ALBANY, NEW YORK

May 22, 1996

11:01 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

ACTING PRESIDENT KUHL: In the absence of clergy, I'd ask that we all bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 21st. The Senate met pursuant to adjournment. The Journal of Monday, May 20th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a privileged resolution at the desk by Senator Trunzo. May we please have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: There is a privileged resolution at the desk. I'll ask the Secretary to read the resolution in its entirety.

THE SECRETARY: By Senator Trunzo, Legislative Resolution honoring the New York State Professional Firefighters in recognition of Professional Firefighters' Week, May 20th to May 24th, 1996.

WHEREAS, it is the sense of this assembled body that the positive and salutary definition of the communities of the state of New York remains of unparalleled importance to the discharge of our shared responsibilities;

There is no substitute, no alternative to the full implementation of that prerogative. On the contrary, the safe, sure and positive definition of the communities of the state of New York dictates that discretion ary power inherent in governance be weighted in favor of that commitment;

Consistent with that pledged concern, it is the sense of this assembled body to honor the New York State Professional Firefighters in recognition of Professional Firefighters' Week May 20 through May 24, 1996;

The New York State Professional Firefighters have 25,000 members statewide; in the 127-year history of paid professional firefighters in New York State, 1450 have made the supreme sacrifice in the line of duty while protecting the lives and property of the

citizens of the state of New York;

It is their concern for the secure and safe definition of this Empire State that recommends New York State's Professional Firefighters for special commendation;

Through their valiant and heroic commitment to the people of the state of New York, professional firefighters have so unselfishly advanced that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations and most proudly honor the New York State Firefighters in recognition of Professional Firefighters' Week, May 20th through the 24th, 1996, fully confident that the professional firefighters of the state of New York mirror that same commitment to excellence which so distinguishes their long history; and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be

transmitted to James McGowan, President, New York State Professional Firefighters, 111 Washington Avenue, Albany New York.

ACTING PRESIDENT KUHL: Chair recognizes Senator Trunzo on the resolution.

SENATOR TRUNZO: Mr. President, it's with great pleasure for me to introduce this resolution regarding Professional Firefighters' Week.

There are many members of the professional firefighters in the gallery today which we'd like to acknowledge, and I'd like them to know that every member of this Senate, all 61 of us, have introduced that resolution. It's a completely -- a resolution introduced by all 61 members of the Senate and every one knows about the risk that these dedicated men and women in the fire professionals do for us day in and day out and, as noted in the resolution, 1450 have passed away in the line of duty protecting our people and during the past year six firemen have died in the line of duty and it's sad to say that two of those six were

constituents of mine that died in New York - New York City firemen, that passed away within two or three weeks of each other. One was Lt. John Clancy, of Oakdale, and the other firefighter, James Williams, of Shirley, Long Island. Both men heroically died as a result of saving lives in their profession.

So it gives me great pleasure to remember these men, as well as commending the firefighters of the state of New York for the tremendous -- the professional firefighters for the tremendous job that they do for all of the citizens of this state and, Mr. President, I wish you would acknowledge the men and women of the Professional Firefighters Association which is up there in the gallery today.

Thank you.

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

SENATOR MARCHI: Mr. President, I couldn't think of a more appropriate resolution for a finer group of people. I remember my days in my early teens,

on three separate occasions I put together an almanac for three widows of firefighters who had lost their lives under the most serious circumstances, and I made a collage of newspaper articles at that time from the many newspapers that had reported separate incidents.

During the course of the war, I found myself several times being laid up by excessive smoke inhalation which is only a fraction of what they experience in life of a very painful and difficult circumstance that rivals even the time when I contracted amoebic dysentery, but this was real physical suffering and I only sampled it on a very -- in a very minor way.

But you never hesitate. You certainly don't throw discretion to the winds but you do where human life is at stake. The saga of bravery and courage that you exemplify, I think, is a matter of common knowledge, and the continuous availability to enormous sacrifice that you make and the statistical records which go beyond those who have made the

supreme sacrifice, but scars that you carry personally in many ways at many times all attest to the fact that yours is a noble profession and you -- you fulfill the highest expectations and you are role models, I think, for people around the state for the courage you exhibit, the commitment that you bring to your responsibilities and the debt of gratitude that I think the people of the state of New York, I think, collectively owe you.

Mr. President, this is a very very fine resolution and certainly it attests - it's attested to by the knowing and sense feeling of every member of this chamber.

ACTING PRESIDENT KUHL: Senator DeFrancisco, on the resolution.

SENATOR DeFRANCISCO: I also rise as a co-sponsor of this resolution to commend the firefighters for their professional work throughout this state. I've seen it at the local level as a local official for many years, and now I see that the fine firefighters that we have in the Onondaga County/Syracuse area are

true throughout the state.

One thing I think we should or I should point out on a very serious note, I think many of us in this room, including myself, think that it's very important to privatize in many ways and to consolidate, to try to save money, but we've got to be very careful as do the local governments that, when you're talking about public safety and you're talking about police and fire, there's a level of professionalism that can't be bitten by the present system, and we've got to be very careful in these efforts to make certain that we maintain the professional firefighters and the professional police officers that we have at our localities and throughout the state and, with that warning in mind and with that admonition in mind, I want to congratulate all of them for the fine work they're doing and thank them for visiting me personally this week.

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

Senator Alesi, on the resolution.

SENATOR ALESI: Thank you, Mr. President.

I join with my colleagues in welcoming these professional firefighters to the Capitol today. Last year I had the pleasure in the other house to welcome them and acknowledge some of the Rochester area firefighters on the floor in the Assembly. Today I see that they're joining us here in the Senate, although I don't think they can see me. Not much of a loss, I'm sure, for them. But I also had the pleasure, the special pleasure I should add, of acknowledging the presence of one of my family members who is with the Rochester area firefighters as well, and certainly appreciate the fact that they've taken time to come join us today and, more importantly, we appreciate what they do for us on the 365 days a year and appreciate the pleasure and the privilege of welcoming them here today, Mr. President.

ACTING PRESIDENT KUHL: Any other

Senator wishing to speak on the resolution?

Hearing none, 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.

On behalf of Senator Bruno, Senator Trunzo and all 59 other members of the Senate, we welcome you to Albany, congratulate you on the wonderful thing that you do for the people here in this chamber and all the people of New York and, as Senator Marchi said, you have the highest expectations of people in this state. We expect big things of you. You're doing a great job. Keep it up. We're proud of you, and thanks for participating in today's session in Albany.

(Applause)

Senator Rath.

SENATOR RATH: Mr. Chairman, I

believe there is a resolution at the desk sponsored by Senator Seabrook. If that title could be read.

ACTING PRESIDENT KUHL: There is a privileged resolution at the desk. Ask the Secretary to read the title.

THE SECRETARY: By Senator Seabrook, Legislative Resolution commending Dr. Frank G. Pogue, Vice-Chancellor of SUNY Office of Special Programs for his years of service upon his leaving of SUNY to become President of Edinburgh College, to be presented at a farewell ceremony on May 23rd, 1996.

SENATOR RATH: Move adoption of the resolution.

ACTING PRESIDENT KUHL: Question is on adoption of the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Resolution is adopted.

Senator Rath.

SENATOR RATH: Mr. President, if we could proceed with the non-controversial calendar.

ACTING PRESIDENT KUHL: Senator Rath, we have a couple substitutions and some motions, if we could take care of those.

SENATOR RATH: Mr. President, please do the substitutions and motions at this time.

ACTING PRESIDENT KUHL: Chair recognizes Senator Padavan.

THE SECRETARY: On page 32, Senator Maltese moves to discharge from the Committee on Judiciary Assembly Bill Number 1770-A and substitute it for the identical Senate Bill 4723-A.

ACTING PRESIDENT KUHL: Substitution is ordered. Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, on page number 41, I offer the following amendments to Calendar Number 945, Print Number -- Senate Print Number 7368.

ACTING PRESIDENT KUHL:

Amendments to Calendar Number 945 are received and adopted.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I have two more.

Page number 23, I offer the following amendments to Calendar Number 734, Print Number 6749, on behalf of Senator Velella, and I -

ACTING PRESIDENT KUHL:

Amendments are received and adopted. The bill will retain its place on the Third Reading Calendar.

SENATOR NOZZOLIO: Thank you, Mr. President.

Last one, on page number 14, I offer the following amendments to Calendar Number 504, Print Number 5773, on behalf of Senator Marcellino.

ACTING PRESIDENT KUHL:

Amendments to Calendar Number 504 are received and adopted. Bill will retain its place on the

Third Reading Calendar.

ACTING PRESIDENT KUHL: Senator Rath that brings us to the non-controversial calendar.

Senator Rath.

SENATOR RATH: Mr. President, if we could proceed with the reading of the non controversial calendar.

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

THE SECRETARY: On page 8, Calendar Number 355, by Senator Leibell, Senate Print 2709, an act to amend the Labor Law, in relation to establishing additional eligibility requirements for unemployment insurance benefits.

SENATOR LEIBELL: Lay aside, please.

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

THE SECRETARY: Calendar Number 485, by Senator Levy, Senate Print 5342-B, an act to amend the Vehicle and Traffic Law, in

relation to establishing an advisory committee on truck weights.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 616, by the Committee on Rules, Assembly Bill 7545-A, an act to amend the Civil Practice Law and Rules, in relation to disposition and use of dispositions.

SENATOR GOLD: Is that 3785?

ACTING PRESIDENT KUHL: Calendar 616 has just been read.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, you just want to lay the bill aside?

SENATOR GOLD: No, I just want to get the record straight on something. I thought it was read as Assembly Bill 7545-A, and my bill here says 3785-A.

ACTING PRESIDENT KUHL: It's Senate Bill 3785-A which is substituted Calendar Number 7545-A. The Assembly bill has been substituted.

SENATOR GOLD: No problem.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 704, by Senator Saland, Senate Print Number 2117, an act to amend the Family Court Act, in relation to procedures for the temporary removal

of a child.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 716, by Senator Libous, Senate Print 6659, an act to amend the Mental Hygiene Law, in relation to rules and regulations relating to a uniform system of reports.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 775, by Senator Present, Senate Print 471, an act to amend the Public Lands Law, in relation to state aid payments for certain state-owned lands.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 814, by Senator DiCarlo, Senate Print 3362, an act to amend the Vehicle and Traffic Law and the Criminal Procedure Law, in relation to driving

while under the influence of alcohol or drugs.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 27. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 832, by Senator Skelos, Senate Print 6371, an act to amend Chapter 509 of the Laws of 1995, amending the Vehicle and Traffic Law, relating to the issuance of special number plates.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 848, by Senator Levy, Senate Print 7357, an act to amend the Vehicle and Traffic Law, in relation to speeding violations committed within a work area.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 856, by member of the Assembly Wright, Assembly Bill 4304, an act to amend the Criminal Procedure Law, in relation to warrants for

violation of probation.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 857, by Senator DeFrancisco, Senate Print 6436 A, an act to amend the Civil Practice Law and Rules, in relation to the form of docketing judgment.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 858, by Senator Saland, Senate Print 6534-A, an act to amend the Criminal Procedure Law, in relation to orders of protection in youthful offender cases.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 859, by Senator Wright, Senate Print 6630, an act to amend the Penal Law, in relation to vehicular manslaughter in the first degree.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 860, by Senator Volker, Senate Print 6695, an act to amend the Criminal Procedure Law, in relation to designating evidence and property control specialists.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 861, by Senator Volker, Senate Print 6761-B, an act to amend the Penal Law, in relation to drug free school grounds.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 864, by Senator Velella, Senate Print 7117, an act to amend the Criminal Procedure Law, in relation to expanding the types of documents which may be electronically transmitted to a grand jury.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 872, by Senator Maziarz, Senate Print 6574, an act to amend the State Administrative Procedure Act, in relation to exempting certain commission

rule makings.

SENATOR MAZIARZ: Lay aside.

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

THE SECRETARY: Calendar Number 883, by Senator Padavan, Senate Print Number 2793, an act to amend the State Finance Law, in relation to contracts for engineering services.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 886, by Senator Kuhl, Senate Print 3357, an act in relation to authorizing and directing the Commissioner of General Services to study the

feasibility of developing a master list of all state publications.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 891, by Senator Maziarz, Senate Print 6450, an act to amend the Executive Law, the State Administrative Procedure Act and the Legislative Law, in relation to creating the Governor's Office of Regulatory Reform.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 894, by Senator Kuhl, Senate Print Number 3077,

an act to amend the Environmental Conservation Law, in relation to permitting the discharge of a firearm.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 896, by Senator Sears, Senate Print Number 5974, an act to amend the Environmental Conservation Law, in relation to including publicly owned drinking water treatment plants.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 898, by Senator Marcellino, Senate Print 6902, an act to amend the Environmental Conservation Law, in relation to removal of endangered, threatened and protected plants.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 902, by Senator Leibell, Senate Print 6462, an

act to amend the Private Housing Finance Law, in relation to the powers of the New York State Housing Finance Agency.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 904 by Senator Nozzolio, Senate Print 4467, an act to amend the Executive Law, in relation to time periods for providing notice of preliminary parole hearings.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 905, by Senator Nozzolio, Senate Print 4473, an act to amend the Executive Law, in relation to final revocation hearings.

SENATOR NOZZOLIO: Lay the bill aside for the day.

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

THE SECRETARY: 929, by Senator Goodman, Senate Print 6416, an act to amend the Local Finance Law, in relation to the sale of bonds and notes of the city of New York.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 936, by Senator Rath, Senate Print Number 6965,

an act to amend the General Municipal Law, in relation to procedures for the issuance of administrative search warrants.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 942, by Senator Rath, Senate Print 7364, an act to amend the Real Property Tax Law and the Real Property Law, in relation to taxation of converted condominium units.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll -- lay the bill aside.

THE SECRETARY: Calendar Number 961, by Senator Velella, Senate Print 7012, an act to amend the Insurance Law, in relation to increasing the limit on the amount of credit life insurance.

ACTING PRESIDENT KUHL: Secretary will lead 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 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 967, by Senator Trunzo, Senate Print 4671-A, an act to amend the Public Authorities Law, in relation to clarifying the status of employees.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 996, by Senator DiCarlo, Senate Print Number 5584, an act to amend the General Business Law, in relation to the sale and rental of films.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1007, by member of the Assembly Gottfried, Assembly Bill 9820, an act to amend Chapter 314 of the Laws of 1984, amending the Public Health Law, relating to removing the statutory exemption for municipally operated summer day camps.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1040, by the Assembly Committee on Rules, Assembly Print 8158-B, an act to authorize the issuance of bonds by the town of Orangetown in the county of Rockland.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. 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 48.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 1053, by member of the Assembly Weprin, Assembly Bill 4728-B, an act to amend the Estates, Powers and Trusts Law.

SENATOR RATH: Lay aside for the day.

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

THE SECRETARY: Calendar Number 1092, by Senator Larkin, Senate Print 3065, an act to amend the Criminal Procedure Law, the Penal Law and the Family Court Act, in relation to making persons 12 to 15 years of age eligible for juvenile offender.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1151, by Senator Johnson, Senate Print 6353, an act to amend the Transportation Law, in relation to granting the Department of Transportation the power to assist certain employers.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1210, by Senator Hoblock, Senate Print Number 6890, an act to amend the Election Law, in relation to special ballots.

SENATOR HOBLOCK: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Rath, that completes the calling of the non-controversial calendar.

SENATOR RATH: Mr. President, if we could proceed to the reading of the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar, beginning with Calendar Number 860.

THE SECRETARY: On page 32, Calendar Number 860, by Senator Volker, Senate Print 6695, an act to amend the Criminal Procedure Law, in relation to designating evidence and property control specialists.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR GOLD: Senator Volker yield to a question?

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

SENATOR VOLKER: Senator Gold.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, would you do me one favor. There's a memo in opposition, I think, from the city of New York.

SENATOR VOLKER: Senator, in all candor, someone else mentioned that to me. We do not have it.

SENATOR GOLD: Senator, do you think you could give me just one day on this until Monday, would you mind?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Lay the

bill aside for the day.

Secretary will continue to call the controversial calendar.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Mr. President, yesterday I was called away on business and I'd like the record to indicate that had I been here, I would have voted "no" on Calendar Number 314, Senate Bill Number 213, by the distinguished gentleman, Senator Holland, and also on Calendar 701, Senate 1984, by that distinguished Brooklynite, Senator DiCarlo.

ACTING PRESIDENT KUHL: Senator Gold, the record will reflect that had you been here yesterday when the roll calls were taken on Calendar Number 314 and Calendar Number 701, you would have voted in the negative.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 861, by Senator Volker, Senate Print Number

6761-B, an act to amend the Penal Law, in relation to drug-free school grounds.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: The explanation was requested in a whisper here to me.

This bill is a follow-up of the drug-free school zone bill that we passed here, I think last year, I don't remember for sure, or maybe it was earlier in the year.

At any rate, it includes, in addition to the schools, it was pointed out to us that as part of school complexes there are day care centers, pre-kindergarten and kindergarten centers, as well as nursery schools. What this bill does is basically include those in the legislation or this amends that legislation to include all those areas that are traditionally considered to be part of the school situation today, and that's what this bill does.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Unfortunately, we had a circumstance in my district about a year and a half ago where a four-year-old was actually threatened by drug dealers because the four-year-old pointed out who the drug dealers were to the police. So -

ACTING PRESIDENT KUHL: Senator Paterson, you asking Senator Volker to yield to a question?

SENATOR PATERSON: I was going to tell him about this, and then I was going to ask him to yield.

ACTING PRESIDENT KUHL: All right, fine. Senator Paterson, there's a lot of activity, lot of motion, couple of Senators taking a nap here. I'm just kidding. I'm just kidding. Ask the Secretary, the Sergeant-at Arms, could you shut the air conditioner off and let's quiet down in the chamber so Senator Paterson can be heard.

Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Volker yield for a question?

Senator, do you think that this -- some of the legislation is becoming somewhat superfluous since -- excuse me, in the greater amount of cases, we're not seeing the same situations for toddlers who are pretty much being brought to school by their parents, and day care centers, the children being dropped off and picked up, so you're not having the kind of intimidation that you would have when teenagers are going to school and which is the original intent of the drug-free zone for schools, and in New York City the circumstance rises to a level where you have pretty much covered every square inch of New York City.

I'm not saying that there's anything wrong with the bill, and I will vote for the bill, but we're just raising the question of about what maybe we just might want to do is just raise the count for the actual offense rather than setting up a special type of legislation that's going to apply in some

districts and in some areas to the -- almost the entire region.

SENATOR VOLKER: Senator, I frankly don't necessarily -- I don't disagree with you. The problem is, though, that in the area of criminal justice these days, perception is so much, frankly, a part of the law, and there seems to be an inclination on the part of some people, if you name an area and if you say this area absolutely needs to be protected, the chances -- and I guess I'm being brutally frank -- the chances of you being able to pass legislation that covers that area specifically is far better than doing a general bill which, in all honesty, I would probably prefer, that in effect would cover the area plus.

Now, the reason -- and, frankly, your reaction to this legislation is about the same that I had when I first thought -- I thought, well, maybe it's a little bit overkill except that when it was pointed out to me and you just pointed out one of the incidents that have occurred in New York City, and I understand

they've occurred in Westchester, that there have been a number of incidents involving pre-kindergarten places or nursery schools that are right adjacent to schools, and the people who proposed this legislation have said that the reason they want it is, in effect, to use the same criteria for all of the entities that are involved in school proper and because so many of the schools today -- and you and I know probably better than most people who criticize education, but don't seem to realize that educators today are parents almost. I mean, in fact, they are parents because, in many cases, unfortunately the kids don't have parents or parents that don't care sometimes, and there have been - these schools have become virtually the only places where kids are taken care of and, in some cases, fed, and almost and in some cases, clothed, but, of course, it's an invitation for people to prey on them, and what this legislation is designed to do is, in effect, hook in the entire areas of schools and include it under the protections of the drug-free school

zones.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Volker.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: Senator Volker, the only thing probably that surpassed the horror of drug dealers threatening a four-year-old child, in my opinion, is the fact that the child was able to point out who they were to the police. That there would be that level of understanding at such a pure age is a harsh commentary on our times and is perhaps the reason why we have a lot of our criminal justice legislation more or less driven by the perceptions of what we would like to protect as opposed to often the actual law enforcement that we can provide.

I just feel, and I am voting for the legislation, Mr. President, but I just feel

that we've got to be careful that we don't mislead the public. I think Senator Volker thought this out very readily and, if this is his determination, I'm certainly willing to follow his lead and go along with it, but I just think perhaps in other bills we have to be careful that we are not playing to the public more than really providing workable, sensible, achievable legislation that would enure to our benefit in terms of the administration of law enforcement or such as in this bill in terms of the calibration of the offense and the type of justice that will be meted out to an offender.

I think that this bill is probably all right, but I am feeling that I see a lot of pieces of legislation come across this desk in which we are probably playing more to the perceptions than we are to actually providing workable remedies.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of

September.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar.

SENATOR HOLLAND: Mr. President.

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

SENATOR HOLLAND: Mr. President, I know that we don't do this all the time, but I'd like to make an exception here as sometimes has been done in the past and welcome a group of gentlemen up above my head. It's the New York State Supreme Court Officers Association. They're visiting Albany and educating us a little bit, and they do a very difficult and sometimes dangerous job. I know this to be a fact because my son is a member of that group and we wish to welcome them here to Albany

today.

ACTING PRESIDENT KUHL: Senator Holland, thank you for bringing that to our attention. We're always willing and pleased to welcome members -- members of their family to the chamber and certainly a distinguished group of supreme court officers.

Thank you for being here. Thank you for taking time to join with us and keep up the good work.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 891, by Senator Maziarz, Senate Print Number 6450, an act to amend the Executive Law, the State Administrative Procedure Act and the Legislative Law, in relation to creating the Governor's Office of Regulatory Reform.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Maziarz, an explanation of Calendar Number 891 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, this bill creates the Governor's Office of Regulatory Reform and provides for its powers and duties. Presently this office is regulated under the -- I'm sorry, is created under an executive order, and by creating such an office it would provide a comprehensive clearing house for business permit information, new and simplified procedures for applications, a review of existing and proposed regulations and other coordinated activities that would directly address the problems business has with permits and other regulatory difficulties within the state.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Maziarz would yield for a question.

ACTING PRESIDENT KUHL: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Thank you, Mr. President.

First, I'd like to add my voice to those -- to lend my voice which wasn't working earlier, but to those who are welcoming the Supreme Court Officers and also the volunteer firefighters this morning.

And now, Senator Maziarz, I don't have any problem with the office. I just have a little problem with this piece of legislation because you just said it was created by a Governor's executive order.

So my question is very simple: What do we need the legislation for?

SENATOR MAZIARZ: Senator, I think we need the legislation because the executive order is extremely brief and very thin in its guidelines. For instance, as you are aware, I was recently appointed as chairman of

the Senate's Administrative Regulatory Review Commission, and also there was a new chairperson of the Assembly appointed to the Assembly's Administrative Regulatory Review Commission, and in the executive order does not provide for agencies or for the Governor's Office of Regulatory Reform to have our joint committee review proposed regulations from the agencies. So in order for us to do our job effectively, I insisted that this be included in this particular legislation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Maziarz.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: Again, Mr. President, I just don't understand what we're doing here which does not mean that it isn't right nor does it mean that it may not even be effective, but I would think that when we are

creating an office, that we have a good idea of why we're creating an office.

I don't understand why we create an office, and then we -- we introduce legislation later on after the office is being created, to establish what it does. I thought that the way regulation works is that that's done in reverse, so I don't have a problem with the fact that we're doing it. I just feel that it's done in reverse order. It would have been far more foresighted, in my opinion, had the general and specific duties of this office been laid out in the very beginning, and I think that is often what is causing us to take more time to discharge our duties than we actually need to, and since I think I've explained this to my own satisfaction, even if I'm the only one here who feels that way, I guess I've used enough time as well.

ACTING PRESIDENT KUHL: Secretary will read the last section.

Oh, Senator Dollinger.

SENATOR DOLLINGER: Senator

Maziarz yield to a couple questions?

ACTING PRESIDENT KUHL: Senator Maziarz, will you yield to Senator Dollinger?

SENATOR MAZIARZ: Sure.

SENATOR DOLLINGER: Senator, is it my understanding that this bill extends the authority of the Governor's Office of Permits and Regulatory Assistance?

SENATOR MAZIARZ: Yes.

SENATOR DOLLINGER: That authority expired almost five months ago, did it not?

SENATOR MAZIARZ: Yes.

SENATOR DOLLINGER: I guess my question is, how did the group that's supposedly bird-dogging all these regulations allow itself to go out of business and didn't realize that its own regulatory authority had been suspended at the end of last year?

SENATOR MAZIARZ: Well, you had the executive order continuing the office, Senator.

SENATOR DOLLINGER: It was the

executive order continued it?

SENATOR MAZIARZ: Yes.

SENATOR DOLLINGER: But the state Legislature allowed it to expire; nobody came to us and asked us beforehand to extend it last year.

SENATOR MAZIARZ: Well, I introduced this bill, Senator, much earlier this year.

SENATOR DOLLINGER: I guess that's one of the -

ACTING PRESIDENT KUHL: Are you asking Senator Maziarz to continue to yield, Senator Dollinger?

SENATOR DOLLINGER: Yes, Mr. President.

ACTING PRESIDENT KUHL: I hate to be left out of this triad here, Senator.

SENATOR DOLLINGER: I know, Mr. President.

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

SENATOR MAZIARZ: Yes, I do, Mr.

President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: When did you become aware, Senator, that the statutory authority for the regulatory office had expired?

SENATOR MAZIARZ: Late last year, Senator.

SENATOR DOLLINGER: Right, and it's now -

ACTING PRESIDENT KUHL: You continue to yield, Senator Maziarz?

SENATOR MAZIARZ: Yes, I do, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Thank you, Mr. President.

And now it's the 22nd of May and we're finally getting around to extending its authority.

SENATOR MAZIARZ: That's correct.

SENATOR DOLLINGER: One other

question.

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

SENATOR MAZIARZ: Yes, I do, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: The statute talks about -- well, I have two questions. Let me ask the first one. In the description of the charge that the Legislature gives, it says that the proliferation of state agency rules impose a burden on the people of this state. Could you tell me, are those burdens derived from legislation passed by this Legislature?

SENATOR MAZIARZ: For the most part, I would say no, not this particular Legislature, not this particular house of the Legislature, but primarily from the other house, but mostly I would say from the various state agencies often when they promulgate rules and regulations that conflict with each other.

SENATOR DOLLINGER: Again through

you, Mr. President, just to clarify.

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

SENATOR MAZIARZ: Yes, I do, Mr. President.

SENATOR DOLLINGER: But, in fact, all those burdens are a result of legislation that was passed by this house as well because, of course, they don't get to be laws unless the Senate Majority puts them on the calendar and the entire Senate passes them, so all those burdens find their origin right here in this room, isn't that correct?

SENATOR MAZIARZ: No, I didn't say that, Senator, and that's not the way I feel. You asked me my opinion. I feel that the ones that are the problem are the ones passed by the other house of the Legislature. I think that the members, all the members of this particular house are very clear thinking and that they would not burden either the people of this state or the business of this state with cumbersome or difficult regulations.

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR MAZIARZ: Yes, I do.

SENATOR DOLLINGER: Senator, I'm just trying to understand. Are you saying that the Assembly can make laws all by itself because that seems to be what you're suggesting is that the Assembly creates all those burdensome rules and the Senate never creates burdensome rules? I mean that's what I understand you to say.

SENATOR MAZIARZ: No, that's not what I said, Senator.

SENATOR DOLLINGER: O.K. Let me ask you one other technical question.

ACTING PRESIDENT KUHL: Senator Maziarz continue to yield?

SENATOR MAZIARZ: Yes, I do, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: In the

section of the bill that talks about the master hearings, this bill sets up a process by which the Office of Permits and Business Review will assist in the applications. It will provide conceptual assistance. It will provide technical assistance, and then it says that they will bring together in a master hearing all of the state agencies that need to conduct hearings and that this office will preside at those hearings.

Doesn't this bill make this office both the prosecutor, the defense and the judge and jury in what happens in the permit process, and isn't that an over-extension of the powers that we want to have vested in any state authority?

SENATOR MAZIARZ: I don't believe so, Senator. I think what that does is, it makes the process go much more smoothly and much more comprehensive when you're dealing with all those state agencies.

Now, Senator, if I could just use by way of example, last Friday you and I toured

an extremely well run, I think, company in the Rochester area and, you know probably in going through that building the different state agencies that would have been involved - Department of Labor, DEC, Department of Health certainly. You know, I think that rather than that particular company or a company like that -- I don't use that as an example -- having to go and getting them to sit down individually, that to get them into a room to sit down collectively and somebody has to, I think, chair that procedure in order to keep those agencies talking to each other.

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR MAZIARZ: Yes, I do, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: But the due process seems to assume that somewhere in the

administrative process there will be a fair hearing in which all sides will air their views about business permits or business authorities and that one of the indicia of a fair hearing is an impartial tribunal.

How can you have an impartial tribunal when the Office of Business Permits has already met with the business and assisted them in the technical advice which I think is a good idea, it's already approved their conceptual plan. It's already brought everybody together, and the very same persons provided all that assistance to the permit applicant is now sitting there as the judge who is going to preside in the case?

How do we meet the requirements of an impartial tribunal when, in essence, what we're doing is giving all this authority to one person in one department?

SENATOR MAZIARZ: Well, I think that their charge here is to speed the process up, to make it more clearly defined. I think at some times when you're dealing with a particular

agency that that agency may be very parochial in nature, and the Department of Health, let's say, is only considered with health issues. They don't worry about the DEC side of it, the Department of Labor side of it, Senator.

I don't know, I'm not pre disposed to think that these people would be unfair at all. Our former governor thought very highly of this particular office.

SENATOR DOLLINGER: O.K. Just one final question, through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Maziarz, you continue to yield to one question?

SENATOR MAZIARZ: Yes, I do, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: This will be my last point. Do you have any report from the Office of Business Permits that shows what regulations they have actually changed in the year and a half that, in this administration, this organization has been working? I know

there's been been a lot of talk about earth quakes in buildings but, to my knowledge, the only ones that have been changed were those that involved DEET.

Have any other regulations been changed? Do you have anything to that effect?

SENATOR MAZIARZ: Yes, I do, Senator. I don't have it with me, but I will forward it to your office.

SENATOR DOLLINGER: All right. Could you tell me what those regulations are that have been actually changed or altered and the process improved?

SENATOR MAZIARZ: No, not with me, the list.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, I've raised what I think is more than just a technical objection to the concept of administrative hearings. This bill, it seems to

me, could come close if not step over the line of due process, and the due process requires that there be impartial tribunals and that, as part of those impartial tribunals you don't have one person be advocating for the business, be applying the compliance review, do all the conceptual review, and then stand there as the judge and jury when the decision has to be made about whether the permit is going to be issued.

I have no problem with providing businesses with assistance. I have no problem providing a business applicant with conceptual review and all those other aspects, but it seems to me this may be a flaw in this bill if we centralize too much authority.

However, because I know the regulatory director, I'm prepared to let it go for a year at least to see what happens, see whether the process continues to bear fruit. I'd point out, I guess, I'm astounded that through all those maze of regulations that he's supposedly working on, he didn't check the regulation that extends his authority from the

state Legislature and, sure enough, we're actually doing it five months after it expires.

Maybe sometimes you find those burdensome regulations are right under your nose rather than out in those other agencies, so I'm going to give it another crack, but I'm at least skeptical about whether this is going to produce the kinds of benefits in the long run that the bill envisions.

SENATOR GOLD: Mr. President.

SENATOR DOLLINGER: I'll be voting in favor, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. Would the sponsor yield to just one question?

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

SENATOR MAZIARZ: Yes, I do.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Yeah. I don't know whether this was asked, but just very

briefly, it was pointed out to me by my dis tinguished colleague from Buffalo. This says it shall be deemed that the act shall have been in full force and effect since January, and maybe you could just explain that.

Were there some actions taken that may not have been legal, or why is that language in there?

SENATOR MAZIARZ: The only actions that have been taken are those covered under the executive order, Senator.

SENATOR GOLD: Well, that's what I'm trying to find out: Why is it important to have that language? Why is it in there? Why would it be important to have that?

SENATOR MAZIARZ: I think just a continuation of the office from when it expired at the end of 1995. I don't think it's meant to put anything -- you know, to legitimize anything that was done.

SENATOR GOLD: Well, if the Senator would yield to one more question.

ACTING PRESIDENT KUHL: Senator

Maziarz?

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: We, on very many occasions, without a big fanfare legalize actions of towns that may -- they thought they had authority and whatever, and that doesn't bother most of us.

What I'm curious about is the office ended, you're saying, with December 31st.

SENATOR MAZIARZ: December 31st of 1995, Senator.

SENATOR GOLD: Right, so if - this talks about January 1st, '96 through now, and all I'm saying is, in other words, there has been in operation a department unauthorized and acting in doing things. That's what you're saying.

SENATOR MAZIARZ: I don't know if you would say unauthorized, Senator. It is authorized under an executive order.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Well, my last question, and this is just a technical question and I'm going to vote for it. I don't care which way you go, but I'm just pointing this out. Do you think there should be language some place in the bill which says something to the effect that any actions taken by, and name the group, under executive order, will be continued or deemed legalized or whatever? I don't know whether there's anything that would be affected, whether there's going to be any court cases. There may be nothing, but just from the drafting point of view, maybe there should be something in the bill which explains that continuity.

SENATOR MAZIARZ: I think it's already in there, Senator.

ACTING PRESIDENT KUHL: Secretary will read the last section.

Senator Leichter.

SENATOR LEICHTER: Yes, Senator Maziarz.

ACTING PRESIDENT KUHL: Senator Maziarz, you yield to a question from Senator Leichter?

SENATOR MAZIARZ: Yes, I do.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: How many members -- I'm sorry.

SENATOR BRUNO: I'm sorry for interrupting, Mr. President.

ACTING PRESIDENT KUHL: Yes.

SENATOR BRUNO: Would you indulge me.

I was told that that was the last speaker, and I didn't want to interrupt. I thought we were moving to a vote because what I have in mind is to ask that we stand at ease and call an immediate Conference of the Majority and then resume where we are, but if we were closing down, then I was just going to wait a few minutes.

SENATOR LEICHTER: Very brief.

SENATOR BRUNO: O.K. Yes, Mr.

President, we certainly can be indulgent in this chamber.

ACTING PRESIDENT KUHL: Senator Leichter, a question of Senator Maziarz.

SENATOR LEICHTER: Senator Maziarz, how many people are there in this Office of Regulatory Review?

SENATOR MAZIARZ: Approximately 40, Senator.

SENATOR LEICHTER: And what is the budget, annual budget, for this office?

SENATOR MAZIARZ: I don't have that figure offhand, Senator, but I am told that it is less than it was under the prior administration.

SENATOR LEICHTER: And, Senator, do you know how much the budget for this office in the -- in the executive budget for the year 1996-1997 is?

SENATOR MAZIARZ: No, I do not, Senator.

SENATOR LEICHTER: Mr. President, just very briefly on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I understand the Majority Leader wishes to call a Conference. Let me just say I -- you know, part of the problem I have with this bill is that it's like the Governor saying, you know, "I don't -- I'm not -- I'm not the Governor. I don't have the powers, so please give me the power over my own Executive Department."

Why didn't the Governor at the present time -- he controls all these agencies. He appoints their heads. I mean it's sort of part of this distancing of the very people who run government from government. We're running against government, like the Legislature, Oh, not me. I mean Senator Maziarz says, Oh, I had nothing to do -- this Senate had nothing to do with all these burdensome regulations.

Who passed it? Of course, it was the Senate and the Assembly. The Governor says, Oh, it's terrible, these agencies. They're - they're delaying permits. They're delaying

regulations. Wait a second, who's in charge? He runs the Executive Department. He has all these powers right now relating to the rules.

I just question, one, the expense. Is it worth having this office? Do you really need it? Secondly, aren't you just adding another layer of bureaucracy because now when a rule is issued or a permit is applied for there may be instances now you've got to go to the Office of Regulatory Review. That's going to take more time.

I pointed out that we have a budgetary expense. Now we've got an office of 40 people. I don't know, maybe 10 years from now they'll set up another office to review the work of the Office of Regulatory Review which is reviewing the work of the agencies.

I just question whether we're not really making government more cumbersome, more expensive and -- and shedding our responsibility and our accountability.

I'm going to vote against this bill.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 52, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we stand at ease, and I ask that the Republican members join me in conference in Room 332.

SENATOR LEICHTER: Mr. President.

SENATOR BRUNO: And the time frame that we're talking about here at ease somewhere in the neighborhood of 45 minutes.

ACTING PRESIDENT KUHL: The bill actually was passed.

Senator Leichter.

SENATOR LEICHTER: Mr. President, just while the Majority Leader is on his feet, Senator, is this an open conference? I know you had one open conference with a lot of fanfare at the beginning of the year, and I've been waiting for you to invite me and the press and the media in to more meaningful conferences like the one that you're about to have?

SENATOR BRUNO: Thank you, Senator.

ACTING PRESIDENT KUHL: The Senate stands at ease.

SENATOR BRUNO: While the Majority has been waiting, I have been waiting for you to open your Conference for one time as we did, so that we could then continue the process, and that has not happened yet. So we're at ease.

ACTING PRESIDENT KUHL: Senate stands at ease.

SENATOR PATERSON: Mr. President, I'd like to the Majority Leader to know that we

did open a conference and nobody came.

(The Senate stood at east from 12:00 Noon until 12:50 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to motions and resolutions, I believe there's a resolution at the desk by Senator Seabrook. I'd ask that the title be read and move for its adoption.

ACTING PRESIDENT KUHL: There is a privileged resolution at the desk. We'll return to motions and resolutions.

The Secretary will read the title to the privileged resolution.

THE SECRETARY: By Senator Seabrook, Legislative Resolution commending Iris W. King, mayor of Jamaica, West Indies.

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 adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could go back to the controversial calendar, regular order.

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

THE SECRETARY: On page 40, Calendar Number 929, by Senator Goodman, Senate Print 6416, an act to amend the Local Finance Law, in relation to the sale of bonds and notes of the city of New York.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. Will Senator Goodman yield to a question?

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

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Yeah. Senator Goodman, can you tell me what this bill has to do with the fact that Deanna Greer, who is the daughter of William T. Greer, is going to graduate this Saturday from Cornell Veterinarian School and we should all be very proud of that?

SENATOR GOODMAN: I can only say to you, sir, that to the extent that this bill affects that, it's a celebratory event and something which brings much happiness to the hearts of all of Mr. Greer's friends and admirers and best wishes to his daughter.

SENATOR GOLD: That's what I thought.

Thank you.

SENATOR GOODMAN: You're welcome.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 942, by Senator Rath, Senate Print 7364, an act to amend the Real Property Tax Law and the Real Property Law, in relation to the taxation of converted condominium units.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: During the recess, the many merits of this bill were explained to me, and I would withdraw my objection.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 996, by Senator DiCarlo, Senate Print 5584, an act to amend the General Business Law, in relation to the sale and rental of films.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT KUHL: Senator DiCarlo, an explanation of Calendar Number 996 has been asked for by the Acting Minority Leader, Senator Onorato.

SENATOR GOLD: Thank you, Mr. President.

This bill amends the General Business Law to prohibit a library from lending an 'R' or 'NC' 17 or other similarly rated film to a minor unless the parent or guardian has consented in writing. The parent only has to consent once in person and then the library can keep that on file. A violation of this section is punishable by a civil penalty of not more

than $100.

This bill came about probably as most good legislation comes about by concerned constituents and concerned parents in my community. It was brought to my attention that our local libraries had on the shelves not just educational videos but they also had movies which are often seen in our local movie theatres.

The problem we have with that and the parents have with that is that the type of movie that is now on the shelves in a lot of the libraries in the state of New York are movies such as "Natural Born Killers", "Pulp Fiction" and other 'R' rated movies.

I was amazed to find out that there are absolutely no restrictions on children going into movie theatres -- going into libraries, rather, and bringing home 'R' rated movies. I find that intolerable. I find that wrong, and that's one of the reasons that this bill is before us today.

I don't usually -- or I like to

think that newspapers are often right, but I would just put on the record that the Times Union did an excellent editorial recently, and I'll read briefly from it. Quote, "The idea that some videos are not suitable for viewing by children is hardly radical. On the contrary. It is the height of common sense. Who really can argue with it? Do the librarians oppose this bill -- who oppose this bill think children should be able to walk into neighborhood libraries and borrow for two days movies depicting graphic sexual act, bestiality and so-called snuff films? Is that what the librarians would have us do in this Legislature?"

From the Daily Gazette in Schenectady, "In an attempt to be all things to all people, public libraries lately have been adding more movie videos to their collections, and they aren't just classics like Hamlet or animated Disney films for kids but 'R' rated titles. Even if one has no problem with libraries spending scarce money on such

materials, one should be concerned about policies that let underaged children borrow them without their parents' consent.

"A bill in both houses of the Legislature would require libraries to get parental approval before lending these movies to children under 17, and it deserves passage."

A quote also from this editorial, "Libraries are taxpayer-supported institutions. While the decision ultimately lies with parents, public policy ought to be that children shouldn't be watching such movies."

Now, this seems to be a very common sense piece of legislation. I don't understand why the Library Association of the state of New York is taking such a strong position opposed to this bill, but the bill makes sense. It's the right thing to do in this state, and let me also say that the taxpayers of the state of New York this year are funding the libraries in the state of New York to the tune of $81.4 million. The libraries in this state

have an obligation to the taxpayers and to the parents and to the children of the state of New York, and I would urge this bill's passage.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1092, by Senator Larkin, Senate Print 3065, an act to amend the Criminal Procedure Law, the Penal Law and the Family Court Act, in relation to making persons 12 to 15 years of age eligible for juvenile offender.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT KUHL: Senator Larkin, an explanation of Calendar Number 1092 has been asked for by the Acting Minority

Leader, Senator Stachowski.

SENATOR LARKIN: Mr. President, this bill adds burglary of a dwelling to the list of designated felony acts under the Family Court Act when the burglary is committed by a person of ages 12 to 15.

ACTING PRESIDENT KUHL: Senator Larkin, do you yield to a question from Senator Stachowski?

SENATOR STACHOWSKI: Actually, Catherine had a couple of questions. Could we hold this one for last?

ACTING PRESIDENT KUHL: Any problems with that, Senator Larkin?

(Senator Larkin shakes head.)

Lay the bill aside temporarily.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1151, by Senator Johnson, Senate Print 6353, an act to amend the Transportation Law, in relation to granting the Department of Transportation the power to assist certain employers.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 1151 has been asked for by Senator Stachowski.

SENATOR JOHNSON: The Clean Air Act bill that we passed in 1993 had a mandate for employer trip reduction programs for any employer of 100 or more people. That was included in there because it was a federal mandate, and we carried through on the state level. The federal government has eliminated that mandate, said if you want to do it, do it. If you don't, don't. So we're doing the same thing.

We're saying that the state shall be helpful. DEC, Economic Development, Motor Vehicles will cooperate and help any employers who would like to do a trip reduction program, car pooling program for their employees. It is not required to do so. This bill has an awful lot of support, including the Business Council, the Association of Counties, many other groups and individuals as well who find it inconvenient

or impossible to do.

I might say one of the interesting things about the program was that though the counties were mandated and the employees were mandated to file all their paperwork to show how they were going to do this, there was no real requirement that it ever be accomplished, and the amount of clean air reduction was very minimal, and the DEC has assured us that they can make up that small amount of air quality improvement in other ways without any particular imposition on any more businesses.

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yeah. Would Senator Johnson yield, please?

ACTING PRESIDENT KUHL: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr.

President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Thank you.

Senator, as I understand it - please tell me if I'm correct -- you're making voluntary a program that is now mandatory, is that correct?

SENATOR JOHNSON: That's correct.

SENATOR LEICHTER: And isn't the current program which is mandatory part of the efforts of the state of New York to meet federal clean air standards which in parts of New York State, as you know, are not in compliance with federal law?

SENATOR JOHNSON: That's correct.

SENATOR LEICHTER: And, therefore, Senator, would not your bill deter and impede New York State's compliance with federal law?

SENATOR JOHNSON: The federal law has changed. Therefore, we don't have this mandate from the federal government. Yes, we

still have other clean air standards to achieve, and I would say this, that -- you probably heard my explanation where everyone was required - the employees over 100 were required to file a plan. The counties were required to coordinate it, but there was no requirement that that plan's objectives ever be achieved and so, therefore, was no guarantee that there would be any particular saving.

In fact, Senator, you may find it intriguing when I explain to you that since our bill passed, more than 100,000 jobs have been lost in the Long Island/Westchester area and, therefore, there are many fewer cars on the road. So we've already achieved the nirvana in clean air.

SENATOR LEICHTER: Yes, Mr. President. If Senator Johnson would continue to yield.

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: The

Senator continues to yield.

SENATOR LEICHTER: Senator, it's your position that under recent amendments to the Clean Air Act, car pools could be voluntary. Do I understand you correctly?

SENATOR JOHNSON: Yes, of course. They have always been allowed to be voluntary, but what the bill does now, it says the county shall help an employer who wants to file a plan, help him do so, help show him how to do it, help him coordinate his plans. So the government will be active for people who would like to do it.

SENATOR LEICHTER: But, Senator Johnson, there's no requirement in the federal legislation that you make voluntary -- that you make mandatory programs voluntary. We're still free if we feel that in order to comply with clean air standards, that a program should be mandatory, that we can so require.

SENATOR JOHNSON: Senator, this particular provision of the federal law has been removed. There is no mandate to do trip

reductions.

SENATOR LEICHTER: Okay.

SENATOR JOHNSON: The DEC has said the small amount of reduction which may have resulted from this will be made up in other ways without any particular inconvenience. They will still be in accord with the clean air plan which they've filed and have to conform with.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I think Senator Johnson is correct that federal mandates have now been lifted, and we are free to convert some of these mandatory programs into voluntary programs. The question is do we wish to do that?

I mean, it's clear to me that there's no real incentive for employers to go to

the expense and the trouble of setting up a car pool system. So I don't believe a voluntary program is going to work, and I just want to point out that what we're dealing with is the health of New Yorkers.

We have a terrible problem in the city of New York, for instance, with asthma, people who are sick. People die of asthma. Their lives are seriously impaired. All of that is due to the serious problem we have in air quality that does not meet safe standards.

So we're saying that you've got to compel employers to do the right things. It's not a big burden. It's not a big expense, but it is a big benefit to the public, which is going to have better and cleaner air.

It's for that reason I just want to point out to you that the Environmental Planning Lobby or the Environmental Advocates as they now call themselves has come out against this bill.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: Yes, if I may. I'm going to be voting for this bill. The Environmental Advocates do advocate against this bill. However, we have seen -- and, of course, I do support the federal Clean Air Act Amendments of 1990 almost totally. However, this is a unique situation that causes extreme hardship and will cause extreme hardship in my county, Westchester County.

The Employee Commute Options Program which is in effect in the entire metropolitan area which, of course, includes Westchester County requires a reduction of 25 percent of the number of employees arriving at the corporate headquarters that are spread across Westchester County. There are other means to reduce the small amount of additional pollutants that would cause much less hardship. We figure that it would -- this alone is responsible for about one half of one percent of the pollutants, and we know at the state level that we will have to totally meet the mandate of the federal government, and we feel that there

are other ways to meet this one half of one percent reduction.

The fact is it is almost impossible to get our employees to the corporate headquarters coming from Putnam, coming from Columbia, coming from different parts of Westchester County. It seems almost impossible for them to get together to arrange joint commuting.

It poses such an extreme hardship that I feel the state will have -- will -- and after all it is under mandate -- to look for another way to meet this one half of one percent pollution without causing such extreme hardship to our businesses in Westchester County.

So I, for once, will be voting against the Environmental Advocates and for the businesses in Westchester who are simply having an impossible time trying to meet this particular mandate.

ACTING PRESIDENT KUHL: Senator Dollinger?

The Secretary will read the last

section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1151, Senators Abate, Connor, Dollinger, Goodman, Lachman, Leichter, Levy, Onorato, Paterson, Stachowski and Tully. Ayes 42, nays 11.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1210, by Senator Hoblock, Senate Print 6890, an act to amend the Election Law, in relation to special ballots.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT KUHL: Senator

Hoblock, an explanation of Calendar Number 1210 has been asked for by the Acting Minority Leader, Senator Stachowski.

SENATOR HOBLOCK: Mr. President, this bill adds a section to the Election Law which provides for the casting of a special ballot for persons who are victims of domestic violence.

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 53.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will call Calendar Number 1092.

THE SECRETARY: Calendar Number 1092, by Senator Larkin, Senate Print 3065, an act to amend the Criminal Procedure Law, the

Penal Law and the Family Court Act, in relation to making persons 12 to 15 years of age eligible for juvenile offender.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT KUHL: Senator Larkin, an explanation has been asked for by Senator Stachowski.

SENATOR LARKIN: Mr. President, this bill adds burglary of a dwelling to a list of designated felony acts. Currently, crimes considered in this category are murder in the first degree for age 13, kidnapping in the first degree, arson in the first, manslaughter, robbery in the first, robbery in the first with a deadly weapon, burglary second at age 14.

What we're trying to do here is to ensure that we can address an issue of crime, crime that every day we see in the newspapers, crime that the Attorney General said unless we act now to stop young people from choosing a life of crime, the beginning of the 21st Century will be a disaster.

Right now what we have in this

age group without being considered for a designated felony act, the Family Court may only punish the minor by designating juvenile, a person in need of supervision or by granting an ACD. What we want to do is to place something in (b) so we can address the crimes that are committed by individuals in this age group.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. Senator, would you yield to a question?

ACTING PRESIDENT KUHL: Senator Larkin, do you yield to Senator Abate?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: Thank you, Senator.

Am I correct in saying that right now if a juvenile is either 12 years old, they cannot be treated -- if a juvenile is 12 years old, they cannot be treated as an adult under

current law?

SENATOR LARKIN: That's right.

SENATOR ABATE: And if a juvenile is 13, the only way they could be prosecuted as an adult is if they're charged with murder?

SENATOR LARKIN: That's the way the current law reads, and then the other group that I read you were for the 14-year-olds.

SENATOR ABATE: Right. So what this law would do now is prosecute 12- and 13-year-olds for the crime of burglary as an adult.

SENATOR LARKIN: Yes.

SENATOR ABATE: There's the potential for a prosecutor to pursue those cases in Criminal Court.

SENATOR LARKIN: Senator Abate, if you read the bill, it very clearly states that they get three cracks at it before they're into this thing.

The first time -- there must be two prior offenses and upon the third occasion, the Family Court can address this under the

designated -

SENATOR ABATE: And when you say "two prior occasions", is that two prior arrests or two prior convictions?

SENATOR LARKIN: Convictions.

SENATOR ABATE: So placements.

SENATOR LARKIN: Yes.

SENATOR ABATE: That they have been placed.

SENATOR LARKIN: And on the third time, they can be placed in a Division for Youth facility.

SENATOR ABATE: So if someone has a prior -- no prior juvenile record and they're either 12 or 13, they could not be treated as an adult under your law.

SENATOR LARKIN: That's right.

SENATOR ABATE: Excuse me, Senator. Obviously, Senator, you know the bill better than I do, but I don't find the language in the bill that talks about two prior occurrences in the juvenile courts.

SENATOR LARKIN: In the Family

Court Act for designated felonies, and that's what we're following through on.

SENATOR ABATE: But is there anything in the bill that says that they have to have had two prior dispositions in Family Court before this legislation kicks in, because I didn't see anything.

SENATOR LARKIN: It's already in the law. We're adding this added procedure - or, excuse me -- part so that they will be treated at the third incident.

SENATOR ABATE: See, I'm not aware of any place in the law that says that this is -- the third time someone's before Family Court as a juvenile delinquent or a designated juvenile offender, that they would be treated as an adult the third time.

SENATOR LARKIN: Under the current law, there is the first and second incident, and the third incident is what we're looking for so that the Family Court can address them. Right now they can't.

SENATOR ABATE: But I guess if

you're referring to another statute that would allow the juvenile to now be treated as an adult the third time around, I just don't know where that statute is. I'm not familiar with that statute in law because as you said, there's nothing within this legislation that addresses that issue. You're referring to already existing law.

SENATOR LARKIN: Because all we're doing, Senator Abate, is taking these 12 to 15-year-olds in that category and adding to -- them to the existing ones that are there so that when the third offense occurs, the Family Court can interact and then place them.

SENATOR ABATE: Senator, I have to plead my ignorance. Do you know where in the law it says that after the third time -

SENATOR LARKIN: I don't have the section with me, but it's there. Believe me.

SENATOR ABATE: No. I do believe you. I'm just totally ignorant to that. So is that statute that already exists in law the third time around the prosecutor?

SENATOR LARKIN: The third part is the new part. They're going to be -- all we're doing is -- saying is this category, when that incident happens on the third time, we're giving the latitude to the judge and this individual fits into that category of the designation.

SENATOR ABATE: Right.

SENATOR LARKIN: And we're just adding to what is already in the Family Court and we're taking this into consideration. I wasn't at the Codes Committee, but when someone asked any questions, it was never discussed by the Codes. So I presumed that all the lawyers on the Codes Committee were quite familiar with this Family Court Act.

SENATOR ABATE: Senator, just a -- if you would yield.

ACTING PRESIDENT KUHL: Do you continue to yield, Senator Larkin?

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: Why is this bill limited to burglary? As you know, Senator Hoblock had a bill not so long ago that would allow the prosecution of juveniles as young as 11, 12 and 13 -- and there was an enumerated list of felonies. Why did you choose burglary and not robbery or assault or arson or murder? I mean, I guess why I ask that, because right now, if this passed -- and please correct me - if this passed, a 12- and 13-year-old could be prosecuted as an adult for burglary but they couldn't be prosecuted as a 12-year-old for murder, and that's -

SENATOR LARKIN: That's correct.

SENATOR ABATE: Why did you choose burglary and not murder?

SENATOR LARKIN: I did this last year, Senator Abate, and I did it based on what information was brought to me by law enforcement officials in my specific district, and I followed up on cases, and I talked to Family Court judges and they said the problem is that these young people, some of them are being used

by adults to break in, and what happens is we have no way of addressing this issue, and I just read you what the United States Attorney General said that if we don't address this with these young people, it's going to get worse.

What we're saying here is that these 12-year-olds, there is a selection for them, and we're also affording the Family Court judge an opportunity to address this which he doesn't have right now.

SENATOR ABATE: Thank you, Senator.

ACTING PRESIDENT KUHL: The Secretary will read the last -

SENATOR ABATE: On the bill, very briefly.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: I share your concern that we need to punish severely young people who commit heinous and violent crimes. I'm not sure that this bill in kind of a partial fashion addresses the issue.

I'm concerned that burglary is selected, and under the law of this -- if this became law, the very same individuals would be in Family Court for murder and would be treated as an adult if they were prosecuted for burglary. It doesn't seem that burglary is the kind of heinous -- it could be in certain circumstances, but I don't understand the selection of burglary when we're not even addressing the murder instance, and I happen to believe when you deal with 12- and 13-year-olds, we need to fashion solutions within Family Court that are tough. Maybe it means that juveniles need to be placed for longer periods of time. Maybe we have to evaluate the programs in DFY. Clearly, no one is suggesting that juveniles who commit these crimes should not be punished.

I do not think at a time when we're talking about all juvenile justice reform, we should take a piecemeal and what I think is a Band-Aid approach to juvenile justice, particularly when we're just throwing in one crime and not looking at a whole host of

solutions, reforms within Family Court and reforms in terms of programming.

There is a New York Times editorial also this week that compared similarly situated juveniles who committed the same crimes, and they looked at the recidivism rate for the juveniles who were treated as juveniles in Family Court and then compared to similarly situated juveniles who were treated as adults, and there are a number of studies, one in New Jersey, another in Florida where the recidivism rates for the juveniles who are treated as adults was much higher, and that's why we have to take a very close look at the benefits of prosecuting juveniles as young as 12 years old for burglary. We want them to be punished. I'm not convinced that the Family Court system cannot deal with them in a tough manner, place them for an extended period of time where they can get the resources and treatment perhaps to turn around their lives.

So I'm not sure, although I understand the intent -- the good intentions of

the author, that this is a bill to advance public safety. I believe it may have the opposite effect, and I think -- I urge this Legis... this chamber to really come forward with a whole package around juvenile justice reform and not be as selective as this piece of legislation.

So for the reasons I've enumerated, I cannot support the legislation today.

ACTING PRESIDENT KUHL: The Secretary will read the last -- Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. Would the sponsor yield for a question of clarification for me, please?

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Thank you.

Senator Larkin, in the support memo that I have with the legislation, it says that it's an act to amend the Criminal Procedure Law, Penal Law and Family Court Act, in relation to making persons 12 to 15 eligible for juvenile offender treatment for burglary of a dwelling. In other words, this makes them eligible for being tried as an adult for burglary without any other charges connected with it?

SENATOR LARKIN: Under the designation -- there will be listed in the same category -- as I just briefly said on the group of ages 13 and age 14, they will be into that category and then the Family Court judge will have the option -- he will have a latitude in dealing with that, the first offense, the second, the third one, and that will allow him to place them into a facility.

SENATOR MONTGOMERY: All right. Now, if you would continue to yield for another question I have.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MONTGOMERY: Thank you.

Senator Larkin, the DCJS has a recent report out giving us the crime statistics for the state, and I don't have it in front of me, but the level of violent felonies is going down dramatically across the state. There are a couple of regions where there's an increase, but by and large statewide, violent felonies -- or arrests for violent felonies have decreased. Where there is an increase, however, is in arrests for misdemeanors.

So I'm just wondering whether or not this law, if it's passed, making 12-year olds and up eligible for juvenile offender treatment, whether or not that will cause an escalation in -- in the trend of having more and more arrests of young children for essentially misdemeanors. I'm not implying that this is a misdemeanor, but certainly it just adds to that

pool of young people who will now be going into the criminal justice system and in this case, for a burglary, they are now being eligible to be tried as an adult.

SENATOR LARKIN: Senator Montgomery, two things: One, I think some of us took the guidance from the Attorney General of the United States, as I said before, when she said that if we don't address these issues now, we're going to pay a heavier price later, but here we are giving an opportunity for a 12-year-old to get some assistance and treatment in a Division for Youth facility. I can't speak for your neck of the woods, but I can speak from my area and as I said, I talked to law enforcement officers. They said one of the biggest problems with youthful individuals, gangs or acting separately is they get involved in a burglary of a house and then they're successful, and they know that there's no way that anyone is going to move in on them or do something with them.

What we're trying to do here is

two fold. We're trying to establish this so the Family Court judge can act responsible and maybe put this individual into a facility and treat him and get him back on the road to recovery rather than slap him on the wrist, turn him loose and let him continue to commit crime.

SENATOR MONTGOMERY: Now, if the Senator would continue to yield.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MONTGOMERY: Are we - it's my understanding that in the event -- what this bill will deal with is the Criminal Court decision, the prosecutor in Criminal Court. This is not -- we're not really talking about the Family Court judge, are we?

SENATOR LARKIN: We're talking Family Court, Senator.

SENATOR MONTGOMERY: The

prosecutor has the option of going into Criminal Court versus going into Family Court, is that - the prosecutor really is the person that makes the decision here.

SENATOR LARKIN: That's true, but if you -

SENATOR MONTGOMERY: And so once it goes into Criminal Court -

SENATOR LARKIN: What we're trying to do is give the judge some latitude in here and the prosecutor.

SENATOR MONTGOMERY: So you're giving the pros...

SENATOR LARKIN: What we're saying here is we have an element of crime that is not on the decrease. What you've read and what we've all read is that in certain types of crime there is a decrease, but there is no decrease in burglaries by juveniles, by this 12 to 15-year-old group, and what we're trying to do is to address this and give those who are making the decisions on the future of these young people some way that they can move

forward, address the issues and try to put somebody in a facility where they can be rehabilitated, and that's the whole purpose of this bill.

SENATOR MONTGOMERY: So, Senator, what we're doing is giving the prosecutor the option of making the decision to send a 12-year-old into the adult criminal justice system, into the adult prison system. That seems to be what we're giving the -

SENATOR LARKIN: Yes.

SENATOR MONTGOMERY: Okay. Now, Senator, the -- every report that I've read regarding juvenile -- problems with juveniles in relationship to the criminal justice system is that the big difference in whether or not we can turn them around is the extent to which they have supports such as counseling, job training and other -- other interventions which help them to change their behavior. So it's more behavior modification that is important to juveniles and which determines whether or not they will continue along the same path or whether or not

they will change their behavior and become productive citizens.

So you're sending them into the adult system which does not have the same kind of focus or support for them. So what is your prediction for the future? Obviously this is not what is going to make it possible -

SENATOR LARKIN: Senator, you made a great case for my bill because you said you want them to get treatment. You want them to do all of that which will rehabilitate them, and that's what the Division for Youth facilities are all about, and this individual would go into a Division for Youth facility instead of a state prison. You just enumerated all of the things that I believe are essential in addressing this issue and for them to go and be assigned to a Division for Youth facility where they have all of the facilities and makeup in order to try to rehabilitate the individual, and that's exactly what our purpose is.

SENATOR MONTGOMERY: On the bill -- on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: This really is a very troublesome piece of legislation because I think that what is missing here is the support of the state to rehabilitate young people or to habilitate them, and so while we move from the budget and from the department that is supposed to be dealing with these young people at a point before they become recidivists or repeat offenders or become habitual criminals of one sort or another, we are sending them into the system, treating them as adults, trying them as adults and treating them as if it's not ever possible to hope that they would have a future.

We've cut DFY services. We're closing DFY facilities. We are essentially turning away from any attempt to redirect the lives of troubled young people, and this really is a -- it's not only downstate, although that's where the majority of problem teens may be but certainly throughout this entire state, what we're saying to young people is that if you're

12 and up and you make a mistake, the state is going to treat you as if there was no hope for you as a person ever being a viable and productive citizen by virtue of the fact that we're going to support your changing your behavior by giving you treatment and counseling and other supports and opportunities.

So I think this is a bad bill. It makes a statement of hopelessness on our part for our young people. We should not be saying this but rather we should be saying that we are going to invest much more in young people so that hopefully they won't go into the criminal justice system. They won't become involved in this kind of behavior and certainly if they do, we're going to reach out to them very early, very quickly so that they will turn around because we have hope that they can and that they will do so.

So, Mr. President, for those reasons, I'm voting no against this bill.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Most of what I have said has been covered quite thoroughly by Senator Montgomery, but I just have one question if -

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

SENATOR LARKIN: I would be delighted, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you.

Senator Larkin, earlier -- I just wanted to clarify something. Earlier in conversation with Senator Abate, you said that although it doesn't exist in this bill, it exists in law that this would apply to the third offense for the youthful offender, and I just wanted to clarify that because I just cannot find anywhere in the law where it actually says that. So my concern, and I imagine yours as well would be that this would be applied on the

first offense to a 12-year-old.

SENATOR LARKIN: Mr. President - Senator Paterson, I don't have the book with me, but I'll be glad to send it down to you, but that's taken exactly from the book, and what we're saying is that when this individual reaches this point and the prosecutor does it and the court does it, they will have the opportunity, the judge will in his proceedings, to make the designation of what will happen to this individual. We've designated it so that he will have an opportunity. Today without the designation, he can put a person into a person in need of supervision, commonly referred to as PINS. Under PINS, we have never seen anything positive for a young person.

SENATOR PATERSON: Thank you, Mr. President.

I would certainly welcome any additional information that Senator Larkin might provide. I did look in the book. As a matter of fact, I was at the library a little while ago and I just didn't see it, and so I'm just saying

I think it affects the status of the legislation. Just one moment. Information is coming in as I speak.

Senator Gold lost his library card previously for using it and -- but I just wanted to point out that I think that that affects the real strength of the legislation, and if I'm wrong, I stand corrected. I'd like to vote against the bill feeling that I'm right, but if additional information disproves what I'm saying, then I certainly would like to have it made available.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I just think we're sending the wrong message to young people. I think that the biggest problem that people that run youth facilities tell us about is not their inability to correct the problems of younger people in the majority of cases. It's the recidivism that occurs when they go back to the same environments that were the

catalyst for their detainment in the first place.

There are a lot of young people, many of them that live in the communities that I represent and that Senator Montgomery represents, and if you knew them when they were eight, nine and ten, you really would know that they could go either way just depending on what their treatment is in terms of their families and schools and that kind of thing, and these are the values that we believe and these are the values of recovery, the values of rehabilitation.

It may have been lost as a concept in the last decade, but it really is something that does exist when there is a feeling that the young people are worth it, and for that reason, I would like to vote against the legislation.

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 7. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1092, Senators Abate, Connor, Gold, Leichter, Mendez, Montgomery, Paterson. Ayes 46, nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Leibell.

SENATOR LEIBELL: Mr. President, I would like to ask for unanimous consent to be recorded in the negative on Calendar 1151.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Leibell will be recorded in the negative on Calendar Number 1151.

Senator Paterson, why do you rise? Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President,

when I was out of the chamber at the library, I ran into a few people from the Motion Picture Association who, as I, can't understand why a - the government would take the proviso of an advisory committee and apply it as law without due process, and so for that reason, I would like to be recorded in the negative on Calendar Number 996.

ACTING PRESIDENT KUHL: Without objection.

(There was no response.)

Hearing no objection, Senator Paterson will be recorded in the negative on Calendar Number 996.

Senator Gold, why do you rise?

SENATOR GOLD: I was out of the chamber, but since they took my library card, I was in a different place. I would like to be recorded in the negative on 996.

ACTING PRESIDENT KUHL: Without objection.

(There was no response.)

Hearing no objection, Senator

Gold will be recorded in the negative on Calendar Number 996.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would also like unanimous consent to be recorded in the negative on Calendar 996.

ACTING PRESIDENT KUHL: Without objection.

(There was no response.)

Hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 996.

Senator Holland.

SENATOR HOLLAND: Housekeeping, Mr. President?

ACTING PRESIDENT KUHL: Yes, we do. We'll return to motions and resolutions.

The Chair recognizes Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Skelos, I wish to call up Calendar Number 1053, Assembly

Print Number 4728-B.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 1053, by Member of the Assembly Weprin, Assembly Bill 4728-B, an act to amend the Estates, Powers and Trusts Law.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this Assembly bill was substituted for Senate Print Number 3449-C on May 8th.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I now move that Assembly Bill

Number 4728-B be committed to the Committee on Rules and that the Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT KUHL: The Assembly bill is recommitted. The Senate bill is restored to third reading.

SENATOR LIBOUS: Mr. President, I offer up the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Hoblock, on page 64, I offer the following amendments to Calendar Number 1161, Senate Print Number 7083, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 1161 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President,

on behalf of Senator Rath, on page 48, I offer the following amendments to Calendar Number 1014, Senate Print Number 7150, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 1014 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of myself, on page 74, I offer the following amendments to Calendar Number 364, Senate Print Number 4440-A, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Libous.

SENATOR LIBOUS: On behalf of Senator Levy, on page 63, I offer -

SENATOR HOLLAND: Mr. President.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: I just want to make an announcement so nobody leaves. There will be an immediate conference of the Majority following adjournment today.

ACTING PRESIDENT KUHL: Senator Libous to continue on motions and resolutions.

SENATOR LIBOUS: As I said, on behalf of Senator Levy, on page 63, I offer the following amendments to Calendar Number 1155, Senate Print Number 6742, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments are received and adopted. The bill will retain its place.

SENATOR LIBOUS: On behalf of Senator Tully, on page 7, I offer the following amendments to Calendar Number 306, Senate Print Number 4578-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The

amendments are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Wright, on page 46, I offer the following amendments to Calendar Number 1005, Senate Print Number 6629, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar 1005 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Holland.

SENATOR HOLLAND: Again, Mr. President, there will be an immediate meeting of the Majority Conference following adjournment, and there being no further business, I move we adjourn until Tuesday, May 28th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Majority

Conference in the Majority Conference Room, Room 332. An immediate meeting of the Majority Conference in the Majority Conference Room, Room 332, and without objection, the Senate stands adjourned until Tuesday, March -- excuse me - May 28th at 3:00 p.m.

(Whereupon, at 1:50 p.m., the Senate adjourned.)