from women. If there was a woman's issue, this certainly has to be it. I received hundreds and hundreds of letters, almost unanimously urging the legalization of it, and the thing that bothered me somewhat about it was many of them were saying that they're already using it, which I think is rather unfortunate because when a law is not respected, it's generally speaking a bad law. So here we have a situation where many women still carry it in their purse. I can recall Senator Goodhue saying that -- on this floor that she was carrying it herself and wasn't a bit ashamed of it, and I think it's unfortunate that this Legislature -- and I'm not speaking of this Senate because we had passed it rather overwhelmingly year after year -- has not allowed, particularly the women of this -- of this state to be able to protect themselves with mace. It is of a defective -- it is an effective deterrent to people that would do harm

to an individual, and I think its time has come to legalize it.

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

SENATOR GOLD: Will the distinguished professor yield to a question?

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

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, first of all, I understand -- I don't know the lines exactly, but I believe you represent the Schenectady area and surrounding -

SENATOR FARLEY: I have four counties. I have Schenectady. I share Saratoga County with the Majority Leader.

SENATOR GOLD: And could you give us an idea -

SENATOR FARLEY: Montgomery County and Fulton County.

SENATOR GOLD: -- Senator, the

crime rate in those counties is pretty bad compared to the rest of the state.

SENATOR FARLEY: I would say it's about on a par with the rest of the state. It hasn't, thank goodness -

SENATOR GOLD: If I could -

SENATOR FARLEY: I'd like to finish answering the question.

SENATOR GOLD: Yeah, of course.

SENATOR FARLEY: I'd like to pay tribute to Mayor Giuliani and the late -- the police commissioner who just left, of New York City, because the crime rate has seriously gone down, which is rewarding, but our crime rate is about average throughout the state.

SENATOR GOLD: Will the Senator yield?

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

SENATOR FARLEY: Yes.

ACTING PRESIDENT KUHL: The Senator does.

SENATOR GOLD: Senator, when you

say it's "average", in other words, you mean - it's about the same as it is, for example, in the Times Square area of New York. It's about the same as areas of Brooklyn and Jamaica and the Bronx. Is that what you mean by "average"?

SENATOR FARLEY: No. That's what you might mean by "average". I don't think - I'm talking about statewide average.

SENATOR GOLD: Well, isn't it a fact, Senator, that these lucky people who are represented by you -- and I don't mean that sarcastically -- are living in a relatively safe area?

SENATOR FARLEY: Is that -- are you asking me that question?

SENATOR GOLD: Yeah. Isn't your area a relatively safe area?

SENATOR FARLEY: They don't have the grave concerns that they do in some of your urban areas. When I was chairman of the Aging Committee and I was holding hearings in New York City and Senator Markowitz -- who I don't see him here -- in his district on some aging

issues, guess what they were talking about? It's all they wanted to talk about was the crime threats and the fact that they really felt endangered even though it was off the subject. I realize that, and I'm sure that many of them wished that they could legally carry mace.

SENATOR GOLD: If the Senator will yield to a question.

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

SENATOR FARLEY: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR GOLD: Senator, you gave credit to the mayor of the city of New York for his -- for the fact that crime is dropping and I'm -

SENATOR FARLEY: And also Commissioner Brattan.

SENATOR GOLD: And Commissioner Brattan, and I'm delighted that crime is dropping. It's a -- it's a continuation of the policies of Mayor Dinkins because it's a matter

of record that crime was dropping during the Dinkins administration but, Senator, this bill is in no way intended by you to sabotage that effort on behalf of Mayor Giuliani, is it?

SENATOR FARLEY: To sabotage it?

SENATOR GOLD: Yeah. I mean -

SENATOR FARLEY: I don't quite understand what you mean. I think that this would aid Mayor Giuliani in his quest to lower crime even more. I think that if a mugger knows that his potential victim has mace, they may try another victim.

SENATOR GOLD: Or shoot him.

SENATOR FARLEY: I didn't think you could carry guns in the city of New York.

SENATOR GOLD: Well, Senator, you're telling me in your distinguished area they can't carry mace but they do it anyway.

Senator, let me just ask you a question. Mayor Giuliani who is doing some fine things for the city of New York -- and there are people who criticize him in other ways, but certainly as a former United States Attorney, he

came in with a law enforcement attitude and, as you say, he had Commissioner Brattan and now he's got the fire commissioner who is the police commissioner, and he's very much involved with crime issues, has the City crime statistics going down and his representative, Robert Harding files a memorandum saying, thanks but no thanks. This is not for us. Now, that's why I say to you, Senator, are you trying to sabotage the mayor, and I know you're not but, Senator, if the mayor of the city of New York, who you acknowledge and you say is fighting crime and bringing down our crime statistics, tells you in a memo that this legislation will cause problems in the City, why would you as a stellar member of the Republican Party want to sabotage our Republican mayor in his efforts to make the City safe?

SENATOR FARLEY: Well, I am so pleased that you are supporting the mayor of the city of New York because -

SENATOR GOLD: Always do when he's right.

SENATOR FARLEY: -- I think that you're on the right track in doing that, Senator Gold, and I applaud you for that, but let me just say that I think that the mayor hasn't spoken to me personally on this. I see that his memorandum comes from one of the police staff members, is that correct?

SENATOR GOLD: It's from the legislative representative, Robert M. Harding, Director of State Legislative Affairs, and he speaks for the mayor.

SENATOR FARLEY: Well, I think that Mr. Harding is misinformed or wrong on this issue. I think that this could really help the crime rate go down. I'll put it that way. I think -- in my judgment, I think mace can be a very effective deterrent to crime.

SENATOR GOLD: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Gold on the bill.

SENATOR GOLD: Mr. President, I have been around a day or two and, you know, you

can't help being here without getting reactions as to people, and if I have to talk behind Owen Johnson's back, I tell everybody he's a very, very sincere and -- person, and I feel the same way about Professor Farley, but the bottom line here is that it's not only important as legislators that we have ideas and we speak our opinion, but as somebody told me earlier today -- I was in the nurse's office -- she said, you know, you have two ears and one mouth, and there's a reason for that relationship. We're not only supposed to voice our opinions, we're supposed to listen once in a while.

Now, the mayor's office of the city of New York is very concerned about this. They say that "the proliferation of such weapons in the city of New York would create a problem, that greater availability would inevitably result in the risk of lost and accidental and unintentional and intentional misuse, the discharge of nocuous materials in a crowded subway train or in any area of congestion would likely cause serious injury or panic."

Now, Senator Farley, I can understand that a woman walking alone at night in a dark area would like to have some protection, but the bottom line is that a great part of this state -- which I was going to say like it or not -- I know you like it -- is the city of New York. We have a subway system, and all you need, Senator Farley, is one woman or one man getting a little jittery in the subway because the person next to them maybe is of a nature that seems strange to them. They take out their mace, fire it off in a subway car during rush hour, and you not only have panic, you have injured people; you have a disaster, and Senator Johnson and Senator Farley, it is really not a joke. This bill comes in every year and Senator Lack and Senator Spano support it, as does the king of the Adirondacks, but the point is, the City -- aside from just creating an opportunity for debate and the same debate every year, it's not going anywhere because the Assembly, which is a real statewide party, having real representatives from upstate New

York and from the city of New York, give some respect to the City administration even when it's a Republican mayor which, by the way, I think is fascinating because I wish that the Republican Governor of the state of New York gave respect to the Republican mayor and the budget took better care of the representatives of that Republican mayor in the city of New York.

I also wish that people like Bob Dole and Newt Gingrich and Jerry Solomon gave some respect to a Republican Governor and didn't try to choke him off in this budget process as they are doing. I think it's interesting that Congressman Solomon who, of course, is one of the most powerful members of Congress being the chairman of the Rules Committee, instead of worrying about getting us money for the state of New York, wants his wife, Senator Farley, to be able to have an assault weapon because, in her area, which I thought was one of the safest in the state, she's very, very nervous but, Senator Farley, maybe you should write to Jerry Solomon

and tell him, don't worry about the assault bill. We're going to get her some mace, and maybe he can bring some money into the state of New York and we can take care of our budget.

ACTING PRESIDENT KUHL: Senator Maziarz, did you have an announcement?

SENATOR MAZIARZ: Yes, Mr. President. I would just like to speak in favor of this bill. You know, we often hear many times about this -

ACTING PRESIDENT KUHL: Senator Padavan, I have you on the list.

Senator Maziarz, I thought -

SENATOR MAZIARZ: I'm sorry. I thought I was on the list. That's why you recognized me.

ACTING PRESIDENT KUHL: Senator Maziarz, perhaps you didn't hear me. I asked you whether or not you had an announcement.

SENATOR MAZIARZ: Oh, yes, I'm sorry. There will be a Majority Conference right after this debate, Mr. President, in Room 332.

SENATOR GOLD: Excuse me. There will be a Finance -

ACTING PRESIDENT KUHL: For the benefit of the members, both in the chamber and out of the chamber, there will be a Majority Conference immediately following the termination of this bill. I did have a list going.

Senator Marcellino.

SENATOR MARCELLINO: I'll waive.

ACTING PRESIDENT KUHL: Senator Marcellino waives.

Senator Padavan.

SENATOR PADAVAN: Mr. President, I'll be very brief -- is this a wave? You want to start on that side? I'll be brief. I'll be brief. Senator Gold's on the phone. I did want him to hear as a loyal supporter of the mayor of the city of New York, both times he ran and one who would support him again when he runs for re-election, I still have the prerogative of disagreeing with him from time to time when I feel that he's wrong and in this instance, he is wrong.

Most of us don't realize there are thousands of men and women legally carrying mace in the state of New York, in the city of New York and throughout the state. They're called postmen. They work for the U.S. Postal Service, and because they're federal employees, they're exempt from our prohibition, and they carry it and legally carry it. So it doesn't make any sense to me that if it's deemed appropriate for postal workers to defend themselves, whether it's against individuals or animals, that the rest of this population should be precluded.

And while the crime rate in the city of New York has gone down and we've given the proper credit for that, it's still very high, and I might add that other parts of this state, urban centers outside the city of New York, in many cases, have not gone down, and this is a statewide bill. So while we concentrate our opposition here within the city of New York, I think we must acknowledge the fact that this bill relates to the entire state,

and most states, including neighboring states like Massachusetts allow mace, permit mace. The city of Boston, with a very large urban center and a large police force, has not had any problems that were described by people who object to this bill, and I don't think we'll have any problems in the city of New York either.

So for that reason, Mr. President, I will vote for this bill.

ACTING PRESIDENT KUHL: Next and last on my list is Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

I will be very brief. I think this bill -- many times we hear of legislation whose time has come in the state of New York. This piece of legislation is one whose time is long overdue. I agree with my colleagues on this side of the aisle that I too support the mayor of the city of New York, but when he's wrong, he's wrong. He was wrong in the last gubernatorial election, and he is wrong in his

position on this bill.

This is -- I spoke before a woman's group two weeks ago in my district, and one of their top priorities was this piece of legislation sponsored by Senator Johnson.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last -

Senator Mendez, why do you rise?

SENATOR MENDEZ: Thank you, Mr. President.

Since Senator Johnson introduced this bill some years back, I have consistently supported this bill, Mr. President. I understand that nine other states do make it possible for women to use mace in the case of being attacked. I don't know of any reason why -- I don't know of any reason or any -- any studies that do show that the experience with approving -- making mace legal has been detrimental in any way, either to police officers or to anybody in those other states. I think that this is kind of a simple protective

weapon that women could use upon being attacked, and I really cannot possibly understand the fuss that is being made against this very simple protective chemical.

So once more, Mr. President, I will be supporting this bill. Judges do know - do know the difference between using mace as a protective device versus using mace to inflict pain or incapacitate another human being, and the cases that have been heard in New York, they have very appropriately in a way exonerated the women that have used it to protect themselves, and this bill does, in fact, punish those who are inclined or do, in fact, use mace to inflict pain; in other words, that use mace for aggressive rather than protective purposes. I think it's a good bill, and I do hope to see the day when my fellow colleagues in the Assembly do pass this bill that is so very important for the women of the state of New York to feel safer as they go about their business in the City and in the state of New York.

Thank you, Mr. President.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 201, Senators Abate, Connor, Gold, Seabrook and Smith. Ayes 54, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, Senator Farley has a resolution. We'll return to motions and resolutions.

The Chair recognizes Senator Farley.

SENATOR FARLEY: On behalf of Senator Levy, would you place a sponsor's star

on Calendar Number 39.

ACTING PRESIDENT KUHL: At the request of the sponsor, Calendar Number 39 is starred.

Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

I request unanimous consent to be recorded in the negative on Calendar Number 170 and also on Senate Bill Number S.6811. I do not have the calendar number.

ACTING PRESIDENT KUHL: Without objection.

(There was no response.)

Hearing no objection, Senator Smith will be recorded in the negative on Calendar Number 170 and also Calendar Number 645.

Senator Skelos.

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

ACTING PRESIDENT KUHL: There's no other housekeeping at the desk, Senator

Skelos.

SENATOR SKELOS: There will be an immediate Majority Conference in Room 332 of the Capitol and the Senate will stand at ease.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Majority Conference in the Majority Conference Room, Room 332. Immediate meeting of the Majority Conference in the Majority Conference Room, Room 332. The Senate will stand at ease.

(Whereupon, the Senate stood at ease from 5:10 p.m. until 7:25 p.m.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Senate Finance Committee in the Majority Conference Room, Room 332. Immediate meeting of the Senate Finance Committee in the Majority Conference Room, Room 332.

The Senate will stand at ease.

(The Senate stood at ease from 7:26 p.m. to 7:40 p.m.)

ACTING PRESIDENT KUHL: Senate will come to order. Ask the members to find their chairs, staff to find their places.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report from the Finance Committee.

ACTING PRESIDENT KUHL: There is, Senator Skelos. We'll return to reports of standing committees. I'll ask the Secretary to road.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill directly for third reading: By the Committee on Rules, Senate Print 6845, an act making appropriations for the support of government.

ACTING PRESIDENT KUHL: Without objection, the bill is reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time, if we could take up Calendar 646, Senate 6845.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 646, by the Committee on Rules, Senate Print Number 6845, an act making appropriations for the support of government.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message of me necessity and appropriation at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity at the desk, and appropriation. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Senator Paterson.

SENATOR PATERSON: Mr. President, I actually have read the bill entirely, so I don't need an explanation, but what would be beneficial is if Senator Stafford would yield for a couple of questions relating to Section 35 of the appropriation.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you very much, Senator Stafford.

I just want to make sure I understand this. If a not-for-profit corporation that is providing services under a state contract and has provided these services under the current fiscal year and continues to provide these services through the month of April under the state contract, isn't it true that the not-for-profit corporation can receive payment from the state under the contract during

that time?

SENATOR STAFFORD: Yes.

SENATOR PATERSON: Thank you, Senator.

If the Senator would continue to yield.

SENATOR STAFFORD: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: My understanding, Senator, is that under the appropriation that we are going to vote on in just a moment, that if there were a hypothetical situation that theoretically would -- would involve -- the strings, Mr. President -

SENATOR STAFFORD: I'm very aware of it.

SENATOR PATERSON: It's the first time I ever stood here, must go with the territory.

-- that if we're looking at a state agency that wanted to relocate its services to another place, that under this

legislation -- under this appropriation it's my understanding that they would not be able to relocate?

SENATOR STAFFORD: Well, I don't know as you could say it exactly that way. Things could be done which can be done in the ordinary course of business, here in the state of New York.

SENATOR PATERSON: Yes, Senator, but a relocation would be not in the ordinary course of business as much as it would be a massive change.

SENATOR STAFFORD: Well, we have to define our terms and you and I know, for instance, the reasonable man, the time we spent in law school discussing what a reasonable man is. It would take probably a number of hours.

SENATOR PATERSON: Well, we're certainly not going to discuss it now.

SENATOR STAFFORD: All right. Thank you.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Therefore, Senator, asserting the "reasonable man" test, if there was any new initiative such as economic development or consolidation of computers or something like that, under the appropriation in Section 35, this would not be accomplished during the month of April under this appropriation; is that not correct?

SENATOR STAFFORD: I don't mean to be short here or to be flippant. I take it seriously, you have a very serious question. I just say again, as I said, when we pass an appropriation, an appropriation will provide for what can be legally done in the ordinary course of business here in the state of New York.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, I would tend to think that, since we're already up to April 2nd and we're talking about an appropriation that expires on April 30th, that an extraordinary circumstance would have to occur within the next 28 days to use these state

funds in that particular way, so I would just suggest to you that that would be a rather extraordinary sense or course of business that would necessitate or be the catalyst for this kind of expenditure.

So based on the fact that we're really appropriating an extension, I would suggest that it is most likely that it would not happen during this time.

SENATOR STAFFORD: I -- I certainly understand your suggestion.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR STAFFORD: Well, I think this -- going along with the way we conduct business here, I think I could continue and say that we don't expect any of the concerns which you have put forth.

SENATOR PATERSON: Well, Mr. President, I guess what I'm looking for in this particular situation is -- is clarity. There is a need that we have to continue the work of the state as we try to pass the budget as we

promised the constituents we represent, the areas that we serve. This is the reason that the Governor originally brought forth this budget six weeks earlier than he usually does, so I think that we have to be absolutely clear on this point that we would not be thinking in terms of relocating state offices, all types of complex new initiatives such as economic development or any kind of consolidations or taking state agencies and sending them to different parts of the state.

So I would want to be assured that that will not happen at least between now and a very short period of time which would be Tuesday, April the 30th, which is exactly four weeks from tonight. I would -- I would want to know that that isn't going to happen, and under the legislation that's what I understand is not going to happen, but I'm just asking the sponsor if we could have a clear definition of the legislation that is a message to us that it will not happen.

SENATOR STAFFORD: Well, of

course, you know, it's how anyone looks at it. As I said again, we don't expect anything like that, but you know, one man's ceiling is another man's floor. It's how you interpret things and like this.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator would continue to yield, and then I will yield the ceiling after that.

If it were the desire to move an agency, if that were the purpose, if that were something that was desired as a result of the appropriation that we're passing here, does this legislation make that possible; in other words, is it provided in the legislation?

SENATOR STAFFORD: Where I'm very encouraged, Senator, is what I am saying here in the beginning I'm now being advised by my counsel, so I'll again -

SENATOR CONNOR: Mr. President.

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

SENATOR CONNOR: Perhaps I can help. Perhaps I can obfuscate more but, if the Senator would yield to a question, Senator Stafford would yield to a question about this section of the law. I'll try and clarify. My goal is to clarify.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield?

SENATOR STAFFORD: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR CONNOR: Senator Stafford, is it the intention of this section of the legislation, and this appropriation, to authorize any major initiatives involving locations of state agencies or otherwise that would not have already been authorized under the law as it existed in the past fiscal year?

SENATOR STAFFORD: It is not the intent.

SENATOR CONNOR: Thank you.

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

SENATOR STACHOWSKI: Mr. President, if Senator Stafford would yield to one question.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield?

SENATOR STACHOWSKI: Would - Senator Stafford, would this section and that appropriation provide that the scheduled construction of roads and bridges in DOT go on line and in a timely fashion so that we don't lose the construction season as we did last year under thea late budget?

SENATOR STAFFORD: Yes.

SENATOR STACHOWSKI: Thank you very much.

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

SENATOR COOK: Senator Stafford, would you yield to a question? If I could build on Senator Connor's question for just a moment. Would it be accurate to say that this legislation does not change the law as it relates to the relocation of state offices,

therefore, whatever conditions exist and have existed will continue to exist exactly as they have been?

SENATOR STAFFORD: I could -- I couldn't put it any better.

SENATOR COOK: Thank you.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on this bill? Hearing none, 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.

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we call up Calendar Number 250 that was restored

to the calendar earlier today?

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 250, by Senator Johnson, Senate Print Number 5830-A, an act to amend the Environmental Conservation Law, in relation to identifying certain persons who may receive food fish licenses.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we adopt.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity at the desk. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill's passed.

Senator Skelos, we have one item of housekeeping if we could take that up at this time. Would that be O.K., Senator Bruno?

SENATOR BRUNO: Can we do that at this time, Mr. President?

ACTING PRESIDENT KUHL: We'll return to motions and resolutions. The Chair would recognize Senator Maziarz.

SENATOR MAZIARZ: Mr. President, on behalf of Senator Nozzolio, on page 15, I offer the following amendments to Calendar Number 404, Senate Print Number 3731, and ask that said bill retain its place on Third Reading

Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 404 received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call for a meeting of the Finance Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Senate Finance Committee in the Majority Conference Room, Room 332, immediate meeting of the Senate Finance Committee in the Majority Conference Room, Room 332.

The Senate will stand at ease awaiting the report of the Senate Finance Committee.

(The Senate stood at ease from 7:55 p.m,. to 8:20 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. Members please find their chairs, staff their places.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, to the report of the Finance Committee.

ACTING PRESIDENT KUHL: Return to reports of standing committees. Secretary will read the report of the Finance Committee.

THE SECRETARY: By Senator Stafford, from the Committee on Finance reports the following bill directly for third reading: Senate Print 6846, by Senator Velella and others, an act to amend the Insurance Law, in relation to the availability of multi-tier programs for homeowners insurance.

ACTING PRESIDENT KUHL: Without objection, the bill is reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time if we could call up Senate 6846.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 647, by Senator Velella, Senate Print 6846, an act to amend the Insurance Law, in relation to the availability of multi-tier programs for homeowners insurance.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move we accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 647. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

THE SECRETARY: Section 13. This

act shall take effect immediately.

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

SENATOR DOLLINGER: Will the sponsor yield just to one question, Mr. President?

ACTING PRESIDENT KUHL: Senator Velella, do you yield to one question from Senator Dollinger?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: You and I had an opportunity to talk about this. I'd just like to put it on the record.

As you know, my concern with respect to the water levels and the problems of coastal zones really relates to Lake Ontario, my portion of Monroe County. My question is, what's the geographic scope of the cancellation and the withdrawal plan provisions in this bill and does it affect the Lake Ontario watershed as well?

SENATOR VELELLA: The scope of when a company would be determined to be with drawing from the market would be determined by their own book of business, and that would have statewide application, so that if a company were writing business on Long Island, in New York City and up in your area, the percentage or the 20 percent or 500 policies that would trigger the issue of whether or not they were systematically withdrawing from the marketplace would be based on the cancellations of their total book of business, not just one particular locality.

SENATOR DOLLINGER: O.K. So Senator Maziarz and Senator Nozzolio, Senator Alesi and myself, that represent the flood plain up and around Lake Ontario, if we were to inform the superintendent that we wanted to make sure he kept his eye on that portion of the state as well with respect to cancellations and a possible withdrawal plan, would this bill authorize the superintendent to make such a finding?

SENATOR VELELLA: Yes. When the system is triggered, then the superintendent's investigation and determination of that is area-specific. He will look at the area and see if there is a withdrawal and call the company in to file a plan and seek other markets or other companies that might come in and write in that market.

SENATOR DOLLINGER: Mr. President, on the bill just ever so briefly, I appreciate the explanation of Senator Velella. I also think I know that Senator Velella's staff and mine have had a brief opportunity to discuss an amendment which would deal with the problem of wind-blown wave action and the impact that that has on homeowners insurance. I know that this bill is an extender that lasts for a period of time. I hope that during the period of the extension, we'll be able to look at that issue more carefully and perhaps address what is a significant issue in the Lake Ontario watershed as well.

Thank you, Senator.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on Calendar Number 647? Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, there being no further business to come before the Senate, I move that we stand adjourned until Monday, April 15th at 3:00 p.m., intervening days being legislative days, and all of this being subject to call of the Majority Leader, so that those members that are involved in the process between now and April 15th know what their responsibilities are and they will be engaged in those responsibilities.

Everyone have a safe and happy holy day and holiday season.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until Monday, April 15th at 3:00 p.m., intervening days to be legislative days, and subject to the call of the Majority Leader.

(Whereupon at 8:25 p.m., the Senate adjourned.)