ALBANY, NEW YORK

April 15, 1996

3:02 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

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

THE PRESIDENT: The Senate will come to order.

Would everyone please rise and join 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, Sunday, April 14. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Saturday, April 13, 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: Madam President. I wish to call up my bill, Print Number 6213, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 449, by Senator Marcellino, Senate Print 6213, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is restored.

Senator Present.

SENATOR PRESENT: Mr. President. On behalf of Senator Holland, I call up his bill, Print 5072A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 407, by Senator Holland, Senate Print 5072A, an act to permit the reopening of the optional 20-year retirement plan.

ACTING PRESIDENT KUHL: Senator Present.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is before the house.

Senator Present.

SENATOR PRESENT: Mr. President. I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Spano.

SENATOR SPANO: Mr. President. I'd like to offer amendments to the following Third Reading Calendar bills:

Senator Hoblock, page 11, Calendar 196, Print 3555;

Senator Marcellino, page 19, Calendar 450, Senate Print 6316;

Senator Cook, page 23, Calendar Number 511, Senate Print 3584;

Senator Holland, page 24,

Calendar 529, Senate Print 5536A;

Senator Sears, page 31, Calendar 594, Senate Print 5973A;

Move that these bills retain their place on third order.

ACTING PRESIDENT KUHL: Amendments are received and adopted. The bills will retain their place on Third Reading Calendar.

Senator Spano.

SENATOR SPANO: On behalf of Senator Bruno, I ask that Senate Bill 722 be discharged from committee, and be recommitted with instructions to strike the enacting clause.

ACTING PRESIDENT KUHL: The Secretary so directs.

Senator Trunzo.

SENATOR TRUNZO: Mr. President. Please place a sponsor star on Calendar Number 130.

ACTING PRESIDENT KUHL: Calendar Number 130 will be starred at the request of the sponsor.

Senator Skelos.

SENATOR SKELOS: Mr. President. I believe there are three privileged resolutions. If we could take up the first one by Senator DeFrancisco, I ask that the title be read. If you could then recognize Senator DeFrancisco for comments and then adopt the resolution.

ACTING PRESIDENT KUHL: Secretary will read the title to the privileged resolution by Senator DeFrancisco.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution, honoring the Student Council and Members of the Onondaga Hill Maple -- Middle School Community Outreach Program (C.O.P.S.) for the first place in the Middle School Division of the 49th Senate District "Good News! Good Kids!" Student Recognition Program.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Mr. President. I rise to congratulate the

students who are present in the chambers today from the Onondaga Middle School -- Onondaga Hill Middle School.

Each of these individuals have been involved in a project that is part of a program that we started when I first got into the Senate. I thought that many students, many young people were normally spoken of negatively in the press and negatively of in the media and there were a lot of good things that were being done; hence, the name of the program, "Good News! Good Kids!"

This year it's grown into a program that has been -- got the involvement of over 3,000 students in my district and the middle school winner is Onondaga Hill Middle School, and basically what they did, I'm going to have to read some of these things because their outreach efforts were so substantial, that affected so many parts of the community, that I think I should read some of these areas.

First of all, they raised $200 for the Rescue Mission for some food services.

They donated more than 1500 cans of food to the Salvation Army. A $250 donation that they were able to raise through various sources for the Ronald McDonald house. They brought in 70 coats for the Catholic Charities Coat Drive and brought in some money for the SPCA and Humane Society. They also raised $3500 for the benefit of the Central New York Make A Wish Foundation, and they assisted elderly homeowners, raking lawns, and also collected Christmas gifts for a needy family.

In other words, they did a lot of things for our community; and because of that, we're honoring them here today, and I would urge that we have a unanimous adoption of this resolution and congratulate these students and all the students who are doing good things, the good kids of our communities.

Thank you.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the resolution?

(There was no response.)

Hearing none, the question is on the adoption of the resolution.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President. I believe there is a privileged resolution at the desk, by Senator Connor. I ask that it be read in its entirety and then if you would recognize Senator Connor for a comment prior to its adoption.

ACTING PRESIDENT KUHL: Secretary will read the privileged resolution by Senator Connor in its entirety.

THE SECRETARY: By Senator Connor, Legislative Resolution, proclaiming April 15, 1996, as United States Naval Armed Guard Day in tribute to the members of the

United States Navy who served as gun crews aboard merchant ships during World War II.

Whereas, members of the United States Naval Armed Guard from the State of New York, who served so valiantly and honorably in World War II to protect this country's freedom, deserve a special salute from this Legislative Body; and

Whereas, this Legislative Body is justly proud to honor the members of the United States Naval Armed Guard who served as gun crews aboard merchant ships during World War II;

On April 15, 1941, members of the United States Naval Armed Guard began preliminary training as gun crews to serve merchant ships;

Known as the "other Navy" during World War II, Navy Armed Guard crews manned the guns of merchant ships struggling to deliver men and material to Europe and the Pacific; and

Whereas, the story of some 144,970 members of the Navy Armed Guard, particularly their exploits in the Battle of the

Atlantic, is a little-known legend of heroism, sacrifice and cruelty by an unforgiving sea and violent death from torpedoes, gunfire and bombs;

One in nine of all merchant ships, or 710, were sunk resulting in the death of 1,810 members of the United States Naval Armed Guard;

Naval Armed Guard members earned 58,186 commendations and awards, including the Navy Cross, Legion of Merit, Silver Star and Bronz Star;

86,198 Armed Guards served aboard Navy destroyer escorts and on infantry and tank landing craft delivering Marines and soldiers to the invasion beaches; and

Whereas, Armed Guards with minimal and often antiquated firepower were constantly pitted against the superior gunfire of surfaced submarines, hostile vessels and attacking aircraft;

The majority of Armed Guard crews sailed the globe aboard slow moving merchant ships packed with explosives or aboard tankers

with their volatile cargoes of aviation fuel;

Numerous crews were forced to abandon flaming and sinking ships in subfreezing temperatures, struggling for survival in open lifeboats as they floated amidst Arctic ice floes; and

Whereas, documents are only recently surfacing which detail Naval Armed Guard exploits, suffering and gallantry against overwhelming odds;

There are only 746 surviving members of the United States Naval Armed Guard currently residing in the State of New York;

No greater debt is owed than that owed to those who gave their lives for their beloved nation; and

Whereas, having exhibited their patriotism during World War II, these men demonstrated their love for their country and now merit the highest praise from their state, New York; now, therefore, be it

Resolved, That this Legislative Body pause in its deliberations to proclaim

April 15, 1996, as United States Naval Armed Guard Day in tribute to the members of the U.S. Navy who served as gun crews aboard merchant ships during World War II; and be it further

Resolved, that copies of this resolution, suitably engrossed, be transmitted to Mr. Charles A. Lloyd, National Chairman and Secretary, United States Navy Armed Guard World War II Veterans; Mr. Henry M. Carringi, Chairman, New York State Chapter, U.S. Navy Armed Guard; and Mr. Lyle E. Dupra, Historian, U.S. Navy Armed Guard World War II Veterans.

ACTING PRESIDENT KUHL: Chair recognizes Senator Connor.

SENATOR CONNOR: Mr. President. In the context of all the many, many heroes of World War II -- and we are all here today enjoying freedom and peace because of the great sacrifices made by men and women in all of the armed forces in that great conflict. It was called to our attention sometime ago that members of the Naval Armed Guard, about whose heroics and exploits we have heard in the

resolution, were desirous of being made eligible for the New York State Conspicuous Service Cross; and at my request, Senator Dollinger took the lead and provided the documentation so that the members -- surviving members of the Naval Armed Guard were, indeed, made eligible and were awarded the New York State Conspicuous Service Cross.

It is now planned to bring forth and have installed a plaque commemorating the heroic efforts of the Naval Armed Guard and those members from New York State who served so gallantly in World War II.

Today, we're now talking -- it is now the 55th anniversary of the birth of the United States Naval Armed Guard, and we pause to commemorate their heroics, and I think we ought to also note what they adopted as their motto which was, "We Deliver," and deliver, indeed, they did, deliver safely, armaments, supplies and fighting men throughout the world.

Today, we're fortunate to have with us Mr. Henry Carringi, the New York State

Chairman of the U.S. Navy Armed Guards Veterans of World War II, and I believe five of his comrades from the Capital District Area.

Gentlemen, we can not and will not forget your 810 comrades who give their last full measure of devotion for this nation; and, today, we say to you and the other 740 surviving members of the Guard who reside in this state thank you and, without a doubt, you delivered.

Mr. Carringi is with us in the gallery with his comrades.

(Applause.)

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: Yes.

Senator Connor, I would like to rise to support your resolution because my oldest brother, John Farley, was a combat Merchant Marine veteran and sailed on a number of ships, and the appalling loss of life that happened with the Maritime Services and the Armed Guard and the bravery that they -- because

they were very vulnerable, usually on ships that carried ammunition and bombs and so forth, and I know the stories that my brother has told me about the heroism and so forth of the Armed Guard and what they did.

It was only recently that this house and the other house recognized Merchant Marines as veterans, and I was pleased to be part of that, and I think it's so important. I know that the Armed Guard has been very supportive of the Merchant Marine Veterans, as they are of you, and they are all very grateful for the protection that the Armed Guard gave to these gallant people that provided all the efforts for the war effort.

And, Senator Connor, I would be honored if I could go on your resolution.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Mr. President. I'd certainly be happy to have all the members of the Senate join me in sponsoring this resolution.

SENATOR SKELOS: No objection.

ACTING PRESIDENT KUHL: Senator Connor, I see a great number of members who would like to be on that, so why don't we take the standard process of putting everybody on as a cosponsor of the resolution except those people who indicate to the desk later that they don't wish to be on.

SENATOR CONNOR: Okay.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the resolution?

Senator Hoblock.

SENATOR HOBLOCK: Thank you, Mr. President.

Just very briefly, and I want to acknowledge and thank Senator Connor for bringing this resolution forward.

You know, as indicated in the resolution, that this is not only an important function that these brave men and women did - did perform, but it's a little-known action that they performed. You know, you've got to -- you

got to get your personnel and your equipment there, and you've got to get them out, and that's exactly what this organization did, and they did it very heroically during the second world war and many other conflicts in the history of this country.

So I'm proud to rise and join with my colleagues in this resolution and commending the debt owed to these individuals.

ACTING PRESIDENT KUHL: The question is on the resolution.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President. I believe there is a privileged resolution by Senator Paterson at the desk. I ask that it be read in its entirety, please recognize Senator

Paterson, and then if we could adopt the resolution.

ACTING PRESIDENT KUHL: Secretary will read the privileged resolution by Senator Paterson in its entirety.

THE SECRETARY: By Senator Paterson, Legislative Resolution, memorializing the life of Ronald H. Brown, United States Secretary of Commerce.

Whereas, it is the sense of this Legislative Body to memorialize the life of one of our nation's most distinguished statesmen, Secretary of Commerce, Ronald H. Brown; and

Whereas, born in Washington, D.C., in 1941, Ronald H. Brown grew up in Harlem; focused and determined, Ronald H. Brown earned a scholarship and attended Middlebury College in Vermont;

He received his law degree at St. John's University School of Law, attending at night, while working by day as a welfare case worker for the City of New York;

Ronald H. Brown served his

country with loyalty, honor and great distinction in the United States Army for four years; he served in both Germany and Korea; and

Whereas, the first African American to hold the office of United States Secretary of Commerce, Ronald H. Brown is considered by many to have been the finest Secretary of Commerce in the history of the United States;

Secretary Brown served on the President's National Economic Council, the Domestic Policy Council and the Task Force on National Health Care Reform; he also was Chairman of the Trade Promotion Coordinating Committee, the Co-Chair of the United States Russia Business Development Committee, and the U.S.-Israel Science and Technology Commission and led President Clinton's initiative on the revitalization of the California economy; and

Whereas, a lawyer, a negotiator, a pragmatic bridge builder, and the highly successful immediate past chairman of the Democratic National Committee, Secretary Brown

brought wide experience to the challenge of building a strong private-sector/public-sector partnership; he was quite certain of his mission to promote long-term economic growth with emphasis on rebuilding our nation's industrial base and working with small business owners and minority entrepreneurs to create and expand employment opportunities; and

Whereas, Ronald H. Brown's life was cut short but he died while serving his nation, attempting to fulfill his goal as Secretary of Commerce, to place American business in the front-line of the economic development in war-torn countries such as the former Yugoslavia; and

Whereas, Ronald H. Brown's life mirrored a compelling commitment to public service, his rise to prominence was forever grounded in humanitarian concern; his life and accomplishments are a source of pride for all Americans; now, therefore, be it

Resolved, That this Legislative Body pause in its deliberations to memorialize

the life of Ronald H. Brown, the 30th Secretary of Commerce of the United States; and be it further

Resolved, that a copy of this resolution, suitably engrossed, be transmitted to the family of Ronald H. Brown.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

And I would like to particularly thank Senators Seabrook and Senator Montgomery for their assistance in compiling the information and preparing this resolution.

It was really a very sad day the day following our break last Wednesday, when I awakened to read in the newspaper that the first black Dean of a New York law school, Dean Haywood Burns of the City University of New York law school, had passed away along with two other professors in a car accident in South Africa during a lawyers conference in preparation for the legal changes made in that particular

country.

Nearly two hours after that, we heard the report, as did all Americans, of the tragic flight from Tusla to Dubrovnik in which there was a crash about a mile outside the air field that killed United States Secretary of Commerce Ron Brown.

I knew Ron Brown personally. He is one of four individuals who I knew personally who were on that flight. The others were Catherine Hoffman of the Bronx, New York; also William Morton, who was born in Wheeling, West Virginia, and raised in Denver, Colorado, and was just buried this Saturday in Wheeling, West Virginia; and also Carol Hamilton of New Rochelle, New York, who wrote press releases for me when I first started running for public office.

So it is the first time in my life, and I would hope that no one in this chamber ever goes through the experience, of actually finding out of the loss of four personal friends in one day, and particularly

dissatisfying because of their unique contributions that they made to this country and also internationally, as this was a trip to try to arrange for the building of the infrastructure of what we know as Bosnia in the wake of this terrible civil disaster that has befallen that country and the outlying areas.

It is unfortunate that this would be the epicenter of the event that would take the life of the Secretary who was born in Washington, D.C., in 1941 but was raised in Harlem and actually lived in the Theresa Hotel at 125th Street and Seventh Avenue, what is now known as Adam Clayton Powell Boulevard, just across the street from the office building that I work in where my district office is. Ron Brown grew up there and achieved tremendous accolades in Middlebury College in Vermont and then later as a lawyer for 12 years as the general counsel to the National Urban League and its vice-president, as the counsel to the Senate Judiciary Committee, and then on as chair of the National Democratic Committee and then the 30th

Secretary of Commerce.

But these are just the credentials that often amplify the life's work of individuals but don't really speak to their character and their commitment and the personal lives that they shared and what they meant to their friends and to their associates and to all those touched by them. Ron Brown was a unique figure. The resolution discusses the United States-Russia Business Council that he founded to try to create an economic empowerment for those who live in Russia after the fall of the Iron Curtain. The United States and Israeli Science and Technology Task Force, where actually it is the Israeli government and Israeli citizens who are trying to give back to Americans since we rate so low in comparison to the other countries in terms of the scientific aptitude of our young students, and also the G-7 Conference in Poland, in which Ron Brown in 1993 took members of the African National Conference right after the first elections were held in South Africa as a way of stimulating two

countries that were in their growth state, one after the fall of communism, one after the fall of apartheit to try to demonstrate that their likenesses could be a way to set parameters for what would be a pattern of development and planning that would inure to the benefit of countries all around the world.

Ron Brown, who was the Chair of the Democratic National Committee and may be described as progressive in his political ideology, had a great number of points of view that might somewhat differ and would have a great deal of appeal to those who might espouse kind of a conservative philosophy, particularly as he chaired the Task Force on National Health Care because of his ideas that there were some forms of privatization that could better improve the delivery of health care services, and particularly managed care, to those who were recipients of Medicaid. This was something that he discussed in a conference a year and a half ago which I had the pleasure to have been invited to.

I introduced Ron Brown on December the 15th of 1995 before the Harlem International Trade Center when he opened up a new Harlem import-export trade service to promote greater contact between business leaders from this country who live in the innercities with those who lie overseas.

So his unique scope of thinking is what really separates competence from excellence, which is why he is remembered so well, which is why so many Americans care about his loss.

It was a tragic day two weeks ago Wednesday, when the first African-American mayor of a large city died in Cleveland, Ohio, and his name was Carl Stokes, elected in 1967; also the death of Dean Haywood Burns and Ron Brown, the 30th Secretary of Commerce that this country has had; and yet the similarity of these individuals may be one of hue, but it really was one, also, of purpose as have so many Americans in the short time they shared with us on this planet made such an astounding contribution, the

benefits of which we still continue to reap.

I only hope that with our often dilapidated educational systems, the poor health care that is delivered to our communities, the many obstacles that people who live in the areas such as a Ron Brown that there will be others who might come along to take their place. Colin Powell, the Chair of the Joint Chiefs of Staff, said the other day that with the tuition the way it is in our City University right now he doubts that he would have been able to have gotten the education that he inevitably received.

But whatever our points of view and whichever ways we differ, we always recognize the contributions that were made by those who believed in their purpose and stood for them. They fought, they suffered, and in this case they paid, but we won, and what we have won is the enlightenment of freedom and the enlightenment of knowledge that they offered us.

And, hopefully, we can continue as we try to solve the myriad problems that the world still has left in its virtue that we might

solve.

Thank you.

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

(There was no response.)

Hearing none, all those in favor, signify -- of the resolution, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is adopted.

The Chair recognizes Senator Goodman.

SENATOR GOODMAN: Mr. President. It's my happy privilege this afternoon to introduce to the chamber a very noted celebrity from the world of dance, television and the movies. She is seated in the front of the chamber, and her name is Marge Champion, and all of you will certainly remember Marge and Gower Champion as two of the outstanding dancers and cultural contributors during the golden era of

MGM movies and on television itself.

Marge Champion is an extraordinarily vivacious lady, who is here with a delegation representing the arts community, and I must say that it gives me special pleasure to point out that she and her husband became synonymous with grace and romance in dance. I think a quote from her says, "We had a romantic quality because we were really in love," which is a very refreshing development in this day and age, and they developed a style over the years doing a variety of guest appearances and ultimately came into the big time appearing in such films as "Showboat," "Give a Girl a Break," "Three For The Show," "The Swimmer," "The G.E. Theater," "Toast of the Town," "The Dinah Shore Show," and, indeed, she won an Emmy Award for her choreography for "Queen of the Stardust Ball," in 1975.

As we all know, the Senate is in the forefront in the Albany firmament of those who care about culture and try very hard to advance it in every way possible, and it's

always a refreshing and delightful experience to have leaders of the art world come to see us for a brief visit.

And may I ask that we accord a special New York welcome to Marge Champion.

(Applause.)

ACTING PRESIDENT KUHL: Senator Skelos, Senator Paterson has indicated to the desk that he would like to open up the last resolution that was adopted for all the members. I know that probably most members would like to be on it. So why don't we take the same procedure. We'll put all the members on the last resolution honoring former Commerce Secretary Ron Brown unless they indicate to the desk that they do not wish to be on it.

Senator Skelos.

SENATOR SKELOS: Mr. President. At this time, if we could take up the noncontroversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the noncontroversial calendar.

THE SECRETARY: On page 11,

Calendar Number 186, by Senator Levy, Senate Print 371, an act to amend the Vehicle and Traffic Law, in relation to civil penalties imposed for alcohol or drug related offenses.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 207, by Senator Hoblock, Senate Print 5173A, an act to amend the Criminal Procedure Law and the Penal Law, in relation to definition of juvenile offender.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 212, by Member of the Assembly Hochberg, Assembly Print 5707C, an act to amend the Criminal Procedure Law, in relation to a defendant's right to supporting deposition.

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

THE SECRETARY: Section 5. This act shall take effect 180 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 233, by Senator Present, Senate Print 992A, an act to amend the General Municipal Law, in relation to authorizing the designation of rural economic development zones.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 296, by Senator Skelos, Senate Print 6072A, an act to amend the County Law and the General Municipal Law, in relation to authorizing counties.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 393, by Senator Skelos.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 395, by Senator Saland, Senate Print 5106A, an act to amend the Social Services Law and the Education Law, in relation to the protection of

pupils.

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

THE SECRETARY: Section 5. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 418, by Senator Libous, Senate Print 4493A, an act to amend the General Business Law, in relation to the storage, sale and rental of X rated and MC-17 rated films.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 459, by Senator Hoblock, Senate Print 5796, an act to amend the Civil Service Law, in relation to the use of credits for veterans and disabled veterans.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 478, by Senator Larkin, Senate Print 6057, an act to amend the Real Property Tax Law, in

relation to school districts which levy taxes on behalf of a school district.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 588, by Senator Goodman, Senate Print 6282.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Skelos, that completes the noncontroversial calendar.

SENATOR SKELOS: Mr. President. If we could take up the controversial calendar at this time.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar, beginning with Calendar Number 207.

THE SECRETARY: On page 11, Calendar Number 207, by Senator Hoblock, Senate Print 5173A, an act to amend the Criminal Procedure Law and the Penal Law.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Hoblock, an explanation of Calendar Number 207 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR HOBLOCK: Mr. President. This bill amends various sections of the Criminal Procedure Law and the Penal Law to include certain weapon offenses within the class of offenses for which 12- to 15-year-old juvenile offenders maybe prosecuted in the Criminal Courts. This is a "may" bill in the sense that the prosecutor can determine to prosecute these individuals, that is, 12-, 13-, 14- or 15-year-old individuals that are

criminally responsible for certain weapon offenses.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you very much, Mr. President. If Senator Hoblock would just yield to a few questions.

ACTING PRESIDENT KUHL: Senator Hoblock, do you yield to a question?

SENATOR HOBLOCK: Sure.

ACTING PRESIDENT KUHL: Senator yields.

Yes, Senator Leichter, why do you rise?

SENATOR LEICHTER: I'm sorry to interrupt. Is Calendar 418 still in the house?

ACTING PRESIDENT KUHL: They tell me it's gone, Senator.

SENATOR LEICHTER: Okay. Thank you.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Well, Mr.

President, there are a number of things that have been asked for in the house; and when they are gone, we just have to move forward.

Senator Hoblock, if I were just going to summarize the legislation, it appears that we have taken many of the crimes that we can charge 14- and 15-year-olds and impose that on 12- and 13-year-olds; and where we only usually try 13-year-olds as adults for murder, when we move the age back to 12, we are now adding in all the other offenses that 14- and 15-year-olds were traditionally charged with.

I was listening to some remarks that the Attorney General was making recently about prevention; and what I'm wondering with this introduction of legislation is, how far are we going to go? Are 10- and 11-year-olds next? Are we just continually lowering the age at which we can charge individuals with crimes, at the same time not really addressing the issues of prevention; and is there any prevention mechanism in this bill that you can describe?

SENATOR HOBLOCK: Senator

Paterson, there is no direct prevention provisions in the bill. But let me say that since last year when we've had this bill on the floor and debated it on that particular issue, you know, I have been saving a number of articles and other pieces of material that have come across my desk on juvenile crime, and I have also been gathering some information on what it is we spend now in the State of New York on youth prevention and diversion alternatives, and various other programs, and it seems to me that we spend now millions and millions of dollars on a number of programs, some of which are working, hopefully and optimistically, and some of which are not working; and in spite of the programs and in spite of the millions of dollars that we spend -- and, hopefully, it is all being spent in the right way and, in fact, is doing some good -- there are certain individuals, perhaps not a great number of them, that choose to take up this life of crime, and it has been said to me by several district attorneys, that whether we like it or not, there

are some of these individuals even in this age category that are hardened criminals; and, in fact, we would like the alternative to or the option to have to prosecute them.

So to answer your question, there are many prevention programs already in place; and had they been working and accomplishing all the goals we would like to have them accomplish, we probably wouldn't be talking about this bill.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. I'm afraid you're right about that, Senator Hoblock, but just to be specific, we - in our proposed budget of this year, we have a $3 million cut in special delinquency programs $2.5 million in runaway programs; and special education funding, we cut by 50 percent. So I'm just saying that while we are addressing what may be the outgrowth of the problem in your bill, what may be the catalyst for why we are standing here talking about your bill is something that seems in a sense a little

contradictory, and what I would add to that is that in light of the cuts for Division for Youth services, which would actually take control of these cases -- and we would assume there would be more of them based on the number of people I would assume would be prosecuted under the change in law that you are proposing -- how are we going to do anything about these 12- and 13-year-olds and 14- and 15-year-olds who come under the net if this legislation is passed if we are operating with a fraction of the resources?

SENATOR HOBLOCK: Well, I'm not sure I can totally answer that question, Senator. Again, you know, this is not a mandatory. They don't have to be prosecuted under these sections. This is up to the district attorney based on the circumstances of the crime.

And I might add that, you know, we are not the only state that is not only faced with this problem but has attempted to do something about it, and in the area of juvenile

offenders, there's a number of states across this country that have even gone further than what this bill proposes in trying to deal with what they see as that small part of the population, unfortunately -- and hopefully those numbers will stay very small -- have to be dealt with a different way and that we can't generalize and have one glove fit all when we're talking about juvenile crime and juvenile offenses.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Hoblock. Thank you for the answers.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: Mr. President. I can't compliment Senator Hoblock on the bill. What I think I can compliment him on is not going as far as they have done in other states because I feel that, generally, we are going in the wrong direction in this

particular area.

If you talk to people that run youth facilities or you look at the statistics, the recidivism does not come necessarily as a result of just the release from the youth facility. It comes as a result of the environment that the individual goes back to rather than the one that's actually treating.

What we're doing is blaming the fact that there is recidivism on the facilities and then cutting the budgets for the facilities, and then, at the same time, adding to the numbers of young people who are in the net of the criminal justice system and then, inevitably, adding to those who are in the correctional system by trying them as adults.

In my opinion, we're adding and subtracting in a way that we don't really come out ahead. Certainly, any person, regardless of their age that commits a crime must be punished, but when we recognize the difference in comprehension and attainment of acuity of those who are actually committing crimes, we recognize

that there is a difference between a 15-year-old and a 12-year-old, and that this may be an answer that may certainly -- if under the definition of what a crime is and what punishment is certainly fits, there is no reason not to lower the ages to 11 or 10 or 9 eventually, when we are really not addressing the full issue of the kind of rehabilitation that we can do that, in most cases, will actually make the difference between what would be a life of crime for some people and true and honest rehabilitation.

We just don't think this is actually the answer. It certainly makes sense in a cursory way because when a crime such as a murder is committed, it's felt by adults. It's effected in that way. It certainly doesn't make a difference who commits the crime. We all feel the same anguish; yet in the same sense, we're really talking about different individuals, as opposed to when an 18-year-old commits a crime, even a heinous one, as compared to when a 12-year-old does.

So we recommend that this bill be defeated. In spite of the fact that its purpose is good, the reality is that the effect is only going to put younger people in facilities longer, take them away from any kind of situation that might reverse their plight, and in our opinion exacerbate the problem rather than cure it.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. I would like to ask the sponsor, Senator Hoblock, if we would answer a question.

Senator Hoblock, these 12- and 13-year-olds that we're talking about in this bill, these would currently be considered mules, would they not, more or less? In the language of the drug people, they are mules more or less.

SENATOR HOBLOCK: I suppose in that area of activity, potentially. But keep in mind that these are offenses that would be committed with a weapon.

SENATOR MONTGOMERY: I had a conversation with one of the commanding officers in my district, and one of the things that he said to me was that the reason that young children this age are involved in various kinds of criminal activity is that they're essentially used as couriers, and they are used because they are below age.

So my assumption is -- and I'm just wondering if you thought about this, as well -- that once we remove the 12-year-olds, then the 9- to 11-year-olds are going to become the same kind of little mules. Would you not suspect that that would happen since that's what happens with the 12-year-olds now?

SENATOR HOBLOCK: I don't think so, Senator Montgomery. I think what we're trying to get at with this bill, as I say, just looking at what's taking place over the past year. You know, there's an article in the Buffalo News, and this is the type of crime we're talking about. We got a 12-year-old boy who is charged with stabbing an elderly Buffalo

woman to death, and he couldn't face more than 18 months. The prosecutor called out for the ability to do something about this individual. It was a -- even though at 12-year-olds, they were talking about a hardened criminal.

We're talking about, in Buffalo, drug related shootings involving 13- and 14-year-olds -- shootings now. This is not possession of weapons or so-called mule. We're talking about a 14-year-old killing an individual after having a quarrel between an elderly woman and a young girl. We have a situation right here locally in which our district attorney said, "You have tough kids under the age of 16 and these kids should be treated as adults in certain criminal situations." We want to get the word out. You don't engage in criminal acts as a juvenile.

Now, there's hundreds of these that have occurred across this state in the past year. We're not talking about every 12- and 13-year-old charged or involved in this activity but, unfortunately, there are those few that we

have to deal with, and district attorney, law enforcement official, you read articles and statistics from other states, this is the only way we have to do it.

President Clinton said himself this is not the time to weaken our laws when we are dealing with juvenile crime. We have to go the other way. I say this, that if, in fact, what we've had in place worked, then why are we talking about this? It's not working, and that's why we have this bill.

SENATOR MONTGOMERY: Senator Hoblock, if you will continue to yield.

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

SENATOR HOBLOCK: Sure.

SENATOR MONTGOMERY: In the same vein, do you anticipate then that eventually we're going to be right back here debating the same bill for 10 and 11-year-olds? Because they are now going become logical next recruitment age groups by people involved in crimes because they are not now part of the net. So it's very

likely that we going to be back next session talking about 10 and 11-year-olds. Would you say that?

SENATOR HOBLOCK: I would hope not. I would hope not, and I would hope we would be able to come back here in a year or two and repeal what it is we're saying about 12 and 13-year-olds. I would hope that we do what I had experienced this morning in going to one of the local grade schools and talking about drugs and alcohol and smoking and getting in trouble and violence and getting along and trying to respect one another and paying attention to teachers and parents and recognizing and respecting the law. Maybe that's what we've got to do so we don't have to have these kinds of things.

No, I don't want to go that way, Senator Montgomery. I'd rather go the other way and hoping that we never have to do this; but, unfortunately, we are in a situation where we've got to cut the chase. We've got to do something about it, try to correct it in those instances

where it needs to be corrected. Again, this is a "maybe" bill. It's not mandatory. We need to address this problem.

SENATOR MONTGOMERY: Thank you.

Mr. President, briefly on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery on the bill.

SENATOR MONTGOMERY: I do hope that Senator Hoblock is correct that we're going to be coming back in a year to repeal this, but I would like to just remind Senator Hoblock and my colleagues of the current budget proposal before us. There is a program that the state calls the Special Delinquency Prevention Program, SDPP, and there has been a cut in that funding, proposed cut in that funding of about 3 million. There is a program for helping runaway and homeless youth, and the recommendation is that that be funded at 3.8 million, down from 5.3 million last year. Mental health services for youth are reduced by 33.8 million. There is a 50 percent cut proposed by the Governor's

budget for at-risk youth.

The budget cuts the Division for Youth after care funding -- the budget adds 1.5 million to after care funding services for youth, but the cuts in funding for youth prevention, for mental health services, and for all other areas that would give us the capacity to serve, hopefully, these young people have been drastically reduced and the very, very small program that we just instituted two years ago has been cut out entirely and that is a program to provide mental health services in school-based health clinics which we all fought very hard to get, and we all in this room -- I think every Senator in here supports that, and that's gone.

So I think there is a bit of hypocrisy in that whole notion that if we just increase the level of punishment and lower the age at which the increased level of punishment can be done that we're going to resolve these issues, and at the same time we're going to cut out any program or reduce our capacity to offer

the kinds of opportunities which give people a hope for a different kind of future at the age when it's likely to make the most difference.

So I oppose this legislation because I think that we should, first, be talking about what can we do to prevent these young people, because we know that if you are going to bring them into the penal system at 12, there's never, never any hope of reforming them, and so we need to think about how can we keep them out, and I think we're losing the capacity to do that. We're not even talking about it. Nobody wants to discuss it. We don't seem to care enough about it, and so I can't in all good conscience supports legislation which does not in any way speak to the real issue.

This is just legislation which speaks to the symptoms; and, Senator Hoblock, I'm looking for legislation from you that talks about the root cause of these young children being so vulnerable to being involved in the criminal justice system.

So I'm going to vote no on this

legislation, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Abate.

SENATOR ABATE: Mr. President, would Senator Hoblock yield to a number of questions?

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: Senator, you stated that there are a number of other states who have tough juvenile justice reform statutes, and it's my understanding -- please correct me -- that there are only four states in the country that allow juveniles to be prosecuted as adults. Even Texas and California do not allow juveniles to be prosecuted as adults beyond the age of 15.

So, Senator, can you tell me what states have tougher laws than we have in New York State today.

SENATOR HOBLOCK: I had it just in front of me here and if you'll give me just a moment, I will locate it.

One in particular, the state of Florida, as I understand, and I don't have the age in front of me, but there was a significant article about what it is they are doing to try and combat the juvenile crime down there.

Oop, I have it.

SENATOR ABATE: Maybe, Senator, rephrase my question. I'm not aware of any states that prosecute juveniles as adults for these kinds of crimes as young as 12 and 13 years of age. Is there anywhere else in the country that is doing that currently, other than for murder and the heinous crimes?

SENATOR HOBLOCK: Texas.

SENATOR ABATE: Texas is not, to my understanding.

SENATOR HOBLOCK: Wisconsin.

SENATOR ABATE: At what age?

SENATOR HOBLOCK: Wisconsin? It says here that Governor Thompson signed into law a bill that allows juveniles as young as 10 -

SENATOR ABATE: For what kinds of crime?

SENATOR HOBLOCK: -- to be tried in an adult court for murder, and lowers the age. It doesn't say.

SENATOR ABATE: Right. See, that I understand.

SENATOR HOBLOCK: It lowers the age for other crimes.

SENATOR ABATE: As you know, New York State many, many years ago passed a law, if you are convicted of murder as young as 11 years old, you can be prosecuted as adult. But what we're doing in New York State with your suggested legislation goes far beyond, I believe, any other state in terms of prosecuting people this young for crimes such as possession and use of a gun, putting aside murder and other -- and I just wanted to see, Senator, if you had any other information on that.

SENATOR HOBLOCK: Yes, as I say, it obviously varies from state to state. A lot of states are reducing the age in which they are making a lot of the adult offenses applicable, and I understand. I understand the problem. I

understand what Senator Montgomery is saying. I understand what you and others are saying about what it is we need to do for these kids.

But I guess, my answer to that, Senator Abate, what happens when it doesn't work. What are we to tell the family of that woman and women in Buffalo when there was an offense committed by a 12- or 13-year-old. Do we tell them we have to raise some more taxes so we can have some more prevention and education, and that government is the answer to everything? Let's not try to work with the family. Let's not try to have some respect. No. Let's just have some more prevention programs, and the next time it won't happen.

I'm trying to deal with those isolated cases -- hopefully they're isolated, and hopefully they're a handful -- of those kids that choose to do this. Now, if they've already committed the crime, what do we do?

SENATOR ABATE: Would the Senator yield to another question?

ACTING PRESIDENT KUHL: Senator

Hoblock, do you continue to yield?

SENATOR HOBLOCK: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: I suggest that maybe the response is it's a combination, a balanced approach between punishing these kids who deserve to be punished and also preventing other kids who haven't entered the juvenile justice system from entering it.

Are you aware, Senator, that currently under the law if a juvenile commits one of these crimes, they can be placed up to 18 months in DFY?

SENATOR HOBLOCK: Right.

SENATOR ABATE: Are you suggesting through this legislation that 18 months is not long enough?

SENATOR HOBLOCK: Yes, I am.

SENATOR ABATE: Then why aren't we looking at DFY to see in appropriate cases where the sentences could be expanded beyond 18 months?

SENATOR HOBLOCK: I think that's what I'm trying to do here.

SENATOR ABATE: No. I think - it's my understanding that you want to prosecute these juveniles as adults, take them out of the juvenile justice system and put them into the adult system.

SENATOR HOBLOCK: Yeah, because as I said, I think there's a lot of them that are really adults.

SENATOR ABATE: Even at 12 years of age?

SENATOR HOBLOCK: Yes.

SENATOR ABATE: For possession of a weapon?

SENATOR HOBLOCK: I beg your pardon?

SENATOR ABATE: For possession of a weapon?

SENATOR HOBLOCK: For that degree of crime, sure. They're not going to be put in jail for years and years as one who would commit a violent crime of some assault, serious

injuries, shooting.

SENATOR ABATE: Would you say 18 months is not enough for mere possession of a gun for a 12-year-old?

SENATOR HOBLOCK: It may be. It may be. But that's not to say that under the circumstances of the case the prosecutor can't do that. The prosecutor can put them into the juvenile offender status and put them through DFY. They don't have to treat them as an adult. If it's a onetime, first-time offense, if the circumstances mitigating and extenuating dictate it.

I think what we're trying to do here is we're trying to get at what has been referred to by those in the law enforcement community as unfortunately at this age almost a hardened criminal or one who chooses to take that extra step and commit that serious crime. We're not trying to get at every 12- or 13-year-old. That's not the intent here.

As I say, what happens when they do commit that crime? Are we tipping again this

balance of worrying about the defendant not near as much as we worry about the victim and not near as much as we worry about who is coming up next.

SENATOR ABATE: Would the Senator yield to another question. I think everyone in this house believes that juveniles have to be held accountable, have to be punished, but I think we're concerned about not just passing laws that sound good and sound tough but are effective.

Are there any studies that you can point to that this legislation would deter juveniles for possessing guns or any data that will show that this would reduce juvenile crime?

SENATOR HOBLOCK: No, I don't think there are any studies particularly in New York because we haven't had this, and I think that those who are in the business -- and, yes, you can probably talk to a couple of college professors that will dig up theories in anything, but if you talk to the people in the

business, and I'm talking to the police officers, those on the street, district attorneys, and those that handle these cases on a day-to-day basis, they are convinced that punishment has to be administered and it is a deterrent. It is a statement to those that we will not stand for juvenile crime. The President of the United States has said that.

SENATOR ABATE: Thank you, Senator. On the bill.

ACTING PRESIDENT KUHL: Senator Abate, on the bill.

SENATOR ABATE: I believe, as my colleagues have said, that this legislation is too broad. It includes not only use of a gun but also mere possession of a gun. Unfortunately, in this day and age, there are young people that are in possession of guns that are not hardened criminals. I believe the juvenile justice system has the wherewithal in terms of length of placement to take care of some of these juveniles. I'm concerned that this is not a balanced approach to fighting

juvenile crime. The Senator said we spent so much money on prevention that we need to only look to punishment. I disagree wholeheartedly. We have never invested sizeable dollars in prevention in the juvenile justice system.

I know, for one, that there are juvenile intensive supervision programs run by probation throughout the state that are now going to be cut by 25 percent. Until I see a commensurate investment and commitment early on to juveniles so they do not get involved in a life of crime along with efforts around punishment, I don't believe this is a balanced approach. At the same time we're finding so much money to try to prosecute juveniles as adults as the inevitable because we don't think these juveniles can be stopped from a life of crime, we are cutting enormously pretrial services, drug treatment programs, programs in probation and juvenile justice.

I agree with my colleague, Senator Montgomery, that let's evaluate. Let's get some input on the effectiveness of these

pieces of legislation before we push them forward in the guise of protecting victims. Talk to victims. They don't want just another piece of law on the books that seems to be tough, that has no effect on their safety. I'm afraid this is another piece of legislation that looks good. It sounds tough, but will not deter another juvenile from possessing a weapon.

So until we not only get more data, but look at a more rational balanced approach to fighting crime, and that includes strong law enforcement, strong prevention and strong treatment, unless we have all three components, we're not going to be effective in promoting public safety for all New Yorkers in this state.

ACTING PRESIDENT KUHL: Chair recognizes Senator Mendez.

SENATOR MENDEZ: Mr. President. I wonder if Senator Hoblock would yield for a question.

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

SENATOR HOBLOCK: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MENDEZ: Senator Hoblock, is the intention of your bill to put away - let's say put away these young kids so that they learn the lesson and, therefore, the assumption is that people would be achieving greater safety?

Would you classify a 12- and 13 year-old as a human being who has gone through the entire process of socialization?

SENATOR HOBLOCK: I'm not sure if I understand that.

SENATOR MENDEZ: You know, kids, since the time they are born, they are socialized into the do's and don't's that are acceptable to society until a certain age. Then they go kindergarten, pre-kinder, grammar school, and then the schools become the secondary socializing agent.

So my question to you is assuming that we decide through your bill to take away

these kids from the -- to deal with these kids from the juvenile delinquency system and treat them as adults and send them, let's say, to jail where adults are, wouldn't you say then that these kids 12 and 13 years old if they are shipped to prisons where adults are, they will be socialized into crime; and, therefore, since they will not be -- since they will not be staying in jail for life, they will come out as more violent felons; and, therefore, the premise of your bill is one that eventually would not act as the kind of safety that you would want to achieve.

SENATOR HOBLOCK: What the bill calls for is the prosecution as adults so that the sentencing could be more severe than it is now. Not necessarily where they are housed but the way they are prosecuted and the sentence they would receive.

SENATOR MENDEZ: Mr. President. If you will yield for another question.

Are you aware that in today's New York Times, that is an editorial that reports a

study that was conducted in New York State and that states the following, that there are at the present time about 4,000 African-American, Puerto Rican and Hispanic kids that have been sentenced -- with the judges that do have discretion in sentencing, they have been -- for the same crimes, they have been sentenced to longer sentences than the other white kids? Are you aware of that?

SENATOR HOBLOCK: No, I'm not aware of that.

SENATOR MENDEZ: I think if you really want to do something with the situation, we have to start looking very closely at the criminal justice system, because to have two kids -- let's say one who is African-American, let's say, of 13 years of age and one who is white appearing for the same crime in front of a judge and to have that judge to allow the white kid to go free, not to go to jail, and sentence the African-American kid or the Puerto Rican kid or the Hispanic kid to go to jail, I mean that is the kinds of situations that we have to take

a look at to then analyze the entire system and then come up with solutions that will not make young people adopt for a lifetime criminal behavior antisocial behavior.

Don't you agree with me?

SENATOR HOBLOCK: Senator Mendez, I couldn't agree more. I couldn't agree with all of the comments made, but I guess I have to answer by saying what happens when it doesn't work? And it hasn't worked. I mean I think we have seen in this state years and years and years of every year the past 12 to 15 spending more money after more money. As the county executive in this county, I saw what was spent on many of these programs, and all it was, was a battle between providers in an effort to try to get a contract, and I often wondered how some of these worked and the number of kids they actually come in contact with given those that need the service, and it's not working. It's working for some, but it's not working for all. We wouldn't have the statistics we have today, if everything that we're talking about in fact

worked.

SENATOR MENDEZ: I understand your preoccupation, Senator Hoblock, but the fact remains that your approach involving these kids, 12 and 13 years old, I think is the wrong approach. It will end up eventually helping to create hardened criminals than helping these young people to find a way.

So, therefore, I will be voting in the negative, Mr. President.

SENATOR HOBLOCK: Okay.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect in 60 days.

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 207 are Senators Abate, Connor, Espada, Gold, Gonzalez, Lachman, Leichter, Markowitz, Mendez, Montgomery, Nanula, Oppenheimer, Paterson, Seabrook, Smith and Stavisky, also Senator Babbush. Ayes 41. Nays 17.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 233, by Senator Present, Senate Print 992A, an act to amend the General Municipal Law, in relation to authorizing the designation of rural economic development zones.

ACTING PRESIDENT KUHL: Senator Present, an explanation of Calendar Number 233 has been asked for by Senator Paterson.

SENATOR PRESENT: Mr. President. Senator Paterson. This bill would allow small communities, rural communities to establish EDZ zones if they have a population of less than

10,000 if the average income and property wealth in that district is no more than two-thirds of the state average.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. Senator Present, would yield for a question?

ACTING PRESIDENT KUHL: Senator Present, do you yield?

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: Senator yields.

Excuse me just a minute, Senator Paterson.

Could we have it just a little quiet in here. There are a couple of staff meetings in here. Members are wandering around. It is very difficult to hear the discussion of the bill that's going on.

Thank you for the interruption, Senator Paterson.

SENATOR PATERSON: Thank you, Mr.

President.

Senator Present. Traditionally these economic development zones, as you will, have been restricted based on size and also on boundary. What I'm just interested in that just wasn't clear enough for me -- it's probably my fault -- is how does what you're proposing vary from the law as it stands right now?

SENATOR PRESENT: To be eligible under existing law for EDZ zones, you have to have certain criteria taken from the last census dealing with poverty and other areas like that. It's very difficult for a small community, particularly a rural community, to compete with a city which may have a municipal water system, sewer systems, and this allows the rural communities of under 10,000 population to compete and get those jobs that are now flourishing in many of the ED zones across the state.

SENATOR PATERSON: Senator, in other words, what you are doing is you are expanding upon what was perhaps helpful a decade

ago; and with the sort of two-thirds of the median population, you are widening the scope to include other areas that would flourish economically, you would presume, if some of these measures that you are proposing would be enacted?

SENATOR PATERSON: True. True. It would allow rural New York State to compete with the more urbanized areas who, in the past, have benefited by the EDZ zone creation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. Since we're exempting the limitation of 39 EDZs from previous law, is this going to make it possible to expand; in other words, do you have an idea how many of these zones may exist as a result of this legislation? I'm just wondering if we aren't oversaturating the market a little bit, or diminishing the value of what an EDZ's definition is.

SENATOR PRESENT: I don't believe so. I have no idea how many may be created.

I'm sure the municipal officials who requested to be determined to be an EDZ zone will make that determination whether it would be worthwhile or not.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Then, Senator, if there is a kind of unlimited capacity for growth here, would not it be better to restrict it?

And in answering that, just finally, the natural boundaries that delineated the contours of the traditional economic development zones don't seem to exist in this legislation. It's not clear to me what the boundaries actually are. So if you could just tell us why you didn't restrict the number and also let us know what you consider the boundaries of the new zones should be, that would suffice.

SENATOR PRESENT: Under the proposed legislation, the boundaries would be no more than the two square miles. They would have

to meet the zoning requirements for the businesses that would hope to enter there. Other than that, there would be no restrictions. We're dealing with small rural areas, a village or a town.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

The legislation seems quite meritorious in its nature. We just caution that there may be a preference of zoning to the rural areas as opposed to those that are more heavily populated, and just on its face, there wouldn't seem to be any need to do that.

There certainly was preference in economic development zones that have existed in the past but that preference was very similar to the types of subsidizing that we've always had in this country when we're trying to give an advantage to those who either have been perceived to have been disadvantaged or impoverished or what we're trying to do is to

promote a certain type of business.

Just the sake of giving an advantage to one area over another is not necessarily a development zone as much as it's a preferential interest, and it's something that we just otherwise need to avoid.

Other than that, there isn't anything that we object to in this particular piece of legislation other than the fact that it doesn't seem to have what would be the pragmatic limits that would set the standards for how many of these zones we're going to have, what their boundaries are going to be, and what the criteria to enable a county or an area to meet the threshold test for what would constitute a zone is going to be.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 588, by Senator Goodman, Senate Print 6282, an act to amend the Tax law and the Administrative Code of the City of New York.

ACTING PRESIDENT KUHL: Senator Goodman, an explanation of Calendar Number 588 has been asked for by Senator Leichter.

SENATOR GOODMAN: Mr. President. This bill relates to something known as a REIT, R-E-I-T, standing for real estate investment trust. A real estate investment trust is roughly analogous to a mutual fund with regard to equity stocks in that it holds a portfolio of real estate properties which are then made available through the purchase of interest in the real estate trust in a fashion that enables an investor to acquire a diversified cross

section of real estate with a relatively modest investment.

The purpose of the real estate investment trust instrument is to make a wider market for real property and, in so doing, in the case of the City of New York to stimulate the development of real estate in the City of New York in a constructive fashion.

In 1994, New York State real property gains tax, the New York State transfer tax, the New York real estate transfer tax and the New York City transfer tax, were amended to encourage the formation of REITs by significantly reducing the tax liability that would accrue on transfers of real property to REITs.

In 1994, amendments were temporary provisions sunsettings on June 30, 1996. Under current law for a newly-formed REIT to qualify for a 75 percent reduction in city real property gains tax liability and a 50 percent reduction in New York -- in New York State and City transfer tax liabilities, two

conditions must be met. First, the realty transferror; that is, the person making the transfer, must remain an interest -- must retain an interest in the REIT equal to 40 percent of the net equity being transferred.

Secondly, at least 75 percent of the cash proceeds received by the REIT from the sale of ownership interest in the property must be used to, first, pay down any debt on the property; second make capital improvements on the property; and, third, make tenant improvements or inducements to the occupants of the property.

The proposed language in this bill would modify those arrangements in the following fashion:

First of all, it would permanently extend the New York State real property gains tax, eliminate the sunset altogether.

Second, it would extend the application of the REIT provisions to transfer as to existing REITs, not just newly-created

ones, change the 40 percent interest requirement to 50 percent for existing REITs, and eliminate the 75 percent rule for existing REITs.

When the law was enacted in 1994, it was frankly hoped that REITs could be formed within the short two-year window provided by the original law. But, unfortunately, that was a period of rising interest rates which discouraged all sorts of real estate transactions, and interest rates in '94-95 in addition to rising, New York found itself in a situation where it had large companies that were involved in the creation of these REITs; and, therefore, the complexity of their proceeding to take advantage of these provisions was denied them due to the shortness of time.

What we have now is a situation where interest rates are on the decline. REITs are again being contemplated, and the sunsetting '94 provisions would be a bar to the expansion of the REIT economy.

Finally, the enactment of the attached language would result in increased

economic activity in the state and especially in the city, which would have additional tax revenue benefit to the city and state.

I have a fiscal note from the Deputy Commissioner for Tax Policy Analysis, which indicates that there would be a $2 million reduction of state revenues in fiscal year '96-97, following which they anticipate that there would be an increase in revenue resulting from the increased economic activity.

I trust that this rather lengthy explanation covers a few of the minor points you may have had in mind, Senator.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President. Senator Goodman, I don't know if it's a couple of minor points, but I thought there were some interesting statements that you made, so if you would be so good as to yield because I'm trying to understand.

ACTING PRESIDENT KUHL: Senator Goodman do you yield?

SENATOR GOODMAN: I will indeed.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: As you read from your memo, the justification you said was when we enacted this -- and I seem to remember the debate on that. I believe or think that I had some questions about it. But you indicated at that time and raised our expectation in generating a great deal of activity and eventually a higher revenue for the state and the city. Now, you tell us, well, it didn't do any of those things but the reason was -- and I'm quoting, "However interest rates in 1994 1995 increased significantly."

Senator Goodman, isn't it a fact that in 1995 interest rates declined. You go on to say in your memo and now interest rates are declining. The fact is, as we know and we've seen what's happened to the market, the interest rates have increased significantly in the last two months. I believe in January, the interest rate on the 30-year bond was 6 percent. It's

now up to 6.8 percent. So it seems to me that you really have the facts completely reversed.

SENATOR GOODMAN: Senator, I'm speaking of long-term trends and not short-term blips in the market.

SENATOR LEICHTER: But you -

SENATOR GOODMAN: If I may, I'd like to respond as best I can.

As you know, the Dow-Jones average has increased by a very significant amount, and in the wake of that, using the 30-year government bond to which you refer, there has been a major decline in the overall interest rate and, more particularly, in the following rate which relates to real estate mortgage rates. It is true that they bounced off the bottom and have shown some recent recovery, but relative to their long-term situation, they are in a much lower condition than they were at the time the bill was introduced.

SENATOR LEICHTER: Mr. President. If Senator Goodman would be good

enough to continue to yield.

SENATOR GOODMAN: Consider this an open invitation to any other questions you would like to pose.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR LEICHTER: Senator, I don't think we're talking about estimates of where interest rates are going. I'm dealing with the actual facts. You say we didn't give this bill or this law a fair chance because in 1995 interest rates increased. The fact is that interest rates declined in 1995. You further go on to say that now interest rates are declining. Senator, they haven't declined. They've gone up. So it seems to me that the justification that you state for the bill just isn't there. There may be other factors why the R-E-I-Ts or the REITs did not capture the imagination of investors.

SENATOR GOODMAN: Is that a question?

SENATOR LEICHTER: Yes.

SENATOR GOODMAN: If the question is the same one that you asked before, I will try to give you a similar answer but perhaps a little clearer.

Senator, the purpose of the REIT in the first instance is to encourage real estate investment, and relative to the level of mortgage rates and real estate interest rates which are what are at stake in these transactions, we have seen a period of relatively lower rates. I have already conceded to you that in the recent past, they have bounced off the bottom and have shown some proclivity to lower, but again they are starting to rise slightly.

The fact of the matter is that's not the principal tusk of the bill. The purpose of the bill is to make it possible to package real estate in a fashion that the REIT makes available that you can not have available in a direct investment in real estate, namely, a cross-section of properties which permit the investor to have diversification in a real

estate portfolio; and, hence, what I think we're driving at in the bill -- you may disagree with my analysis of trends in interest rates. You are looking at it month to month. I'm looking at it year to year. In certain periods under discussion, the rates have fluctuated within a broad band, but the fact is that rates are now more favorable than they were.

But even if that were not the case, we find that in the two-year period under which this law was in existence, there was insufficient inducement to create REITs, which we believe have a beneficial economic impact.

If you wish to debate the economic impact, we can do that, but I trust you realize that the reference to interest rates is relatively peripheral in terms of the fundamental thrust of the bill which is to encourage and increase the packaging of property so that the small investor may have diversified portfolio risk.

SENATOR LEICHTER: Mr. President. If Senator would be good enough to

yield.

Senator, it's not a peripheral issue because the issue really comes down, is there a benefit to the people of the State and the City of New York, and when you presented this bill two years ago, the bill that became law, it was with the expectation, and I know it was genuine on your part, that this would eventually bring in more revenue to the State of New York.

Now, since it hasn't done that - and in fact, Senator, I think I heard you say that there was going to be a loss of revenue in this coming year to the state and the city as a result of extending this law and in fact making it permanent. So my question to you is, where is the benefit?

SENATOR GOODMAN: Senator, the benefit if you will concede at the outset that the policy approach to REITs is one that is favorable to the economy -- and I have not heard you yet challenge that premise -- then I think the rest follows from that.

What I'm saying to you is that when you make it possible to acquire a diversified portfolio of real estate, you widen the appeal of real estate investment to certain investors who would not wish to put all their eggs in one basket, and that is the purpose of this law.

Now, during the two-year period in which the law was in effect, it did not have the desired impact. You could ascribe a series of reasons to that. I think interest rates were one. You may or may not agree, but the fact of the matter is that there's, in our opinion, economic desirability in extending this and in eliminating the sunset so that the tax advantages implicit in this proposal will be available on a longer range to a wider variety of investors, and that's at the core of this.

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

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

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: If our purpose is only to benefit wealthy investors -

SENATOR GOODMAN: Excuse me. Did you say wealthy?

SENATOR LEICHTER: Senator, if I could just phrase my question. If our aim and purpose is to benefit investors -- and most of the people who invest in REITs are not your widows. They're not your ordinary working people who usually put their money in CDs. They happen to be pretty sophisticated investors. Now, if your aim and purpose is I would like to make these people who happen to be primarily wealthy to see that they get a better return, that they pay less taxes, your bill is right on target. No question. It's a great benefit to well-off investors. My question to you is how about the public? How about the treasury of the state of New York?

Now, two years ago, I believe you said this is going to, in fact, increase

revenue. Now we see it hasn't -- your explanation is, well, interest rates increased in a year when, in fact, they decreased. You now read us a memo which says that we're going to lose revenue. So my question, very clearly, is where is the interest to the public, not to the big, wealthy investor; where is the interest to the public?

SENATOR GOODMAN: Senator, you have interpolated this and have injected your own perspective into my remarks which I must, in all respect, tell you I did not make. I did not say this was for the benefit of wealthy investors. If that was your opinion, I think it would be imperative that you produce some evidence that there is some special benefit to the wealthy in this that is not available to the middle class investor who may wish to purchase real estate as an alternative to other types of investment.

With the very substantial rise in the Dow-Jones industrial average and in the opinion of some people with the equity market

now at an unparalleled high, there are certain risks in that market which might not be available in the real estate market which is only recovering from a long-term real estate recession. So it may be that the little fellow or the middle class investor prefers out of prudence to invest in -- have an interest in a variety of buildings rather than in a variety of companies, and that's something which will be beneficial to all classes. So, please, let's not characterize this as a populace versus capital type of debate. It has nothing to do with that at all. Although, it might be a little easier for you to attack it on those grounds. That is not the fact.

The fact is that the bill seeks two things: It seeks to make available in a fashion which would not otherwise be possible investment in a broad gauged package and a diversified package of real estate properties which would be available to people of all investor classes, not merely the wealthy. In fact, it is very likely that the wealthy people

can afford to make direct investments in buildings, whereas the less wealthy could only invest in real estate through a medium such as a REIT.

Now, secondly, you implied that there is a great loss to be suffered by the state, and that is not the fact. I told you the fiscal impact related to a single year, and in that year we anticipate that this would be more than offset by the events of future years. This is an economic stimulant. We want to encourage real estate to be built. We want to encourage housing to be built. A REIT does precisely that by making it possible for new investors to enter the market in significant numbers and in significant volume which would otherwise not be possible.

So with that perspective, perhaps we can persuade you that this is constructive. This is not an example of class warfare, which I gather some of you are very fond of suggesting, but really, that's not the point at all.

SENATOR LEICHTER: Mr. President,

my -

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: -- my good neighbor across Central Park, I assure that neither geographic nor class welfare -- warfare -- it may be welfare for some, Senator, but that's really what I want to get to, and that is I'm sure you, since you present the bill, have studied REITs. Could you tell us who ordinarily invests in REITs and tell us what is the average investment that somebody makes in a REIT?

SENATOR GOODMAN: How many decimal places would you like me to give you in answer to that?

SENATOR LEICHTER: Just bring it down to the -- just bring it down to the period.

SENATOR GOODMAN: Senator, I'm not in a position to respond to that, other than to tell you that conceptually, it is quite clear that in order to obtain diversification in a portfolio, one can do it through REITs and one could not do it in a comparable number of

dollars and single building investment. That should be very evident to you, and I use the analogy of the mutual fund to illustrate this, and if you stop to think for a moment, the class of investors who have been attracted to mutual funds have been at the very least middle class and sometimes upper, lower and lower middle class people who use that medium because they get expert management and they get diversification. That's the purpose of this, and I dare say that to propose that it is only for the benefit of the wealthy is simply unfactual by common sense observation.

SENATOR LEICHTER: Mr. President, if Senator Goodman would continue to yield.

Senator, to in any way equate REITs and the way they work with mutual funds where you come in for $1,000 or even maybe smaller amounts is just completely wrong. You said you didn't know what -- the figures. Am I wrong when I say that most REITs will not accept investments usually less than 50,000, maybe some at 10,000, but in most instances, isn't it true

that the amounts invested in REITs has at least five figures in it and usually more than that; isn't that true?

SENATOR GOODMAN: I don't believe that is true, Senator, and you yourself had proposed a very broad range. First you said 50,000 and then 10,000. I dare say that there are probably more investors in total volume of dollars invested who come in at the lower end than the higher level.

SENATOR LEICHTER: Mr. President, again, if Senator Goodman would be good enough to yield. I'm not the one who's sponsoring the bill. I'm going on my knowledge and information as to REITs and the investment required -- the minimum investment required, to my knowledge, tends to be rather large. This is not an investment for your ordinary small-time investor, people who may be attracted by mutual funds but, Senator, you said that in the long range, this is going to provide economic stimulus. Am I correct that the only figure you have been able to give us is that next year

we're going to lose $2 million?

SENATOR GOODMAN: The only dollar figure I've given you is two million, but I would estimate that possibly the effect of a REIT investment program such as this could amount to as much as 200 million of economic stimulus.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Leichter on the bill.

SENATOR LEICHTER: I generally appreciate Senator Goodman's debate on the bill and I find him usually to be very factual. In this particular instance -- and I think this really gets to the core of the argument, and that is who's going to benefit by these investments? What we're doing in this bill is to give up forever, because we're eliminating the sunset, taxes that the state of New York levies on high priced real estate transactions, and we have to take a look at what is going to be the cost to the state of New York.

Senator Goodman I know is very actively involved, and I think very commendably, in trying to deal with some of the harsh cuts in the budget. He's working on the arts and other areas too. One of the reasons that we have a budget proposed by the Governor with these harsh cuts is because of the loss of revenue. Now, in some instances we say, okay. We're going to reduce taxes because we see that in the future, there's actually going to be an increase in revenue, but let me tell you, that argument covers a lot of sins and covers instances that are just not so.

Now, two years ago Senator Goodman stood before us and said, ladies and gentlemen, let's try it. For two years, let's lower the tax on real estate investment trusts and I'll tell you, we're going to get so much economic stimulus that whatever taxes we lose as a result of this bill, we're going to make up in additional revenue. Now, it comes two years later and says it hasn't worked. He has says it hasn't worked because in 1995, real estate -

I'm sorry -- because in 1995, the interest rate increased when, in point of fact, it declined. He says it's going to work in 1996 because the interest rates are now declining when, in fact, they've gone up. So I must say the reason for it certainly doesn't make sense, but then you give us a fiscal note that says we're going to lose $2 million this year.

So what we're asked to do is to buy, frankly, a pig in a poke and accept that in the future, this is going to generate so much economic activity. Well, I'll tell you, it isn't. This is just another bill that is very favorable to high priced investors, people with a lot of money, and I see no benefit whatsoever to the public.

Let me just point out, one of the features of this bill is that the savings that you have in taxes, you're limited as to what you can do, but what's the limit? The limit is meaningless because you can use those savings to pay off your mortgage. So I really don't see any benefit whatsoever to the public here. I

don't see anything that's going to generate more housing; that's going to generate a lot of commercial property that's going to bring down rents. All that's being done by this bill is allowing people to deal in high priced real estate through high priced investments and avoid paying the tax, and the bottom line is, in Senator Goodman's own words as he quotes from whatever fiscal -- whoever prepared the fiscal note, that there's going to be a loss of $2 million in revenue. We'll be back here next year in having to deal again with greater budget deficits, having to find money, avoiding cuts and there will be a $2 million hold next year because of this bill, and I predict there will be further holds in future years because the only benefit that anyone's going to see from this bill is going to be high priced investors.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: I have profound regard for Senator Goodman. I know of his experience. He was once the finance

administrator of the city of New York, and I don't believe that Finance Administrator Goodman would have submitted a proposal for the city of New York which stated fiscal implications undetermined. Finance Administrator Goodman would have been more precise before proposing that the city of New York embark upon a program, and I think it is disappointing to say the least to find this uncertainty, this gap between expectations and reality and the inability - and I'm not saying it was deliberately done to obfuscate, but the inability of the sponsor of this legislation to tell us in more precise terms what are the fiscal implications.

This bill should appropriately go to the Senate Finance Committee. It should not be on the floor. If the Senate Finance Committee passes muster on this bill, then I believe we should take another look at it and we should have more information available to us, but not in the present form, and accordingly, because of the uncertainty as to the price tag, because of the uncertainty as to the benefits,

because of the confusion between what the bill is to accomplish in terms of lost revenue and what it will accomplish in terms of stimulus to the economy and especially because we're on the verge of decimating so many programs that are so important to so many communities throughout the state, I think there should not be a blind man's bluff giveaway, which is what this is, a blind man's bluff giveaway unless we know the ramifications.

Senator Goodman, would you be willing to have this legis... I'd ask Senator Goodman to yield.

SENATOR GOODMAN: Yes, I will.

SENATOR STAVISKY: Would you be willing to have this bill past muster with the Senate Finance Committee so we have more accurate information as to the fiscal implications so we are not left with the word "undetermined" which appears on your bill memo? In all probability, if there is a reasonable argument, a reasonable, factual information that is presented, the Senate

Finance Committee would look favorably on such legislation.

Ron -- Senator Stafford is a reasonable person. The members of his committee are informed legislators, and I think this bill belongs in the Senate Finance Committee instead of on the floor of this chamber, and I would ask Senator Goodman, would he consider sending it to the appropriate place, the Senate Finance Committee, so we could get more precise information as to what the fiscal implications may be?

ACTING PRESIDENT KUHL: Senator Goodman, did you hear the question?

SENATOR GOODMAN: I will be happy to respond. Senator, unfortunately, I cannot accede to your request because I think that it's an inappropriate and unreasonable one for a reason I will now share with you.

I have in my hand a letter from Merrill Lynch dated in January -- January 4, and it says, "Although, as you know, Merrill Lynch is headquartered in New York City and is one of

the largest financial service firms in the world, recently Merrill Lynch has been extremely active in the initial public offerings of real estate investment trusts.

"I'm writing you at the suggestion of several New York City private real estate clients who are valuating the merits of going public in the form of a REIT. These clients view the current New York real estate transfer tax structure as an impediment to going public. An amendment of the tax structure could encourage a number of New York City real estate companies to pursue initial public offerings.

"Since 1991, more than 40 companies have gone public as REITs raising $10.1 billion with total company value greater than 15 billion. In addition, existing REITs re-issued an additional approximate $2.6 billion during the period. None of these companies has any significant real estate holdings in New York City." I'm just going to take a moment to scan this to give you the most germane parts that I think will interest you, Senator.

SENATOR STAVISKY: Senator Goodman, if I may interject -

SENATOR GOODMAN: Senator, if you don't mind, I'm in the process -

SENATOR STAVISKY: I'll wait.

SENATOR GOODMAN: -- of responding to that, and I'll ask your indulgence for one moment.

"If the City and state of New York are able effectively to address the current tax burden, which would exist in the event of a sunset, we are aware of at least $2 billion in potential REIT initial public offerings that could be completed for companies with New York City real estate. Through 1996, the total might be greater than five billion. This new equity, in addition to capital raised for these companies on an ongoing basis, would be used to pay down debt, thereby reducing the mortgage loan exposure of key lenders who may then be willing to liberalize their tight credit policy for New York City real estate, acquire new properties, develop and/or renovate properties

which would generate construction jobs in New York City. The ability to complete new initial public offerings is obviously contingent on receptive capital markets in general."

Now, Senator, in responding, the reason that I do not think this bill should be set aside is that I think this gives you further weight of evidence to the effect that this would be a major economic stimulant measurable in billions of dollars. I'm further advised that one of the major mutual fund companies does make available through REITs investments as low as $1,000 per investor, and in that case, although Senator Leichter is apparently -- oh, there he is. He's within earshot, so I'm happy to be able to tell him that my information is that there are available "trushes" of $1,000 at a time, Senator. So your hypothesis that this is something that provides an investment possibility only for the rich is obviously rebutted by that fact.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: If I may interpret what Senator Goodman has said -- and I don't want to put words in his mouth -- it appears that unless Merrill Lynch gives approval, Senator Goodman is now willing to refer this piece of legislation with the spurious price tag to the Senate Finance Committee where it properly belongs. Merrill Lynch is not a voting member of the New York State Senate. If we as elected representatives of all parts of the state have questions, then we are the ones who will vote on this and we are the ones who may request that a piece of legislation with a spurious evaluation of its implications in terms of benefits and in terms of losses -- we should be able to get a clearer picture from the Senate Finance Committee to which this bill properly should be referred.

I do not believe that we should be voting and making decisions in the dark, and if we are not going to have a report from the Senate Finance Committee on this piece of legislation, then until we know the price tag

and until we know benefits and until we know the costs, then I will be voting in the negative on this piece of legislation, and I hope that others who are fighting for the restoration of programs, of importance to their constituents, will act accordingly.

I wish to be recorded in the negative when the last section is read.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Goodman would be so kind as to yield for a couple of questions.

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes, I will, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, the most recent Crane's magazine has actually a front page article on the real estate investment

trusts, and it talks about some of the things you mentioned before. In a sense -- my counsel advised me that actually is in a sense like a mutual fund for real estate investment or maybe ten years ago, sort of like a Keogh plan for investors where a person that doesn't have a great amount of money can invest with others and combine their resources and perhaps derive some kind of benefit from the -- from real estate, and in this most recent article, they talk about the fact that they feel the -- that the interest rates are going down as you previously stated and, therefore, there would be an opportunity for there to be a great investment in this area.

So my question to you is that, although at this point it has been something that maybe I might concede to you has been beneficial for the smaller investor, is it not possible that some of the major investors seeing the trend may come in; they may invest; they may get involved in a REIT and then after the two years, now that we don't have a real restriction

on how much profit can be derived -- previously, approximately 25 percent would have been the limit since 75 percent of any monies that were invested out of it had to come from what would be purchased or reinvestment or repayment of debts -- that now there would be a greater opportunity for the larger investor to, in a sense, cash out after a couple of years, get the tax benefits and then realize the profit, kind of a windfall.

SENATOR GOODMAN: I'm sorry, Senator. I was momentarily distracted in attempting to get some additional information out of another document that I have before me. Could you just restate the basic thrust of the last part of the question so I can respond?

SENATOR PATERSON: I'm saying as the legislation is prepared -- and we're assuming that much of the information that you gave earlier sounds pretty consistent with what people who examine these types of markets seem to understand, that it is kind of a -- has traditionally or at least up to this point has

been sort of a mutual fund for real estate investors, and that it has been something that has benefited the smaller investor, that it's not just something for very wealthy people, that as a result of that and the interest rates which may be lowering, that larger investors may come in, make large investments in putting their property into a REIT and then after the -- they have derived the tax benefits, not having to pay, you know, at the level that they would have otherwise, but after about two years, they would in a sense cash out, that at that point having gotten the benefit and there being no restrictions on where any additional monies are invested, that it doesn't have to go to reinvestment, or it doesn't have to go to purchase, or it doesn't have to go for payment of debts, that they would then in a sense just take the tax break, hold the money for a period of time and then take it out because there isn't any restriction on how much profit that they can accrue.

SENATOR GOODMAN: Thank you,

Senator.

I understand what you're driving at. The answer is that if you were a real estate investor and you owned a large property, let's say a $10 million building, at any time you are at liberty to dispose of that property unless it's rent controlled and subject to restricted sale and in so doing, you are cashing out your investment. You are also benefiting, if you are a beneficiary of the tax abatement provisions with their sliding scale, 15-year reductions in real estate taxes, you're benefiting from the encouraging tax climate which has been deliberately created by the city of New York to permit the construction of buildings and otherwise unused space.

So as a general policy, we have a society which seeks to encourage people to build, which gives them certain tax benefits to get them to build and particularly so in the wake of a very depressed period in the real estate market where there's been great reluctance, in many instances, to start new

properties, and what this basically provides is, if you will, a large pump priming mechanism which has been denied to New York realtors. Although heavily used in other parts of the country with great benefit, it's been denied in New York because we have these bars and restrictions which make it unprofitable and, in fact, a dangerous investment for many people to come in with real estate development.

What we are trying to do here by eliminating this sunset is to give this an extended period of time in which to let the pump be primed, but what I want to stress is that I appreciate your creating a response to Senator Leichter's early dubiety with regard to the fact that I used a mutual fund analogy. This is analogous to a mutual fund and, in fact, some of the large mutual fund companies are creating REITs at this very moment and would be encouraged to do so if this sunset were to be removed. The removal of the sunset lifts a bar to real estate development at a time when we're doing everything within our power to cause the

real estate market to recover from its recent very deep recession which it is not yet fully out of. I think anything that this Legislature can do to encourage that is something which this house should think very kindly of and should support.

As far as my good friend and respected colleague, Senator Stavisky's assertions that this is blind man's bluff and that this is -- I have forgotten his exact language. It was frankly rather derogatory with respect to the intent of the bill, not to its sponsor, but I must say, Senator Stavisky, this is a level of suspicion which I think is not warranted by the facts of the case. We're trying in broad daylight to create tax incentives to the development of real estate in New York. Strip away all the trappings and what's left is a desire to cause more real estate to be built. Is there a profit motive in this? Of course. If there weren't in a free enterprise economy, no one would touch it with a 30-foot pole. The days of government

subsidization of housing on a giveaway basis are now gone and the voters have made it clear, I think in the last state election, that they want to try to get the system of free enterprise to give its benefits to the state of New York, and I don't think that anyone will be harmed by this but a great many people could be very heavily benefited.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, with the approximately two hours and 45 minutes of broad daylight left, I wondered if Senator Goodman would indulge me with the answer to another question.

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: To answer your questions, the daylight period will be extended, Senator. I yield.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you,

Senator.

I don't think that Senator Goodman, Mr. President, and Senator Leichter were really that far apart. I think Senator Leichter's premise was that anyone who's in a position to invest had to, just by that nature, be in a preferred financial position in this state. I think that Senator Goodman was right that when you look at all investments and you weigh what the real estate investment trust is, it really is not the kind of boondoggle that other investments have been calling for those of the highest wealth and in the highest percentile of salary accumulation that they would be the only ones to participate but, Senator Goodman, as we have always allowed a certain number of tax abatements and certain incentives, in this particular situation, what I'm afraid of is not the incentives, as I think I've pointed out before. I'm very much in agreement with you up to that point.

What I'm talking about is that the transfer taxes would be eliminated for an

individual who went into the REIT, just for - with a reduced transfer tax for purposes of personal gain, stays in for an ephemeral period and then basically cashes out without having to endure some of the encumbrances as if the individual had just gone ahead and made the regular purchase, and what I'm suggesting and again asking just for clarification is isn't that a possibility under the legislation as it's proposed, that we will have this result of individuals who get a specific individual advantage which, in our opinion, is one of the factors that contributed to the lapse in the real estate market some nine years ago?

SENATOR GOODMAN: Senator, as I think I explained at the outset of my explanation of the bill, whoever sells the property would be required to retain an interest of 50 percent for existing REITs.

SENATOR PATERSON: Which is -

SENATOR GOODMAN: And that is actually being changed from 40 to -- we're changing it from 40 to 50.

SENATOR PATERSON: That's an increase of ten percent -

SENATOR GOODMAN: That's correct.

SENATOR PATERSON: -- over what the existing ownership was, which is actually a very good step, but I guess my question is, does that cancel out the other factor being the 75 percent of monies that have to be reinvested for purchase or for repayment of debt or for investment that now would be eliminated and would, in my opinion, create what would be an unlimited opportunity for profit? In other words, does that increase in ten percent from 40 to 50 percent of ownership negate what could be the loss of revenues as a result of those individuals who made -- who took advantage of the tax incentive and in a sense derived a personal profit out of it?

SENATOR GOODMAN: Just a moment, Senator. I'm consulting with counsel to be sure we give you an accurate -- I'm informed, Senator, that the 75 percent provision to which you refer -- and let me just repeat what it is

so that everyone's clear what we're talking about. At the present time, at least 75 percent of the cash proceeds received by the REIT from the sale -- that's the existing REIT -- from the sale of ownership interest in the property must be used either to pay down any debt on the property or to make capital improvements to the property or to make tenant improvements, and what we are faced with is the fact that no other state has this requirement and as a result, we are losing the business that would otherwise be able to be brought into New York with respect to that category of REIT.

Now, let's be very candid about this. What we're trying to do is to bait our hook, and we're baiting our hook with an advantage that the existing REITs do not have because, otherwise, they won't -- the fish won't swim in our waters at all. If you want to catch a fish, in this instance, you have to do it with a succulent worm and not with a shriveled-up, piddling, little worm that no fish would touch with any dignity. So with that thought in mind,

I have to concede that there is the problem you raise, but I hope it will be more than offset by the fact that we will have a full platter.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: You're right, Senator. There has to be an inducement that would be profitable to the investor, and we don't have a problem with that.

I guess my one last question is somewhat of a follow-up to a certain extent on issues raised earlier by Senator Stavisky, which is that since we are not in a position to really know right now, since we're not even really that sure how many REITs have been established and what gain or loss we have already endured and we're now going into a period where we are going to project that we might sacrifice $2 million to see that this program works -- and it's creative. It's certainly an invention that may inure to the benefit of this state in the sums of great numbers of revenues that would come from the success of the REITs, but since we

don't have a firm number and we don't know what direction we're going in, would it not be more prudent to at least temporarily establish a sunset of another two years just so that we can examine what the accompanying next couple of years of the REIT market is like?

SENATOR GOODMAN: Senator, that's an interesting question, but let me respond to it in this way and with some real conviction.

First of all, I think we should -- you're aware of the fact that I have quite a substantial record with regard to matters relating to tenant protection. We've tried our best from this side of the house, not always having our views shared by a majority of my colleagues, to do what we can to make certain that the real estate industry does not press down unfairly on the tenant interest but, Senator, I want to stress to you, the words "real estate" are not dirty words. The real estate industry is an industry which deserves to be developed to the fullest in the most wholesome possible way, providing the best

possible inducements, and just as I rigorously attempt to protect tenants against inappropriate incursions, I would protect and hope that we could have a real estate industry which is robust and which will come out of its recent recession at a gallop and not at a trot. I think that this measure is an exceedingly important one, and when you say that we really have no sense of what the effect of this bill would be, I beg to differ.

I've read to you from an expert point of view, that of Merrill Lynch, who are by no means the only people involved in this and, Senator Stavisky, really, your attempt to suggest that we are crowning Merrill Lynch as a member of the Senate by my reading from a letter -- a letter from Merrill Lynch is, I think just a little bit extravagant in its assessment of what I'm attempting to do.

Let it be said that this firm, which is the largest securities firm in the nation, has stated flatly that since 1991, there has been raised more than $10 billion of new

money and probably companies with a greater - with a value in excess of 15 billion. This letter was written some time ago. By now, I'm sure that this probably exceeds 20 to 25 billion. Just think of the benefits of $25 billion of new money being invested in the New York real estate market at a time when this industry is anemic. This is a blood transfusion at a moment when the patient is starting to recover but is still not yet in robust, good health.

I think this house stands to gain a great deal on behalf of our constituents if we can pump new money into the economy, get new homes built, get new buildings built, new office buildings or whatever, in order to permit the City and the state to flourish in a way that it could if there was a real sizzle on the real estate "steak". At the moment, it's simmering. It isn't even a McDonald's 1 burger. It's got to be -- to mix the metaphor a little bit, it's got to be really given a great injection of gustatory enhancement in order to get people to

do something, and that's what the bill does. Real estate needs to be stimulated. The economy needs to be stimulated. Jobs need to be stimulated.

So in one short sentence, I'll just sum it up by saying this bill is good for the people at all levels of our economy and it should be passed overwhelmingly.

SENATOR PATERSON: Senator Goodman, I would demur to your conviction and just add this addendum of sentiment regarding the REIT. I don't think that you have to prove to this chamber in any way that there is a finite coefficient of reward that the estate would actually receive. This market has been in such grave danger for the last nine years that just the innovativeness of the proposal and the definition of its success in other places, I think is sufficient for us to try it. I think quite often the fact that an idea is new is just resisted because nobody can identify what the actual results have been. If that were actually the case, there would have been so many elements

of creativity that would have been rejected because nobody knew what the actual result would be.

It's -- it's my opinion that the legislation is quite meritorious as it's presented and try to point out that this is not something that is usually engaged in by the super rich, but is actually open to the middle class investor that might have a couple thousand dollars and would like to try some alternative other than that of a mutual fund or some situation where there's an aggregate -- there's an aggregate investment of dollars in different areas by a number of people that come together in a sort of semi-partnership.

All we are suggesting, and I suggest this in support of the legislation, is that since we can't accurately state what that amount would actually be, that it might have been a little more foresighted had we just extended this for a period of time when we could actually measure how it's actually doing since we are investing $2 million of taxpayer money in

this -- in this -- what could be termed an experiment, but I think you've pretty much demonstrated that it's one that has a risk factor that's certainly pragmatic for us to take at this time.

Otherwise, the opportunity for reward and for increased revenues into the real estate market is quite good. As you pointed out, the 75 percent redistribution of any proceeds that were restricted to the building and repairs and repayment of debts is something that does only exist in this state. You raised the ownership factor from 40 percent to 50 percent which should somewhat negate the issue that I was raising earlier, the issue of the possibility of individuals deriving personal gain and then getting out of the market and taking advantage of the tax benefit.

So all in all, I think that it may have been better to put a restriction and in a sense a sunset just for measure. I would have to support the legislation after listening to your explanation and hope that it does do what

you intended it to do.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President -

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: -- to explain my vote. Mr. President, if I hadn't convinced myself based on my own arguments that this bill should be defeated, I certainly am convinced by Senator Paterson's argument because he rightly points out this bill is so greedy that it even is retroactive. The whole basis for the bill we're told is we need to bring in more money into real estate investments. Then you make the bill retroactive. You say it hasn't worked. We haven't given it a fair test. You remove all

sunsets, and Senator Paterson is absolutely correct, but he's much more generous of spirit and heart than I am.

So I must say, Senator, this bill is nothing but a giveaway to large investors, and you're cutting monies that this state desperately needs. We are in great financial trouble. We're in financial trouble because people get up and they say "Let's cut this tax. Let's cut that tax. It's going to stimulate jobs. It's going to stimulate investment. It's going to stimulate growth", and most of the time it doesn't happen, as Senator Stavisky pointed out and again, Senator Paterson, you have absolutely no figures to support your statement, and the fact is that we've got an enormous deficit, Senator Goodman, because you and other people on your side of the aisle got up and said that tax that we're going to pass -- that was last year -- is really going to generate job growth. We had less job growth in 1995 than we had in the last year of the Cuomo administration. You told us that this bill is

going to lose us next year $2 million, Senator, so when you're here next year saying "We can't afford these cuts to the arts", just think of that $2 million that you gave away to rich investors.

I vote no.

ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the negative. Announce -

Senator Abate to explain her vote.

SENATOR ABATE: I cannot support this piece of legislation at the time basically for the arguments raised by Senator Paterson. I believe that the benefits should be extended. I have some problem with the permanent extension, particularly in light of -- even the justification statement says in the last two years, there has not been enough information because of the interest rates. I don't think any harm is done to the real estate investment. If we extend it temporarily for a period of time and if it's worthy of a future extension, two

years from now, a year from now we can look at permanent extension. I hope that the Senator - the sponsor of the bill will look at this compromise. I think there will be greater likelihood of success if it were extended temporarily instead of permanently, and I hope in his good wisdom that he will consider that option.

ACTING PRESIDENT KUHL: Senator Abate -

SENATOR ABATE: And I will be voting negative because of the word "permanent" extension.

ACTING PRESIDENT KUHL: Senator Abate in negative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 588 are Senators Abate, Leichter and Stavisky. Ayes 56, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the controversial calendar.

Senator Santiago, why do you

rise?

SENATOR SANTIAGO: Mr. President, I would like to be recorded in the negative on Calendar 207.

ACTING PRESIDENT KUHL: Without objection.

SENATOR HOLLAND: No objection.

ACTING PRESIDENT KUHL: No objection, Senator Santiago will be recorded in the negative on Calendar Number 207.

Senator -

SENATOR HOLLAND: Mr. President, is there any housekeeping?

ACTING PRESIDENT KUHL: Yes, there is. We can return to motions and resolutions, Senator.

The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Padavan, on page 16, I offer the following amendments to Calendar 367, Senate Print 669-A and I ask that

that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 367 are received and adopted. The bill will retain its place on the Third Reading Calendar.

That completes the housekeeping at the desk, Senator.

SENATOR HOLLAND: Mr. President, there being no further business, I move we adjourn until Tuesday, April the 16th, 1996 at 3:00 p.m. sharp.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Tuesday at 3:00 p.m.

(Whereupon, at 5:15 p.m., the Senate adjourned.)