ALBANY, NEW YORK

June 4, 1996

10:05 a.m.

REGULAR SESSION

SENATOR JOHN A. DeFRANCISCO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT DeFRANCISCO: The Senate will come to order. Would you please rise and repeat with me the Pledge of Allegiance.

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

The invocation today will be given by Reverend Pat Bumgardner from the Metropolitan Community Church of New York City from the 30th Senatorial District.

REVEREND PAT BUMGARDNER: Let us pray.

O God, we come before You this morning, Your servants, called out to act justly and love tenderly and walk humbly in Your presence, and we seek in this moment the blessing of Your holy spirit, that the words we utter today and the decisions we make might truly honor our call.

Give us all the courage in these times of growing homophobia and racism and intolerance for differing religious traditions

and practices and beliefs to stand true to Your vision of just and equal accord and protection and care for all Your children.

Give us the courage and conviction necessary to be bold in speaking and acting, to legislatively protect and care for all people, all domestic relationships, all children, all families, including those of our lesbian, gay, bisexual and transgender constituents. Give us courage always to speak against violence and act for just and right relationships among all groups.

We make this prayer this morning trusting in Your power alone and in the name of all that is good and holy. Amen.

ACTING PRESIDENT DeFRANCISCO: Reading of the Journal.

THE SECRETARY: In Senate, Monday, June 3rd. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Sunday, June 2nd, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Tully.

SENATOR TULLY: Yes, Mr. President. On behalf of Senator Lack, I wish to call up his bill, Print Number 6301, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT DeFRANCISCO: The Secretary will read.

THE SECRETARY: Calendar Number 570, by Senator Lack, Senate Print 6301, an act in relation to granting the Department of Transportation.

SENATOR TULLY: Mr. President, I

now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT DeFRANCISCO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 33.

SENATOR TULLY: Mr. President, I now offer the following amendments.

ACTING PRESIDENT DeFRANCISCO: The amendments are received.

Senator Tully.

SENATOR TULLY: Yes, Mr. President. On behalf of Senator Stafford, on page 43, I offer the following amendments to Calendar Number 1148, Senate Print Number 5549 and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT DeFRANCISCO: The amendments are received.

Senator Wright.

SENATOR WRIGHT: Mr. President, on behalf of Senator Hoblock, please place a

sponsor's star on Calendar Number 887.

ACTING PRESIDENT DeFRANCISCO: The sponsor's star is so placed.

SENATOR WRIGHT: On behalf of Senator Maziarz, please remove the sponsor's star from Calendar Number 833.

ACTING PRESIDENT DeFRANCISCO: The sponsor's star is so removed.

SENATOR WRIGHT: And on behalf of Senator Libous, please remove the sponsor's stars from Calendar Numbers 191, 336, 348, 364, 714 and 757.

ACTING PRESIDENT DeFRANCISCO: The sponsor's stars on those calendar numbers are removed.

SENATOR WRIGHT: Senator Libous thanks you.

ACTING PRESIDENT DeFRANCISCO: And I'm appreciative of all of his work.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe that there is a privileged resolution at the desk by Senator DeFrancisco. I would ask

that the title be read and that we move for its immediate adoption.

ACTING PRESIDENT DeFRANCISCO: The Secretary will -- the Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution honoring Vera House, Incorporated of Syracuse, New York, an agency that works to end domestic violence on the occasion of the kick-off of its White Ribbon campaign which will run June 8 through 16, 1996.

ACTING PRESIDENT HOBLOCK: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. I'd like to speak briefly on the resolution.

The reason why I'm wearing the white ribbon is that an organization that seeks to prevent and assist women who have been victims of domestic violence, the Vera House in Syracuse, started a White Ribbon campaign and that White Ribbon campaign is a campaign where generally men but also women wear white ribbons in order to emphasize the importance of

eradicating this sickness in our community known as domestic violence.

This White Ribbon campaign actually started in Canada in 1990, when a male college student killed 14 women, and it was an outrage in that community, and the men began wearing white ribbons to protest that activity and to bring awareness to the rest of the community about the importance of eradicating domestic violence.

I have provided a white ribbon for each of the Senators, and the period of time when these white ribbons will be worn in central New York and hopefully now throughout the state is June 8th through June 16th, and I would appreciate all of you participating in this very worthwhile cause.

Thank you.

ACTING PRESIDENT HOBLOCK: Thank you, Senator DeFrancisco.

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 Paterson, did you have comments, sir?

SENATOR PATERSON: No. I just wanted to congratulate Senator DeFrancisco for working on this subject of domestic violence which more and more we're finding is entrenched in our society, an incident that occurs every 15 seconds that affects three to four million women a year. Ten deaths of women a day contribute to domestic violence, and the staggering statistic that we who in New York City learn, that 20 to 25 percent of all public hospital emergency room treatments are interventions related to domestic violence.

There was a statement recently that welfare causes domestic violence. It really is quite the opposite. The fact is that the women who are injured, 20 percent of them lose their jobs. 3- to $5 billion a year are

estimated in labor costs related to domestic violence, and the fact is that unfortunately many of those women lose their jobs and lose their careers and opportunities because of this menace that will really envelop all of our society because children are affected. Children who have witnessed domestic violence are more susceptible to becoming part of those actions themselves and also the accompanying vices of substance abuse, violent crime, juvenile delinquency and suicide.

So this is an important week, and I'm very happy that Senator DeFrancisco has involved all of us, and we probably need to be looking into this issue in our own districts in our own ways, but hopefully to bring the statistics down and to improve the quality of life for men and women who live in our society.

ACTING PRESIDENT HOBLOCK: Thank you, Senator Paterson and thank you, Senator DeFrancisco.

The resolution is adopted.

Senator Bruno, are you ready for

the calendar?

SENATOR BRUNO: Mr. President, I believe there is a privileged resolution at the desk by Senator Connor. I would ask that the title be read and that we move for its immediate adoption.

ACTING PRESIDENT HOBLOCK: The Secretary will read.

THE SECRETARY: By Senator Connor, Legislative Resolution commemorating the Inaugural National Puerto Rican Day Parade to be held in New York City on June 9, 1996.

ACTING PRESIDENT HOBLOCK: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the non controversial calendar.

ACTING PRESIDENT HOBLOCK: The Secretary will read.

THE SECRETARY: On page 7, Calendar Number 306, by Senator Tully, Senate Print 4578-B, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 2.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay it aside.

THE SECRETARY: Calendar Number 331, by Senator Volker, Senate Print 4588, an act to amend the Penal Law, in relation to issuance of licenses.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT HOBLOCK: Lay it aside.

THE SECRETARY: Calendar Number 347, by Senator Skelos, Senate Print 653-A, an act to amend the Public Health Law.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT HOBLOCK: Lay it aside.

THE SECRETARY: Calendar Number 380, by Senator Saland, Senate Print 2784-A, an act to amend the Social Services Law, in relation to eligibility.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 36.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 496, by Senator Gold, Senate Print 2978-A, an act to amend the Election Law, in relation to allowing a child.

SENATOR VELELLA: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 538, by Senator Velella, Senate Print 5766-C, an act to amend the Insurance Law and the Vehicle and Traffic Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 36, nays 1, Senator Wright recorded in the negative.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 609, by Senator Maltese, Senate Print 447-A, an act to amend the Penal Law, in relation to creating the crime of placing a false bomb.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 626, by Senator Levy, Senate Print 391, an act to amend the Transportation Law, in relation to establishing a task force.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 744, by Senator Levy, Senate Print 1386, an act to amend the Real Property Tax Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

SENATOR BRUNO: Mr. President, would you star that bill at the request of the sponsor.

ACTING PRESIDENT HOBLOCK: The bill is starred at the request of the sponsor.

THE SECRETARY: Calendar Number 758, by Senator Sears, Senate Print 7193-A, an act to amend the General Business Law, in relation to the disclosure of motor vehicle registration costs.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 825, by Senator Velella, Senate Print 3458-A, an act to amend the Transportation Law, in relation to the application of Article IX of such law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 843, by Senator Levy, Senate Print 7310, an act to amend the Vehicle and Traffic Law, in relation to restricting the weights of certain vehicles.

ACTING PRESIDENT HOBLOCK: Read

the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 874, by Senator Padavan, Senate Print 2529 -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 882, by Senator LaValle, Senate Print 2790, an act to amend the Executive Law, in relation to population requirements.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 888, by Senator Saland, Senate Print 6055-A -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 922, by Senator LaValle, Senate Print 7237, an act to repeal Paragraph C of Subdivision (2).

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 945, by Senator Rath, Senate Print 7368-A, an act to amend the Village Law, in relation to propositions.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 971, by Senator Trunzo, Senate Print 6714, an act to amend the Civil Service Law, in relation to designation.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 982, by Senator Wright, Senate Print 7320, an act to amend the Education Law and the Mental Hygiene Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 5. This act shall take effect September 1.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 990, by Senator Wright, Senate Print 6769-A, an

act to amend Chapter 812 of the Laws of 1987.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1009, by Senator Maziarz -

SENATOR MAZIARZ: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 1022, by the Assembly Committee on Rules, Assembly Print 10508, an act legalizing, certifying and confirming the acts of St. Johnsville.

ACTING PRESIDENT HOBLOCK: Read

the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1069, by Senator Maziarz, Senate Print 7432 -

SENATOR MAZIARZ: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 1078, by Senator Goodman, Senate Print 6459, an act to amend the Public Buildings Law, in relation to deleting the value limitation.

SENATOR PATERSON: Lay the bill aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1090, by Senator Sears, Senate Print 1396-B, an act to amend the Penal Law, in relation to authorizing counties.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1121, by Senator Hoblock, Senate Print 6309-A, an act to amend the Criminal Procedure Law and the Family Court Act.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1125, by Senator Levy, Senate Print 329, an act to amend the Vehicle and Traffic Law, in relation to pedestrians' right of way in crosswalks.

SENATOR LEICHTER: Lay the bill aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1127, by Senator Levy, Senate Print 339-A, an act to amend the Transportation Law, in relation to expanding the definition.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Excuse me. On Calendar 1127, ayes 43, nays 1, Senator Wright recorded in the negative.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1139, by Senator Kuhl, Senate Print 3534, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1142, by Senator Levy, Senate Print 4050-B, an act to amend -- an act to amend the Highway Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

Senator Farley.

SENATOR FARLEY: I would like to be recorded in the negative on 1127.

ACTING PRESIDENT HOBLOCK: Without objection, Senator Farley will be recorded in the negative on Calendar Number 1127.

The Secretary will read.

THE SECRETARY: Calendar Number 1143, by Senator Levy, Senate Print 4118-A, an act to amend the Public Authorities Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1145, Senator Farley, Senate Print 4542, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1150, by Senator Goodman, Senate Print 5838-B, an act to amend the Vehicle and Traffic Law, in relation to restricting.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1154, by Senator Velella, Senate Print 6497, an act to amend the Vehicle and Traffic Law, in relation to reports.

SENATOR VELELLA: Lay the bill

aside.

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

THE SECRETARY: Calendar Number 1156, by Senator Levy, Senate Print 6743, an act to amend the Vehicle and Traffic Law, in relation to the imposition of fines.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45, nays 1, Senator Kuhl recorded in the negative.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1157, by Senator Marchi, Senate Print 6817-A, an act to amend the Vehicle and Traffic Law, in relation to providing for a distinctive "Foreign

Organization" license plate.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45, nays 1, Senator Tully recorded in the negative.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1158, by Senator Lack, Senate Print 6844, an act to amend the Public Authorities Law, in relation to authorizing and requiring.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, may I have unanimous consent to be recorded in the negative on Number 1157 as well?

ACTING PRESIDENT HOBLOCK: Without objection, Senator Dollinger to be recorded in the negative on Calendar 1157.

Senator Gold, did you want to be recorded on that as well?

SENATOR GOLD: No, no. I was just helping.

ACTING PRESIDENT HOBLOCK: Oh, all right.

The Secretary will read.

THE SECRETARY: Calendar Number 1159, Senator Levy, Senate Print 6875, an act to amend the Vehicle and Traffic Law and the Public Authorities Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 30 days.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1160, by Senator Levy, Senate Print 6905, an act to amend the Vehicle and Traffic Law, in relation to the seizure of license plates.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1172, by Senator Holland, Senate Print 7025, an act to amend Chapter 942 of the Laws of 1983.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1179, by Senator Marchi, Senate Print 4431-A, an act to amend the Public Authorities Law, in relation to the general powers.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1185, by Senator Marchi, Senate Print 6617, an act to amend the Business Corporation Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1189, by Senator Marcellino, Senate Print 7133, an act to amend the Public Authorities Law, in relation to exempting information.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay

the bill aside.

THE SECRETARY: Calendar Number 1191, by Senator Larkin, Senate Print 6457, an act to amend the Banking Law, in relation to the sale of joint credit.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1197, by Senator Maltese, Senate Print 3085, an act to repeal Subdivision 9 of Section 14-114 of the Election Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1204, by Member of the Assembly McEneny, Assembly Print 4695, an act to amend the Election Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1228, by Senator Stafford, Senate Print 612, an act to amend the Environmental Conservation Law,

in relation to the siting.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1229, by Senator Larkin, Senate Print 935-A, an act to amend the Navigation Law, in relation to liability.

ACTING PRESIDENT HOBLOCK: Read -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1230, by Senator Hoblock, Senate Print 1633, an act authorizing the city of Albany.

ACTING PRESIDENT HOBLOCK: A home rule message is at the desk. Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1231, by Senator Nozzolio, Senate Print 1999, an act to amend the General City Law, in relation to excluding the city of Auburn.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1232, by Senator Larkin, Senate Print 4254-A, an act to authorize the town of Cornwall.

ACTING PRESIDENT HOBLOCK: A home rule message is at the desk. Read the last

section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1234, by Member of the Assembly Colman, Assembly Print 8464, an act in relation to discontinuing the Spring Valley Toll Plaza.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1236, by Senator Larkin, Senate Print 6503-A, an act to authorize the town of Blooming Grove, Orange County.

ACTING PRESIDENT HOBLOCK: The home rule message is at the desk. Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1237, by Senator Saland, Senate Print 6762-A, an act in relation to legalizing and validating the adoption of a bond resolution.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll. The home rule message is at the desk.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number

1238, by Senator Velella, Senate Print 6959-A, an act authorizing the commissioner of General Services.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section -

SENATOR PATERSON: Party vote in the negative, Mr. President.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

Senator Bruno.

SENATOR BRUNO: Party vote in the affirmative.

SENATOR VELELLA: Mr. President, I believe on that vote, that bill requires a three-quarters majority since -- two-thirds - I'm sorry -- two-thirds majority. Since we've now obtained the necessary votes on the other side of the aisle, I move to put the bill on the table -- lay the bill on the table.

SENATOR VELELLA: Mr. President -- can we lay that bill aside, Mr. President?

ACTING PRESIDENT HOBLOCK:

Senator Velella, I have been informed by the desk that this bill does not require a two-thirds vote, so we can record the party vote.

SENATOR VELELLA: Thank you, Mr. President.

ACTING PRESIDENT HOBLOCK: We're going to confirm that, so we're going to lay the bill aside temporarily.

SENATOR VELELLA: Thank you.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative on Calendar 1157, please.

ACTING PRESIDENT HOBLOCK: Without objection, Senator Leichter will be recorded in the negative on Calendar 1157.

ACTING PRESIDENT HOBLOCK: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to motions and

resolutions, and I would move the adoption of the Resolution Calendar.

ACTING PRESIDENT HOBLOCK: The Secretary will read -- oh. All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno -- Senator Gold, why do you rise?

SENATOR GOLD: Yeah. May I please have unanimous consent to be recorded in the negative on 1157.

ACTING PRESIDENT HOBLOCK: Without objection, Senator Gold will be recorded in the negative on Calendar 1157.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the controversial calendar.

ACTING PRESIDENT HOBLOCK: The Secretary will read.

THE SECRETARY: On page 7, Calendar Number 306, by Senator Tully, Senate Print 4578-B, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation has been asked for, Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

This is an agreed upon bill sponsored by -- in the Assembly by Assemblyman David Gantt and, Mr. President, it is a true bipartisan bill in the spirit of the comments of my college, Senator Marcellino, yesterday when he was speaking of the breast cancer pesticide bill and referred to the Declaration of Independence and the Bill of Rights as being documents that were framed in the spirit of bipartisanship as this bill is, Mr. President, because it was before this house earlier in the year, and it passed by the vote of 54 to 6 with

several members of the Minority objecting to certain portions of the bill.

Now, as has often happened in this house, some of the comments from members are very lucid and they help to better a bill. They help to temper it in the true spirit of having a stronger piece of legislation.

On that particular occasion, recommendations were made by Senator Paterson with respect to authorizing conditional licenses for work, school and medical reasons, and that was included in this amended version.

Recommendations were made by Senator Abate with respect to authorizing the cleanup of graffiti via community service, and that was included in this amended bill, and also Senator Onorato who voted for the bill but made a recommendation regarding the removal of driving privileges regardless of age were included and incorporated into this amended version. So we have a truly bipartisan bill, and I appreciate the comments of my colleagues.

This bill does prohibit the

issuance of a driver's license to certain minors and young adults for one year from the time at which they are convicted of making graffiti which currently, Mr. President, is a misdemeanor but very few people are ever given that punishment of up to a year in jail. This, we think, would help to prevent this scourge on our society.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

On the -- on the bill.

ACTING PRESIDENT HOBLOCK: On the bill.

SENATOR PATERSON: I certainly, along with the other members of the Major... the Minority who -- must have been a Freudian slip, Mr. President -- would like to thank Senator Tully for re-examining this bill and for negotiating it, and since I was the one who raised the objection to certain types of negotiations, I was trying to point out

yesterday that there is a difference between compromise in the sense of legislation and apportionment and distribution of resources and then the compromise of principles, and I did not think or would I ever be in favor of those who even with whom I disagree to actually compromise their values with a gun to their head just to pass certain types of legislation.

Now, in this case, this is an area where compromise is quite valid. However, still there are a few of us that feel that the punishment doesn't really relate to the crime, that actually the individuals would be better enhanced in their punitive service, in some kind of public variety of service or some area that they can give back to the community or perhaps spend time cleaning graffiti off the walls of the subways, of the areas that they actually inflicted this damage.

We don't feel that -- relating it to a driver's license, which many of the individuals who would commit the crimes don't have a driver's license, setting up almost a

situation where you are at greater risk if you have a driver's license when you commit this crime. We don't feel that it would be reasonable that the individual who would be committing the crime of defacing or defiling property in the form of graffiti would at the time of the offense even be aware that they would perhaps lose their driver's license.

Now, although knowledge is not a prerequisite to any kind of -- although the knowledge of what -- the full effects is certainly no excuse for defacing property, at the same time, it is remote to the actual crime that the individual be penalized in this particular way. If anything, just a straight sentence or fine or some kind of community service or an act of having to clean greater than the -- than the damage that was actually caused, we feel would be a better solution, but we are quite pleased that a number of our colleagues were willing to take some of the discussion that occurred earlier in the session pertaining to this legislation and used it in

reassessing what the public policy of the bill is and actually using some of that information in redrafting the bill.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45, nays 2, Senators Connor and Paterson recorded in the negative.

ACTING PRESIDENT HOBLOCK: The bill is passed.

Senator Lachman, did you want to explain your vote on that bill?

SENATOR LACHMAN: Yes.

ACTING PRESIDENT HOBLOCK: I apologize. I didn't see you before.

SENATOR LACHMAN: Thank you, Mr. Chairman.

I was one of the six in the Minority that voted against the bill initially, and I wanted to echo the remarks of Senator Paterson. In the spirit of compromise and conciliation, my colleagues have changed the bill and not completely to the extent that I want but sufficiently for me to vote in the "A".

Thank you.

ACTING PRESIDENT HOBLOCK: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 331, by Senator Volker, Senate Print 4588, an act to amend the Penal Law, in relation to the issuance of licenses.

SENATOR PATERSON: Explanation.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Volker.

SENATOR VOLKER: Mr. President, this is a bill that's passed this house -- in fact, it passed the house last year by a vote, I

believe of 37 to 21, and it's passed this house on several occasions -- that would change the system of pistol licensing in this state to make licensed handguns available to persons who have a clean, moral, criminal and mental record. It's called a proper cause bill because, in effect, what it does is to reverse the process now which many people believe has not truly worked, and that is it would create the presumption that a person has a clean, moral and criminal record and, obviously, we would still have fingerprinting and things of that nature to make sure that that is correct, and once that is shown to be correct, then the person is entitled to a license barring some other problem that comes up as to the character of the person, and that is the bill.

SENATOR PATERSON: And that is a fine explanation, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: On the bill.

ACTING PRESIDENT HOBLOCK:

Senator Paterson, on the bill.

SENATOR PATERSON: The change in this legislation, according to a memo that we received from New York City, would triple the number of handguns in New York City.

In the last year, the murder rate has gone down 25 percent, and the mayor is really interested in keeping as many guns off the street as possible. We do not want to have anyone infer from this discussion that the proliferation of these licensed weapons would in any way increase the crime rate. However, New York City feels that it has a right to govern in the area of licensing within its jurisdiction and we heartily agree.

There is certainly the understanding that might be reached that could change people's minds that the actual legislation, if passed, would take a lot of licenses and grandfather them in, which are right now just ownership licenses and are really just licenses for commercial use. What we would then have is no challenge to these licenses.

They would immediately convert to carry licenses without any investigation.

This bill creates a rebuttable presumption that there is good moral character on the part of an individual who applies for the license that would have to be proved to the contrary, but in order to discredit the individual, we would get no opportunity to challenge any of those licenses that would already have been grandfathered in.

So we still feel that, although this is a bill that would affect the state entirely, that individual localities would probably be more apt and probably be more appropriate to determine where the license would come from and what the threshold would be in order to gain a license.

ACTING PRESIDENT HOBLOCK: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I voted against this bill before, and I intend to vote against it again today because it affects the concealment of a weapon provision

under state law, as least as I read it, and the sponsor can perhaps correct me if I'm wrong, but what this allows is -- we currently have a provision that says if you want to carry a concealed weapon -- and it says "without regard to employment or place of possession" -- it means you can carry it anywhere you want to in this state -- it says, "currently by any person when proper cause exists for the issuance thereof." Proper cause -- the burden is now on the applicant to show proper cause to carry a concealed weapon without regard to place and without regard to occupation.

What this bill would do is say proper cause would be presumed in instances in which you would shift the burden of the government to show that improper cause or lack of sufficient cause exists.

It seems to me we have a broad provision in this state that allows people to carry concealed weapons in certain instances when it is based on the place of the -- in which you carry it or their occupation. We have an

extensive law that provides that now without a showing of cause. Simply show the place, show the location and you can carry a concealed pistol if you meet those criteria.

Here what I think we're doing is we're giving basically a carte blanche to people that carry consistent -- concealed weapons, concealed pistols, and I think under those instances to simply ask that you have some proper cause, that you demonstrate your competence to carry it, that you demonstrate your understanding of fire safety or whatever else is required to show proper cause, it seems to me that's a minor restriction, a minor burden that we put on the backs of those who want to carry consistent -- concealed permits or concealed pistols, and it seems to me that that's a good idea to keep that provision and not broaden it as the chairman of the Codes Committee wants to do.

Carrying a concealed weapon has all -- is fraught with all kinds of dangers, all kinds of potentials. Many responsible gun

owners, I'm sure they're not a problem, but I'm concerned about broadening the standard under which concealed weapons will be carried in this state.

I think we struck a reasonable balance when we put this provision in the statute in the first place. We ought to maintain that balance now and, therefore, I will be voting in the negative, Mr. President.

ACTING PRESIDENT HOBLOCK: Read the last -- read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 331 are Senators Abate, Babbush, Connor, Dollinger, Gold, Goodman, Kruger, Lachman, Leichter, Marchi, Markowitz, Mendez, Montgomery, Onorato, Oppenheimer, Paterson, Seabrook, Smith and

Waldon. Ayes 34, nays 19.

ACTING PRESIDENT HOBLOCK: The bill is passed.

Senator Waldon.

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

I respectfully respect unanimous consent to be recorded in the negative on Calendar 306.

ACTING PRESIDENT HOBLOCK: Without objection, Senator Waldon will be recorded in the negative on Calendar Number 306.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT HOBLOCK: The Secretary will read.

THE SECRETARY: Calendar Number 347, by Senator Skelos, Senate Print 653-A, an act to amend the Public Health Law, the Criminal Procedure Law and the Family Court Act.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation has been asked for, Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President.

The purpose of this legislation is to provide police officers and peace officers with a method of discovering whether they have been exposed to a transmissible disease during the performance of their duties without jeopardizing the confidentiality of the suspected carrier's medical condition.

This bill requires the police or peace officer to apply to the court for the defendant to be tested for certain diseases which the officer can show probable cause that he or she may have been exposed.

As we know, police officers are -- continually come in contact with persons who engage in conduct which is likely to often cause them to be a carrier of a transmissible disease. There are treatments which are available after exposure to certain diseases which can prevent them from developing into full blown diseases, many diseases like hepatitis B and TB can be avoided even after exposure by

quick treatment. Therefore, it's imperative to be able to ascertain such information to ensure quick treatment. A lengthy process adversely affects the individual and his or her family along with the morale of the entire department in the case of a police department.

This legislation is supported by the Nassau County PBA, the Nassau County -- New York City PBA, Nassau County PBA, Police Conference of New York.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter -- I'm sorry.

SENATOR LEICHTER: I'll yield to you, Senator Waldon.

ACTING PRESIDENT HOBLOCK: Senator Waldon.

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

Would the gentleman yield to a question?

ACTING PRESIDENT HOBLOCK:

Senator Skelos, do you yield?

SENATOR SKELOS: Yes.

SENATOR WALDON: Senator, in this procedure that you wish to have implemented regarding the police, is there any medical intervention, or is it just the guesstimate of the cop on the scene?

SENATOR SKELOS: Is there what?

SENATOR WALDON: I said is there any intervention by a medical practitioner in this process, or is it just the best guesstimate of the cop or cops on the scene?

SENATOR SKELOS: The judge -- the police officer or peace officer who either arrests or detains an individual or if the person is incarcerated will make an application to the court and would have to show probable cause that the person that they feel that may have exposed them to a transmissible disease is possibly carrying that disease. So they have to go to probable cause and, as you know, that is a very high standard in our judicial system.

SENATOR WALDON: If I may

continue, Mr. President. Would the gentleman -

ACTING PRESIDENT HOBLOCK:

Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

SENATOR WALDON: I'm not sure about the high standard in the judicial system. I know that on the street, an officer, if he has probable cause -- which means that from his training and from his apprehension of the surroundings around him -- if he suspects that someone has committed or is about to commit a crime, he can stop that person, intervene, make certain -- cause certain questions to be asked and if he feels necessary, arrest the person. That is the standard of probable cause, as I understand it, but I'm more concerned about whether or not in the application to the court, is there a doctor in the house? Does someone other than the police officer say, Well, you know, my training at the Academy tells me and my 15 years on the street tells me that this person may have this disease or certain diseases? Is there any medical intervention prerequisite to

the application to the court for this process?

SENATOR SKELOS: That would be up to the court.

SENATOR WALDON: Is that a no? There's no -

SENATOR SKELOS: No. I said that would be up to the court, and the petitioner's requirement -- or application would have to show probable cause. If the court determines that they would like to have medical testimony, then they could have the medical testimony.

SENATOR WALDON: If I may continue, Mr. President.

SENATOR SKELOS: May I point out that this is also an in-camera proceeding. It's confidential.

SENATOR WALDON: I understand that.

Thank you.

Mr. President, would the gentleman -

ACTING PRESIDENT HOBLOCK: Senator Waldon.

SENATOR WALDON: -- would the gentleman continue to yield?

ACTING PRESIDENT HOBLOCK: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes, Mr. President.

SENATOR WALDON: Senator, I appreciate your indulging my questions, but I think what you said to me is that prior to going to the court, it is just the best guesstimate - and pardon the phraseology -- it's the most professional guess or estimate of the police officer which determines that he goes to the court. There's no prerequisite prior to entering the court that he establish prima facie, if you want to call it that, probable cause, if you want to call it that, reasonable suspicion, if you want to call it that, about a disease being carried by the person arrested or being incarcerated. That is clear, is it not?

SENATOR SKELOS: The standard is probable cause. If you're a police officer and you feel that you have been exposed to a

transmission -- transmissible disease under certain conditions, then you have the right to make an application to the court, and if they feel that there is probable cause to believe that you have been exposed to a transmissible disease, they could then order that that person be tested for a transmissible disease.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Senator, that wasn't responsive to my question. What I really asked -- and I'll be as simplistic -- I know sometimes I'm convoluted -

SENATOR SKELOS: We could differ, Senator Waldon. I mean, I'm going to respond as I wish to respond. You may not like the answer, but I'm going to respond as I wish to respond to your questions.

SENATOR WALDON: I don't know if -- are we having a colloquy? That's fine with

me.

ACTING PRESIDENT HOBLOCK: Senator Waldon, you have the floor right now. You've asked Senator Skelos to yield.

SENATOR WALDON: I would like to ask another question of the Senator.

ACTING PRESIDENT HOBLOCK: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes, Mr. President.

SENATOR WALDON: Not to preamble too much, Senator, but with all due respect to you as a Senator in this chamber and to the process in terms of our dialogue and debate on the floor, it has been my expectation and my history here that most people have really tried to respond to the questions as put, but let's move on.

SENATOR SKELOS: If I could respond to that, Mr. President. I believe that I can respond -- or any sponsor can respond to a question the way they think best answers the question, but great minds like yours and mine

can disagree, obviously as to the question and to the response.

SENATOR WALDON: I appreciate the stroking, Senator, but may I continue, Mr. President?

ACTING PRESIDENT HOBLOCK: Senator Waldon.

SENATOR WALDON: This will be about the last question.

ACTING PRESIDENT HOBLOCK: Senator Waldon, do you continue to ask questions?

SENATOR WALDON: Would the gentleman continue to yield?

ACTING PRESIDENT HOBLOCK: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes, Mr. President.

SENATOR WALDON: Senator, are you, in fact, creating a new standard in evidence; because heretofore, I have never, ever heard of probable cause utilized in the fashion that you're characterizing in your proposal. It

has always been, in my understanding -- and counsel can correct me, my learned friend who went to law school with me and who was the actual magister of our fraternity and I'll accept what Richie says, but you can tell me whether or not this is a new standard, meaning that we're now going to have probable cause in a situation that does not lead to an arrest.

SENATOR SKELOS: The issue of probable cause is not a new standard. That's - exists in our jurisprudence system here in New York state and this country for many years.

SENATOR WALDON: Thank you very much, Senator.

Mr. President, on the bill.

ACTING PRESIDENT HOBLOCK: Senator Waldon, on the bill.

SENATOR WALDON: Senator Skelos and I have debated each other on a number of times and we've done TV shows together that were quite, I think, challenging in terms of the TV audience, but today I think we found a way to dance as we've never danced before.

It is my belief that there should be some prerequisite intervention by a medical practitioner before such an application is made to the court for a lot of reasons: One, the police officer is not trained to make medical determinations; two, sometimes bias enters into what the police do, especially with the certain segment of the population, those who may, in fact, have AIDS or those who may be a part of the gay community.

Cops, unfortunately -- and I happen to have been part of, for most of my working life -- a major portion of my working life was as a police officer, and I loved what I did. I loved the guys and ladies I worked with, but sometimes we had biases that I found unconscionable, and I would think that this might be an instance where that kind of bias might just erupt and taint the process.

So I would encourage us not to vote for this bill in a positive fashion because the proper medical intervention has not occurred, and we should not create problems in

terms of suits for the city and state. We should not create problems where the police will do the wrong thing because they haven't had proper intervention by a medical practitioner, and I think that we ought to be sensitive to the needs of a community that has many times -- or all too often, I should say -- been treated unfairly by various forms of the government.

So I encourage my colleagues to vote no on this particular proposal.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Yeah. Mr. President, what bothers me with this bill is we're trying to deal with a problem that, as far as I understand, doesn't exist.

I realize there's a certain ideological attitude which is expressed by these bills but, you know, you can express your ideology in various ways, put out a press statement, and I'm troubled because I'm not aware that we have problem, and I wanted to ask,

if Senator Skelos will yield, to see that maybe there's a problem that I'm not aware of.

Would you yield, Senator?

SENATOR SKELOS: Yeah, Mr. President. I do yield.

ACTING PRESIDENT HOBLOCK: The Senator yields.

SENATOR LEICHTER: Senator, can you tell me any instance where a police officer as a consequence of an arrest where he came into contact with a person being arrested and whatever the nature of that contact was that as a consequence, he became HIV-positive? Do you know of one such case?

SENATOR SKELOS: Well, first of all, we have a situation that I understand in our corrections system where six percent of the corrections officers have tuberculosis. We have instances where police officers have patted down a person that they're about to arrest and they've pricked themselves with a needle that that person had on their person, but I know that you brought up the issue of AIDS. We're talking

about transmissible diseases. This is not an AIDS bill.

SENATOR LEICHTER: Mr. President, if Senator Skelos will be good enough to continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

SENATOR LEICHTER: Senator, you're absolutely correct that this bill covers diseases other than AIDS, but it specifically covers AIDS, and the fact of the matter is that this bill wouldn't be before us if it weren't for AIDS. The other diseases have been around for centuries. This Legislature has never bothered to put in this sort of a bill, so we know it's driven by AIDS and, therefore, my question is specifically whether you know of one instance -- one instance -- where somebody arrested prior to conviction and being incarcerated in a state penal institution, where a police officer or court officer or anyone who dealt in a capacity of authority with the

arrested person developed the HIV virus?

SENATOR SKELOS: With the - maybe I can ask you a question. With the AIDS confidentiality laws, how are we supposed to find that out?

SENATOR LEICHTER: Mr. -- I'll be happy to answer your question, and then I hope you'll answer my question. It's very easy to find out because I think in most instances, I believe that where people in such situations have become HIV-positive, they have said, I became HIV-positive as a consequence.

We've had instances of nurses that were pricked by needles, became HIV-positive. There was this very tragic case of the young woman who, at least it was alleged, became HIV-positive from contact with her dentist. You remember she testified before Congress.

So I think that those cases do become public, and I can't believe that a police officer or somebody else covered by your bill who became HIV-positive as a result of contact

with an arrested person would not come forth and say, "Hey, look what happened to me."

Do you know one such case -- now, let me -- having answered your question, if you would answer my question. Do you -

SENATOR SKELOS: Senator Leichter, I think the issue is that in our prisons today -- and this is testimony that I obtained at a hearing that Assemblyman Feldman had -- that 25 percent of the inmates today test positive for TB. 15 percent in our prison system test positive for HIV. Now, we know some of them have both. These results come from a random sample of 400 prisoners done every two years. So I believe possibly the rate is much higher.

We have instances where police officers have been pricked with needles. The issue is not whether that person became HIV-positive or not. The fact is that that police officer has the right to find out if, in fact, the person that was carrying that needle was HIV-positive, and let me ask you this,

Senator Leichter. If we took out the HIV provisions, would you then be supportive of the bill?

SENATOR LEICHTER: Senator, I would -- I would probably not be supportive of the bill, although I could see some instances where, if you -- if you tested the transmitter of the disease, whether it's a person arrested, preconviction or subsequent to conviction, where it would give you a definitive answer, then I would say maybe we ought to do it.

As you know, the real problem that I have with the HIV testing is that I - and while I know it's sincere, and so on, but the fact is that it doesn't do anything for you because I think you will agree -- and I'll ask you to yield for this purpose -- that irrespective of what the test results are from the person who is tested -- the arrested person, let's say -- if the concern is whether HIV virus has been transmitted, that you must -- you must, you must test that police officer or the other people covered by your bill. Don't you agree

that's so?

SENATOR SKELOS: Yes. I mean -

SENATOR LEICHTER: Senator -

SENATOR SKELOS: Senator Leichter -- Senator Leichter, maybe I could ask you a question. Do you believe that we should tell people who are exposed to HIV what course of treatment they should choose?

SENATOR LEICHTER: I'm sorry. Could you repeat that question.

SENATOR SKELOS: Do you believe that we as a Legislature should tell people that have been exposed to the HIV virus what course of treatment they should take?

SENATOR LEICHTER: Senator, I wouldn't -- since I have seen this Legislature meddle in so many things, I wouldn't be surprised to find a bill one day that says you should take three green pills in the morning and two yellow ones at noon, and so on. No. I don't think that any one of us have the medical capacity -- when you're talking a "course of treatment", I assume you're talking of medical

treatment but, Senator, I wouldn't be surprised to see that bill. It won't have my name on it but, of course, we shouldn't.

SENATOR SKELOS: Senator Leichter, if a police officer, again patting down a person, is pricked by a needle, finds out that the person was HIV-positive or a corrections officer is spit upon in the face by a person carrying TB in the prison system, don't you believe they have the right to choose what medical treatment they desire at that point if they find that the person that was either carrying the needle or spit in his face or her face is carrying a transmissible disease?

SENATOR LEICHTER: Senator Skelos, you're not talking about medical treatment. You're talking about something really quite different. You're talking about the manner in which people covered under your bill can demand that other people be tested. That's not a matter of treatment.

SENATOR SKELOS: Sure, it is. Following -- following the testing, you then

have a right to do what's best -- what you feel is in your best interests to protect yourself.

SENATOR LEICHTER: Senator, if I may respond, take that as a question, you certainly have certain rights as to what medication you're going to take, what course of treatment you're going to follow, who you're going to see, but you're talking now about invading the rights of people -- and I consider them rights -- people who have not yet been convicted -- I'm particularly concerned of an arrested person -- and I have trouble seeing on what basis we're going to invade that right, particularly when we're talking about the HIV virus, when it serves absolutely no purpose, because you've conceded that we have to -- that the person who thinks he or she may have been affected has to be tested irrespective of the test that is given to the person who is the alleged transmitter of the disease. That being so, why would I invade somebody's rights when it serves no purpose whatsoever?

SENATOR SKELOS: I'll use one

example. Hepatitis B, if it can be treated immediately, you can be cured of that problem as a police officer or as a corrections officer.

SENATOR LEICHTER: Senator, as you know, the reason that I ask asked you about AIDS is because that's what's driving this bill. If you want to put forth a bill here that deals about hepatitis and deals about TB, I would look at it in a different way because -

SENATOR SKELOS: Senator Leichter, are you basing -

SENATOR LEICHTER: Can I just finish?

SENATOR SKELOS: I'm sorry.

SENATOR LEICHTER: -- I'd look at it in a different way because if the concern is TB -- and I -- somebody -- I'm an arresting officer, somebody has spat at me, I'm concerned that the person has TB, there's probable cause, and so on -- well, if I test that person and he tests negative for TB, then it's clear that I could not have caught TB from him, but AIDS is a totally different situation, and we discussed

this at great length when we had another bill - I don't believe it was your bill. I think it was Senator Saland's bill about testing people for AIDS prior to their conviction.

So I've got to take a look at what I know drives this bill, and I look at your memo, I look at the bill and it continuously talks about HIV, and we have to acknowledge the fact that TB has been around for hundreds of years, and this Legislature has never passed such a bill regarding the testing of TB, so it hasn't been a problem, and that gets back to my initial question.

Where is the problem? Where are the police officers who believe or think that they have contacted the HIV virus? I don't know of a single case, and I don't know of any benefit that would be -- that would be achieved by testing the alleged transmitter of the disease.

SENATOR SKELOS: And as with Senator Waldon, great minds can differ, Senator Leichter, but I believe that the police officer,

peace officer in the performance of their duty have the right to protect themselves, that they have certain rights and with the standard of probable cause, there are sufficient protections of the person being -- that's being tested.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: On the bill.

ACTING PRESIDENT HOBLOCK: Senator Leichter, on the bill.

SENATOR LEICHTER: I want to thank you, Senator Skelos. I think we've certainly clarified and crystallized the differences between us.

Let me say, being a police officer, it's a very tough job and you do place yourself under risk. So if there's things that we can do that will really help a police officer avoid a serious disease, I want to do it, and I could see some basis for doing it in the case of TB, although we -- as I pointed out, the

Legislature hasn't done this for the hundred years or so that TB has been around, so it must not really be a serious problem.

Hepatitis, you're absolutely correct. The sooner that you treat hepatitis, the better are the chances of curing the person. It's a serious disease but, again, I don't know whether we've ever had a problem, but when we get to HIV -- and that's the reason this bill is before us -- I mean, you could talk about other communicable diseases. You could clothe the bill in any sort of ornaments that you want to, but that's why this bill is before us, and that -- here we're just dealing with an ideological statement because there's no medical fact which lends any credence to it, and I think all of us have to admit that even arrested people have certain rights.

Now, those rights at various times have to be -- have to be subordinated to other rights if there's a purpose for it, but when you get to HIV, because it is such a difficult, such a complex disease about which we

still, unfortunately, know far too little -- but the one thing we know is that the fact that somebody tests positive doesn't mean that the person who thinks that they were in contact with the transmitter, that he or she will become positive, and even if the person tests negative, it isn't an assurance at all that the HIV virus hasn't been transmitted because the person may have had unprotected sex the night before and may have acquired the HIV virus. It won't show up in the test, but he can transmit the disease.

So faced with that, why would we in any way affect or infringe -- I think it is an infringement -- somebody's rights when it doesn't serve a purpose? There's no medical purpose that's involved, and Senator Skelos very candidly said -- I asked him, don't you have to test the police officer under any circumstances irrespective of the test that was given to the alleged transmitter of the disease, and he said yes.

That being so, I think it

undermines and undercuts this particular bill, and you can't -- I just want to -- I guess I'm emphasizing, repeating it, but I think it's worth repeating it -- don't sell a bill that deals with HIV, and when you can't answer and you can't provide any logic for the HIV testing, you say, Well, it could be another communicable disease.

This bill is here for HIV. It refers to HIV. It's sold on the basis that you're dealing with HIV, and the medical knowledge that we have just doesn't support what this bill tries to do.

ACTING PRESIDENT HOBLOCK: Senator Abate.

SENATOR ABATE: Yes, Mr. President. Would Senator Skelos yield to a question?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Skelos yields.

SENATOR ABATE: I have some

questions around the process itself that I don't understand. I think the bill says that probable cause has to be articulated to the judge in order for the order to be granted and the testing to take place. Who needs to carry the burden to show probable cause, and is -- does the district attorney represent the officer in this case or does private counsel intervene and represent the officer in this case?

SENATOR SKELOS: Private counsel of the petitioner. The petitioner has the burden to show probable cause.

SENATOR ABATE: And when do you think this motion will take place? Will it be a special calendaring because, as you know, in court cases, cases are adjourned periodically. So would this allow the attorney, the private attorney representing the officer to try to get this case rescheduled at an earlier date for a special hearing?

SENATOR SKELOS: The petitioner would make the application, and I would assume that the application would be heard

expeditiously.

SENATOR ABATE: And would it be made -- would the motion be made ex parte to the judge for a hearing?

SENATOR SKELOS: Yes.

SENATOR ABATE: So it would be an ex parte motion and a hearing would take place; and prior to the hearing taking place, the defendant could be -- we're talking about the defendant in this case -- the defendant could be held for 24 hours pending a hearing even taking place, or is it 24 hours after the hearing and the judge has an additional 24 hours to make a decision?

SENATOR SKELOS: Yes. The judge has 24 hours to make the decision.

SENATOR ABATE: A judge has 24 hours, but then can a defendant be held in - pending finding the judge getting the hearing - the hearing may take some time. So conceivably the defendant would be held in more than 24 hours pending the decision of the judge.

SENATOR SKELOS: Possibly.

SENATOR ABATE: So we're dealing with a situation, probable cause has to be determined and before that hearing takes place, a defendant is going to be held -- be detained for a period of time. During that period of detention, are these individuals held in isolation, because we don't know that they have TB. We don't know what they have.

SENATOR SKELOS: Could I just ask you a question? Are you reading the "A" print or the 653?

SENATOR ABATE: I have 653.

SENATOR SKELOS: There's an "A" print.

SENATOR ABATE: Okay. I don't have the "A" print.

SENATOR SKELOS: There is an "A" print.

SENATOR ABATE: Okay. I don't have it, but maybe since I haven't read the "A" print, maybe you can explain to me, if -- before a hearing, before a decision is made, my understanding, a defendant would be held in

detention up to 24 hours. Is there something in the bill that requires this defendant to be held in isolation for that period of time?

SENATOR SKELOS: No, there is not.

SENATOR ABATE: Even though the defendant might have TB?

SENATOR SKELOS: Haven't proven it.

SENATOR ABATE: And who would bear -- the last question is who would bear the cost of the testing? Who will bear -- has there been any cost analysis of the cost of doing the hearing itself?

SENATOR SKELOS: It would be by the public health officer.

SENATOR ABATE: And have you done any kind of physical analysis of what the cost would be to the court system -

SENATOR SKELOS: No.

SENATOR ABATE: -- of detaining people an additional 24 hours or the cost of having these additional hearings?

SENATOR SKELOS: I have not done that. My concern is the police officers and the corrections officers.

SENATOR ABATE: On the bill.

Thank you, Senator.

ACTING PRESIDENT HOBLOCK: Senator Abate, on the bill.

SENATOR ABATE: I oppose this bill. I have a similar concern with this body and in particular, the sponsor. I care about the health and welfare of police officers and uniform court officers and correction officers. I look at the memo and the justification language, and let me cite the justification language.

"This legislation is needed to provide quick answers and peace of mind to officers."

I do not believe this bill as written provides quick answers or peace of mind to officers. If we care -- and we debated this issue last week as it dealt with victims, and last week I said if we really care about victims

-- and in this case, if we really care about law enforcement officers -- we need to give them information that is going to protect their health, get them into treatment and not be burdensome.

We now have a test that did not exist. This debate and this bill, I believe is an outgrowth of old debates. We now have a test called PCR testing. Instead of putting our money into what I call these ridiculous hearings that will be an outgrowth of this bill, the cost in detaining people 24 hours on the premise that there might be an order for testing, let's put this money directly into testing officers who want to be tested. Through the PCR test, they can get that information immediately. Put money so officers can be tested frequently so that they know what is happening to their own bodies. They should have precounseling and post-counseling testing to help them in their endeavors.

What this bill does is give officers bad information. It talks about

information about another individual. It does not help them assess their health needs.

I agree with Senator Leichter. This bill is not about TB. As a former commissioner of correction -- and I know because I was there at Rikers Island when the TB epidemic was really at its greatest, and that there are protocols in all the prison systems, and I understand -- I've dealt with this issue with correction officers who have some great deal of concern, but the protocols are when inmates are admitted, they are tested. They not only get blood tests, they get chest X-rays, they get sputum tests. They are immediately isolated. Officers know -- that means uniform officers, police officers and corrections officers know when someone has been identified with TB, they're put into isolation units. Some of the best isolation units are at Rikers Island. They don't leave those units until they are no longer at risk of communicating that disease to someone else. There's directly observed therapy. There are protocols now on

the local and state level to assure that officers -- and training ad nauseam to assure that officers are not placed at risk with people who have TB.

So rest assured this is not a tuberculosis bill. If this were a tuberculosis bill, we should put as much money as possible in identifying people with TB, isolating them, ensuring there is directly observed therapy and protecting those law enforcement officers that come in contact with people with TB, but this is not TB. This is HIV-positive. The doctors have said and the experts have said, if you want to help someone who thinks they have been infected, the best help you can give that individual is tell them to test themselves periodically to get the correct information.

So instead of putting money again into a burdensome court proceeding that talks about probable cause, talks about additional detention, that talks about isolation, take that money so we can actually help the officer himself or herself. That is a pro-victim bill.

That is a pro-law enforcement bill. It could be done with less burden on the courts, less burden on the officer himself or herself. That is a better bill. Now that we have the PCR testing, we should revisit the bill and do something that's, in fact, going to help law enforcement officials.

Until we amend this bill and effectively do something that provides good health information to the officers, I will continue to oppose this legislation.

ACTING PRESIDENT HOBLOCK: Senator Lachman.

SENATOR LACHMAN: On the bill and then a question to the Senator. I think it's essential as every member in this chamber does to ally ourselves with the police officials who put their lives on the line in protection of our -- of us, our families and our communities.

The question, however, I have is, is this the best possible form of legislation that would achieve the objective we want in order to protect our police officials?

To be more specific, I do happen to feel very strongly that TB is growing in this society, and the drugs that have been used in the past have not proven to be as effective to counteract the dangers from tuberculosis.

However, Senator -- Senator Skelos, if the purpose or general idea of the bill, you don't get the impression, as I did get to some extent in your comments, that this is a general bill involving all transmissible, communicable diseases, because it specifically states to provide police officers, court clerks, uniform court officers and correction officers with the method of discovering where they have been exposed to the AIDS virus or other related viruses.

Now, tuberculosis is not an "other related" virus. At the same time, tuberculosis should now be looked at again because it is increasing in our society.

Now, I would like to know, if the Senator with yield, Senator Skelos, in the tradition of conciliation of Senator Tully and

in a previous Senate in the previous century of Henry Clay, would you be willing to change the definition of the purpose or general idea of the bill to conform with what you said in this chamber it is all about, which you cannot tell from reading this, because from reading this explanation, you single out a cohort of the population, rather than getting to the heart of the matter which I think we should reach.

ACTING PRESIDENT HOBLOCK: Senator Skelos, do you yield?

SENATOR SKELOS: I'll try to answer Senator Lachman's question. If you - perhaps you're reading a memo, but if you would look at the -

SENATOR LACHMAN: I'm reading your memorandum in support of the legislation.

SENATOR SKELOS: Okay. Well -

SENATOR LACHMAN: And this is right on top, the first paragraph.

SENATOR SKELOS: If you would look at line 27, we define "Transmissible disease shall include the immunodeficiency

virus, HIV or any of its derivatives, hepatitis and any of its derivatives, tuberculosis and any other serious illness which the court finds the petitioner could have a reasonable expectation of contracting from a subject as a result of the alleged exposure."

SENATOR LACHMAN: Would the Senator continue to yield?

ACTING PRESIDENT HOBLOCK: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

SENATOR LACHMAN: Would you, therefore, be willing to change the top paragraph of the purpose or general idea of the bill which gives an erroneous impression about the objective of the bill?

SENATOR SKELOS: Could I just - I could answer that by saying we pass legislation, not memos, but I'm not sure which memo -

SENATOR LACHMAN: But there are memos to explain the legislation.

SENATOR SKELOS: I'm not sure

which memo you're talking about. Is that the sponsor's memo?

SENATOR LACHMAN: Yes. It says Harvey Weisenberg.

SENATOR SKELOS: For the "A" version or the "B" version -- or the regular version, which version?

SENATOR LACHMAN: Sorry. I'm told I'm supposed to stand.

It says "Memorandum in support of legislation submitted in accordance with Assembly Rule 3, Section 1 (e)", and the first paragraph after the definition of the title of the bill discusses the purpose or general idea of the bill and singles out a specific cohort of the population rather than the rest of the population.

SENATOR SKELOS: Senator Lachman, again, I hate to be debating memos, but my sponsor's memo says, "New York State Senate introducer's memorandum in support submitted in accordance of certain rules", and then it says, "Senate Bill S.653-A." Is that the memo that

you're looking at?

SENATOR LACHMAN: Yes. Maybe we have different versions of the same memo.

SENATOR SKELOS: It says 653-A? Okay. I'D be delighted at some point to change the memo then. Do you have the Assembly memo or the Senate memo, because you said "in accordance with the Assembly rules."

SENATOR LACHMAN: It says -- I'm sorry. It says "Member of Assembly and Senators." Your name is listed along with Assemblyman Weisenberg.

SENATOR SKELOS: That, I don't believe is our memo, Senator Lachman.

SENATOR LACHMAN: It must be the Assembly memo then.

ACTING PRESIDENT KUHL: Senator Dollinger, you're next on the list.

SENATOR DOLLINGER: Thank you, Mr. President.

One question for the sponsor. I want to follow up on the point that Senator Abate made.

ACTING PRESIDENT KUHL: Senator Skelos, do you yield to Senator Dollinger?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: If we drafted a bill that said if a police officer or court officer is in a position where there might be an exposure to any one of the transmittable diseases that you mentioned, the officer could go to the medical officer of the department for which they work, be it the police department or a court officer, and if the physician said that there was probable cause -- a physician determined that they were in a situation in which exposure could occur, that the state of New York would pay to have that person tested for whatever transmittable disease that existed and they would pay for the cost of that. Would you support that bill?

SENATOR SKELOS: I'm supporting the bill that's before me right now.

SENATOR DOLLINGER: Again through you, Mr. President. Would you support that bill?

SENATOR SKELOS: I would have to see the entire bill or the provisions and certainly I would have an open mind.

SENATOR DOLLINGER: Okay. Well, Mr. President, it's my hypothetical. It's very simple. If an officer believes that they have been exposed, they go to the chief medical officer of their employer, relate the facts under which they believe they were exposed, the chief medical officer would then say either, Yes, that's a reasonable likelihood that you were exposed or he would say, No, there's no chance you were exposed and then the employee would have the choice of either appealing the decision or review of the decision, but bottom line is that if the physician said there's a reasonable likelihood of exposure, then the state of New York would pay to have that person tested for every possible transmittable disease. Would you support -

SENATOR SKELOS: I'd have to think about it, Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, on the bill.

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

SENATOR DOLLINGER: Senator Waldon talked about Senator Skelos' dancing ability, and he's been at Arthur Murray a number of visits recently because -- my question was rather pointed and direct -

SENATOR SKELOS: The difference between you and me is I have maybe two right feet and you have two left feet.

SENATOR DOLLINGER: I may even take that as an accurate description, Mr. President, but the point I'm trying to make is that the problem that Senator Skelos' legislation addresses is an important one, that is, what are the circumstances under which the people who are out on the front lines of fighting crime and handling our court system, what's the chance that they're going to be

exposed to something that could adversely impact their health.

But Senator Abate is correct. Senator Waldon is correct. Senator Leichter is correct. There's just no point -- no point in raising everybody's anxiety level by testing the person who might be the suspected carrier.

The far better solution to this problem, the absolutely irrebuttable solution to this problem, the best way to handle this problem, the way that actually solves the problem rather than dances around the edge is to simply have the state of New York, through the Public Health Law or other provisions, give to the police officer or the corrections officer or the court officer the ability to be tested to find out whether they've actually got it.

I think Senator Abate made a good point when she said all this bill will do is require that that be done as the second step. This is the first step in the dance. It's the second step in the dance that really gives you the information that you need to be able to make

proper health decisions and that is, regardless of what the suspected carrier has as a disease, the question is, do you have it? It's a logical question. We ought to be able to give our corrections officers, our court officers - excuse me. This just applies to court officers and police officers -- we ought to be able to give them some assurance that we care enough about them, not just to tell them that they might be exposed, but that they actually have it. That's what you really need to do to solve this problem.

This bill is all about -- in my judgment, about dancing around the political periphery and not getting to the heart of the issue. If you want to get to the heart of the issue, put together a bill that says if you're a court officer or a police officer, you think you have been exposed, go to a medical director, have the medical director conclude -- reach a conclusion based on the facts given that there's a likelihood that you were exposed, and the state of New York will pay for the cost of the

testing, both then and six months from then - from the time of suspected transmission and a year from the time of suspected transmission, so that we can put the police officers and court officers of this state at ease in knowing whether or not they've contracted one of these potentially dangerous if not fatal diseases.

If you want to solve the problem, that's the way you solve the problem. This doesn't solve the problem. This just, in my judgment, creates a political posture that says we've done something politically popular but we haven't solved the problem.

I concur with my colleagues who say, if you want to do it, there's a simple way to do it. Let's do it that way and get the job done.

ACTING PRESIDENT KUHL: Senator Paterson is next on the list, but he's absent from the chamber momentarily.

Senator Gold.

SENATOR GOLD: Yeah. Mr. President, I think that we, unfortunately in

this chamber have our enemies list, and whenever things get slow, particularly at this time of the year when we don't have a budget, something gets rolled out so that we can have another scapegoat out there to take a shot at.

If there were a law, I guess we could get a bill put out that says banning abortions in the 11th month. After all, you know, some people carry past the ninth month. You never know, and you certainly don't want 11-month abortions. Then we'll have to vote on that.

I'm concerned about this bill for one reason, Senator Skelos, and it's a really very practical reason, and I would hope that you would see it as a practical reason.

There are some people in this chamber who very rightfully take predictable positions on any bill dealing with AIDS, and the rumors in the back rooms here are that, Well, they've got certain constituencies and when get into a certain central part of New York City, they react to these kinds of bills.

I, for one, understand very much how difficult it is being a police officer, being a correction officer, being subjected in any of these circumstances, but I'll tell you what's wrong with the bill, Senator, and it's more practical than it is philosophical.

We have in the last few months seen what is probably, in my recollection, the most unprecedented attack on the judiciary by irresponsible press -- well, irresponsible press is really the same word, I guess -- than I have ever seen. And what happens when that happens?

We in this country have prided ourselves in things called separation of powers. We prided ourselves in the fact that if you have an independent judiciary, you won't have what you had in Nazi Germany where judges, in their own defense at trials after the war said, They made me do it and I only followed bad laws, et cetera, et cetera. We always prided ourselves in an independent judiciary.

Judges, male and female, are only people. They are only people. Hopefully,

they're our best people, but they're only people, and I can tell you, Senator Skelos, that in the last few months there are unquestionably judges, decent people, who are making decisions that they don't necessarily believe in or that maybe they wouldn't have made a year ago because they're concerned about how somebody in the press is going to write about it.

Now, I believe that as a member of the Legislature we should be responsible to the people who elect us. There's no doubt about that. I believe that as a member of the judiciary, a judge should be responsible to the society which he is representing or she is representing but, Senator, the problem with the bill is that probable cause, as I see it, is not really spelled out and it's an invitation to a judge to say, Look, what's the harm? Somebody did it and we'll give the test. It may have an effect. It may not have an effect. There may have to be another test, but I'm not reading my name in the New York "blah, blah, blah", and this irresponsible reporter or that

irresponsible reporter ain't going to pick me out as one the junk justice just because let somebody else worry about it and that, Senator Skelos, is dangerous because you're always talking about that first crack in the dam, that first opening of the door. That's what these things are all about, because then we start to create precedents, and we in this Legislature should be very careful about the precedents that we create.

Judges are honorable people; there's no doubt about it, trying to do honorable work. If you're asking me whether or not we should have restraints upon the press, absolutely not. I mean, if you have to take one of two evils, you give me the freedom of press we have in this country and, yes, even the irresponsibility that goes with it, but on the other hand, we have to understand the doors that we open up.

If you have a situation as you admit it to be, Senator Skelos -- and you are an honest man -- you have a situation as you

understand it to be, that the only protection an officer would have is for self-examination, then what in the heck are we doing in this bill? What are we doing?

I think that the dangers in this bill far outweigh any situation where we would be helping a police officer, and I intend to vote against it.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: I believe Senator Paterson wants to come in and debate the bill, and if I could, on behalf of Senator Levy, there will be a meeting of the Transportation Committee at noon in Room 124 of the Capitol to consider nominations.

ACTING PRESIDENT KUHL: By way of announcement, Senator Levy has called a Transportation Committee meeting at noon, ten minutes from now, in Room 124 of the Capitol.

Is there any other Senator besides Senator Paterson wishing to speak on this bill?

(There was no response.)

Senator Dollinger.

SENATOR DOLLINGER: Would Senator Skelos yield to just a couple other questions?

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Thank you.

The testing that's required under this bill for the suspected transmitter, would that cost -- you mentioned that that would be covered by the Public Health Law, is that correct?

SENATOR SKELOS: Public health officer would be in charge of the testing proceeding.

SENATOR DOLLINGER: Okay. But who pays for it?

SENATOR SKELOS: It comes out of that county or town.

SENATOR DOLLINGER: Okay. So it would be paid for by the county. Is there any provision here to have the state pay any portion of this?

SENATOR SKELOS: No.

SENATOR DOLLINGER: Okay. So this is a mandate that we're requiring counties to pay for.

SENATOR SKELOS: This is protecting police officers and peace officers.

SENATOR DOLLINGER: Okay. Somehow I have a feeling my county executive would come back and tell me that's a mandate.

SENATOR SKELOS: I think your county executive would be delighted to protect police officers and peace officers.

SENATOR DOLLINGER: Well, he may tell you that. He may not quite tell me that, but let me just follow up on that if I may, Mr. President. What's the possibility that Workers' Compensation would cover the cost?

SENATOR SKELOS: I don't know the answer to that.

SENATOR DOLLINGER: Well, if it were a cost related to the employee's exposure, if it were anticipated that there might be a disease that were transmitted, wouldn't that be

covered by Workers' Compensation?

SENATOR SKELOS: Possibly if it was part of an injury.

SENATOR DOLLINGER: But -- again through you, Mr. President. If it was an exposure which creates the potential for injury, wouldn't there be a compensation recovery? I mean, wouldn't you -- wouldn't this become part of Workers' Compensation to cover the cost?

SENATOR SKELOS: I don't believe so. I think if there was an injury, possibly. Without an injury, no.

SENATOR DOLLINGER: Again through you, Mr. President. What's the possibility that health insurance on the part of the police officer would cover the exposure?

SENATOR SKELOS: I don't -- I don't believe so.

SENATOR DOLLINGER: Well, again through you, Mr. President, suppose the officer goes to his private physician and says, "I think I have been exposed to TB or HIV and I'd like to find out whether I have been exposed", wouldn't

his health insurance cover that if his physician recommended it?

SENATOR SKELOS: I have no idea what that person's policy says.

SENATOR DOLLINGER: Well, wouldn't it be logical to assume that they would pay for it?

SENATOR SKELOS: I -- you know, with many health insurance policies, there's logic to them and there's non-logic to them. So I would have to look at the individual policy.

SENATOR DOLLINGER: Well, Mr. President, I believe Senator Paterson may have additional questions that he wants to follow up on this, but the issue of the payments through other sources, either through Workers' Comp' or through health insurance, I think is another aspect to this bill that raises the possibility that there's another way to do this to accomplish the beneficial result that you want without having to go through this around-the-corner approach of requiring the testing of the suspected transmitter.

I'll yield to Senator Paterson.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, I think most of the questions I would have asked Senator Skelos have already been asked quite eloquently by other members, but since he was standing, I wondered if he would yield for one more question.

ACTING PRESIDENT KUHL: Senator Skelos, do you yield? The Senator yields.

SENATOR SKELOS: Yes, Mr. President.

SENATOR PATERSON: Senator Skelos, should this bill be made law -- and I see you've worked very hard on it, and I don't know of any more diligent staff than the one that you possess.

SENATOR SKELOS: I agree with you.

SENATOR PATERSON: -- the question is do you think that this legislation could act as somewhat of a deterrence or perhaps

even raise false hopes if the suspect tests negative and the victim who is a peace officer, corrections officer -- police officer, I'm sorry -- then is misguided into feeling that there is no need to be self-tested.

SENATOR SKELOS: No. I believe this legislation will provide a peace of mind for the police officer or the peace officer by the fact that the person that they're concerned with in carrying a transmissible disease, whether that person has it or does not have it.

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

SENATOR SKELOS: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: That's the part that I'm just not understanding. This is one of those pieces of legislation that we come to the floor, we debate them, but we're not going to have our minds changed, but this is one of those pieces of legislation that I could have my mind changed. In fact, I have been reviewing

it with your staff all morning, and my point is that if you could give me the criteria that establishes the standard of what we're now calling peace of mind -- because we have already understood that we would test the convicted because we're now going to have them in facilities and they're going to have contact with perhaps corrections officers, and that kind of thing, so then we would have testing, and I think both you and I would agree that a convicted felon should be tested, but now let's take a look at this situation. We have a suspect that's been taken into custody. The officer believes that there may have been some contact, but what we're saying is that the fact that this test is administered and the fact that results come in and the suspect tests negative, how does that establish peace of mind when the suspect may actually have tested negative that day, another week or two tests positive and then the victim, who is the police officer, eventually tests positive; where is the peace of mind?

SENATOR SKELOS: I believe I heard that same argument with the baby AIDS debate. Again, here, two great minds are differing, Senator Paterson.

SENATOR PATERSON: No, no. Senator, I don't -

SENATOR SKELOS: I believe that by the fact that this legislation is being supported by the New York City PBA, the Nassau County PBA, the Metropolitan Police Conference, on and on who represent these individuals we're trying to protect, that if they felt that they would not -- that this legislation was not necessary to protect their members, they would not be supportive of it.

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

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

SENATOR PATERSON: On the baby AIDS bill, we have a slightly different circumstance in which I don't think this argument has as much merit. One is that the

baby who we're worried about doesn't have any independence and so the testing on that issue, even though I voted against the bill, I would have to concede that the test in that case, based on the information you're presenting right now, would be far more valid, but here we have an individual who can make a decision, and what you're saying in this legislation is we want to establish peace of mind. That's how we're categorizing it, and so I'm giving you a possibility, a scenario.

The suspect is arrested. The suspect tests negative. Where is the peace of mind, because unless the person tests themselves, they don't really know, not because we do or do not care about the police officer or that we differ or we have a differing point of view, regardless of what the calibration of our minds are, we're not disagreeing here.

I'm just saying to you that since we know it's certainly possible and more than just a scintilla, pretty representative that the test will not reveal whether or not the officer

-- the peace officer or police officer that we're trying to protect can contract one of the many viruses that you're talking about, I'm just asking you, where is the peace of mind?

SENATOR SKELOS: I think that's not necessarily true because we're dealing with diseases like tuberculosis, which is a bacterial disease, where the person who is infected with it may test positive, but the police officer who has been infected by it or possibly infected by it at that point does not test positive.

SENATOR PATERSON: Mr. President, Senator Skelos, in the issue of tuberculosis - and I think you went over this with some of our colleagues -- that -- a simple blood test would not confirm that a person has tuberculosis one way or the other. So for the purposes of this conversation, I would rather not even talk about tuberculosis. I would just like to stick to HIV testing, and I'm just saying that since the test doesn't give a -- any kind of permanence -- you see, what I'm trying to get you to understand is -

SENATOR SKELOS: I understand what you're saying, Senator Paterson.

SENATOR PATERSON: Well, let me just add to it. -- that if you could show me that there is an overwhelming -- that the odds are overwhelming, that the test of the suspect would actually give us valid information about what's happening to the victim, I don't think we'd have any further discussion. I would be willing to take the chance.

In other words, I'm saying that to protect the police officer or the peace officer, I would have to follow your recommendation, but what I'm saying is that it's so unreliable -- it's not totally unreliable. It's certainly a very good indicator, but it's so medically inconclusive that other than the fact that we're testing the person just because we'd like to know -- and maybe we need to have a discussion of, do we need to test the suspect just because it may be a good policy; we just need to know while a person is in one of our institutions. We could have that discussion,

but what I'm saying -

SENATOR SKELOS: Does that include AIDS testing?

SENATOR PATERSON: Yes.

SENATOR SKELOS: So you believe every individual, that when they enter into a -

SENATOR PATERSON: No. I'm not saying that I believe a person -

SENATOR SKELOS: -- a corrections institution that they should be tested for all transmissible diseases, including AIDS.

SENATOR PATERSON: No. I'm not saying that I believe it.

SENATOR SKELOS: So AIDS should be a -- should be excluded from all testing.

SENATOR PATERSON: I don't believe either. I don't believe either of the tests -

SENATOR SKELOS: 15 percent of the inmates are HIV-positive and they shouldn't be tested for AIDS but other diseases should be tested.

SENATOR PATERSON: Well, I think that all of the convicted inmates should be tested because that becomes a matter of security and a matter of designation.

SENATOR SKELOS: For all diseases, including AIDS.

SENATOR PATERSON: For all diseases, including -

SENATOR SKELOS: Well, all transmissible diseases, including AIDS, TB, hepatitis, AIDS, would you include the testing for the AIDS virus in your statement?

SENATOR PATERSON: Among inmates in our state prisons?

SENATOR SKELOS: Yes.

SENATOR PATERSON: Absolutely.

SENATOR SKELOS: Okay.

SENATOR PATERSON: Absolutely, but what I'm talking about here are individuals who have not been convicted, who have been charged with a crime, where we haven't fully even established that there is enough contact between the victim -- between the suspect and

the victim, and what I'm asking you is how you can offer to the police personnel or the peace officers, how can you offer them peace of mind when you don't have medical information to make the statement that you now have peace of mind because we went and we tested the person that did this to you and we have established that they do not have one of these viruses, so you -

SENATOR SKELOS: First of all, in terms of probable cause is necessary for the person to be tested, I think we just have a disagreement. The groups that represent the police officers, the correction officers, people that we're talking about support this legislation and they feel it gives them sufficient peace of mind. So there's obviously a disagreement between you and the police unions who represent these individuals.

SENATOR PATERSON: Last question, Senator. Would you please tell me what information -- so that we wouldn't want these organizations that are fighting for the well-being of police officers, we wouldn't want

them to be confused, and I would suggest that to you that they might be a little confused, not because they don't care, but because they may have been misled, and that was my original question to you. Would this kind of legislation mislead people, and just by telling me that these groups support it, you're just furthering to me the confusion that's being caused by the legislation because you're -

SENATOR SKELOS: I don't believe it would mislead them.

SENATOR PATERSON: Okay, because you're enumerating a number of groups that are in support of the organization, but you have yet to tell me what information causes them to feel that this would establish peace of mind.

SENATOR SKELOS: They have supported the legislation.

SENATOR PATERSON: Mr. President, on the -- on the bill.

Their support of the legislation of and in itself does not establish that they have peace of mind, and what it means is that

they believe that the passage of this legislation would help. If they can't give a reason why they supported the legislation, it leads me back to my original premise, which is that the legislation creates a presumption for which there is no factual evidence that sustains it. The testing of the suspect does not give us enough relevant data to make a medical determination for what is happening to the victim, police officer or peace officer.

When we passed the legislation about HIV testing for sexual offenders just a couple of weeks ago, the sponsors of the legislation admitted that the best way for the victim to learn the status of their medical condition is by their own testing. PCR testing right away would be one way to establish it completely.

In this situation, I did not hear in this entire long debate any information, not one piece of information that established to me that the testing of the suspect would give us relevant data that would relate to the medical

condition of the victim.

Although the legislation, as Senator Gold pointed out, may sound very nice and it may be very certainly appealing as in the sweet-smelling salvos that you might swallow and they taste good, but I'm afraid in this case some of the lobbying groups swallowed this legislation whole. Who can blame them? No one, but who can remind them? We can remind them of the terrible truth that as frightening as it may be, that the individual who may actually feel that they have come in contact with a person who has transmitted the HIV virus or hepatitis B or even tuberculosis for which the test is not substantial enough in this legislation, that that person is going to have to be tested, and to in any way even suggest or hint or imply that by testing the perpetrator -- as much as the perpetrator may deserve a punishment, that punishment will not help us determine what the status of the victim is.

This is not something that I feel like getting up here and saying. This is an

actual medical fact that is understood by those who work in these situations every day, and so I'm saying by opposing this bill that Senator Skelos is on the right track. He did a lot of work on this legislation, a lot of research, but unfortunately, as appealing as the legislation is, it would only help to, in my opinion, confuse individuals and would actually almost compel them in a way not to get themselves tested because they think, Well, the odds are, you know, he didn't have it so I guess I don't have it, and that could be so destructive, and when any of those peace officers or police personnel find out what actually could happen under their bill, I think they would have a different point of view, and I would hope that the advocates for the legislation can come up with at least a reason for why they think it would establish peace of mind, because I certainly couldn't vote for this bill with peace of mind. I wouldn't want to contribute to the transference of any information that would cause people to take an action that might inure to

their own detriment.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Thank you, Mr. President.

I'm going to be supporting this bill. The PBA feels that this is going to offer some peace of mind to their law enforcement officers and to other -- other potential victims of transmittable diseases. I'm not at all sure it will, but I'm going to support this. I think there are major flaws here in that testing someone else is not going to help you determine your HIV status and, of course, the most major area of concern won't be addressed, namely, does

the law enforcement officer have the disease or does merely the person he's apprehending?

More to the point would be to offer testing to all police officers themselves personally than to test the apprehended person, but I'll support it in that I believe the PBA believes that this will cause a calming effect.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 347 are Senators Abate, Connor, Dollinger, Gold, Lachman, Leichter, Markowitz, Mendez, Montgomery, Nanula, Paterson, Santiago, Seabrook and Waldon. Ayes 41, nays 14.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to - Senator Nanula, why do you rise?

SENATOR NANULA: Thank you, Mr. President.

I would like to request unanimous consent to be recorded in the negative on Calendar Number 331.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Nanula will be recorded in the negative on Calendar Number 331.

Senator Leichter, why do you rise?

SENATOR LEICHTER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar 971, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 911.

SENATOR LEICHTER: 971.

ACTING PRESIDENT KUHL: Excuse me. It's 971.

Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I would like unanimous consent to be in the negative on Calendar 306.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 306.

Senator Santiago, why do you rise?

SENATOR SANTIAGO: Mr. President, I would like to be recorded in the negative on Calendar 331, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Santiago will be recorded in the negative on Calendar Number 331.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 496, by Senator Gold, Senate Print 2978-A, an act to amend the Election Law, in relation to allowing a child.

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 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 874, by Senator Padavan, Senate Print 2529, an act to amend the Education Law, in relation to empowering community boards.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Padavan, an explanation of Calendar Number 874 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR PADAVAN: Thank you, Mr. President.

Under the decentralization law that was adopted a quarter of a century ago, school districts in the city of New York are given the authority to manage schools, operate them and facilities under their jurisdiction.

One of the authorities not given to them -- and I believe it was an oversight - was the right to determine when because of inclement weather schools should be closed in a specific school district. There's a very practical reason for this.

The city of New York, there are parts of the city that are far flung, communities in Staten Island, eastern Queens, northern Bronx, where the weather, a snowstorm as an example, could be substantially more extreme than it would be in perhaps the inner city, and the authority given to superintendents to make a judgment, one that relates specifically to the safety of pupils and personnel on a given day is an authority that I think they should have.

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

Senator Paterson.

SENATOR PATERSON: Mr. President, just to show what an open mind I have, I think Senator Padavan has just convinced me. I think

we should all vote for this bill.

ACTING PRESIDENT KUHL: Is that a party vote in the affirmative?

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 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 888, by Senator Saland, Senate Print 6055-A, an act to amend the State Finance Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Skelos, an explanation of Calendar Number 888 has been asked for. Senator Saland is not in the chamber. What's your pleasure?

SENATOR SKELOS: Lay it aside temporarily and proceed with -- lay it aside for

the day.

ACTING PRESIDENT KUHL: The bill will be laid aside for the day at the request of the sponsor.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1022, by the Assembly Committee on Rules, Assembly Print 10508, an act legalizing, certifying and confirming the acts of St. Johnsville.

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 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1078, by Senator Goodman, Senate Print 6459, an

act to amend the Public Buildings Law, in relation to deleting the value limitation.

SENATOR PATERSON: Explanation, please.

SENATOR SKELOS: Would you stand at ease for a moment.

(Whereupon, the Senate stood at ease.)

SENATOR SKELOS: Mr. President, could we lay that aside temporarily. I would ask the members as the bills come up for debate, to please be in the chamber, if you're a sponsor of the bill or you wish to debate the bill. We're in the -- hopefully the last few days of session and it's very important we be here to move ahead in an ordinary fashion.

If we could, Mr. President, take up Senator Velella's bill, Calendar Number 1238.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1238.

THE SECRETARY: Calendar Number 1238, by Senator Velella, Senate Print 6959-A, an act authorizing the commissioner of General

Services.

ACTING PRESIDENT KUHL: The 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 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could continue with the calendar, reg... controversial calendar, regular order.

ACTING PRESIDENT KUHL: The Secretary will continue to call the controversial calendar, beginning with Calendar Number 1125.

THE SECRETARY: Calendar Number 1125, by Senator Levy, Senate Print 329, an act to amend the Vehicle and Traffic Law, in relation to pedestrians' right of way and

crosswalks.

ACTING PRESIDENT KUHL: The 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.

SENATOR SKELOS: Star that at the request of the sponsor.

ACTING PRESIDENT KUHL: The bill is starred at the request of the sponsor.

THE SECRETARY: Calendar Number 1189, by Senator Marcellino, Senate Print 7133, an act to amend the Public Authorities Law.

SENATOR PATERSON: Explanation.

SENATOR MARCELLINO: Mr. President, this -- this bill exempts from the freedom of information requests material provided by small businesses to the Environmental Facilities Corporation. The corporation is multi-media and environmental assistance.

The Environmental Facilities

Corporation, known as the EFC, currently has authority to provide multi-media environmental assistance to small businesses and under current law, information provided by small businesses to the EFC in connection with the provision of such services would, to the extent such information constitutes a record, be subject to the disclosure requirements of the Freedom of Information Law.

In contrast, when providing similar services to small businesses to comply with the Clean Air Act, under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, the information provided about the EFC by participating businesses is expressly exempted from FOIL. This legislation would extend a similar Freedom of Information Law exemption to information provided to the EFC by small businesses in connection with the provision of multi-media assistance.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: I think there is a better way of getting around the problem of having small businesses provide the information. I don't think that -- I'm speaking on the bill -- that reaching a key understanding which citizens have with their government of open government and making records available to -- to all the citizens who are interested in this subject, I don't think that's advanced by this bill. I don't think closing our government files is the right way to go.

We do want to offer incentives to have compliance by small business, and we do offer things right now like assuring them that their trade secrets will not be exposed under the Freedom of Information Law, but exempting them from this full compliance with providing information to the general public, I think could only hide possibly environmental violations. We would not like that. We believe in the availability of all government records, and that's why the environmental advocates generally believe this is not a good bill and opposes it.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1189 are Senators Abate, Connor, Dollinger, Kruger, Leichter, Markowitz, Montgomery, Nanula, Oppenheimer, Paterson, Santiago and Seabrook. Ayes 43, nays 12.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1228, by Senator Stafford, Senate Print 612, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1229, by Senator Larkin, Senate Print 935-A, an act to amend the Navigation Law, in relation to liability.

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

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Larkin, an explanation of Calendar Number 1229 has been asked for by Senator Leichter.

SENATOR LARKIN: Senator, this bill protects volunteer firefighter companies, the districts or department from a strict liability cause of action when a petroleum product is discharged into the ground or water while responding to a fire-related emergency where there is no indication of willful or gross

negligence on the part of the named individual.

What we're saying is that in this bill, if firefighters respond to an incident and it was shown that they were neglectful, willful and gross negligence, they can be held liable, but if they're in pursuit of their duties and something happens, it is not neglect. It's something that the Association of Fire Districts of the state of New York have been trying to get because more and more firefighters are being called to respond to these incidents, and there is no protection for them out there doing their job properly. This is mainly a volunteer force, and they should have some protection.

As you'll note that there is a complaint by the Trial Lawyers, but my response to the Trial Lawyers is that the volunteer fire companies are not afforded blanket immunity. Firefighters, the companies will be held liable if they are found to have an act -- have acted with willful or gross negligence. As such, they shall be granted immunity from only strict liability when they are actually performing

their job and they're doing what they have been taught and trained to do and to do properly.

SENATOR LEICHTER: Mr. President, Senator Larkin, it sounds like a reasonable bill to me.

SENATOR LARKIN: Thank you very much, Senator.

ACTING PRESIDENT KUHL: The 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 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1231, by Senator Nozzolio, Senate Print 1999, an act to amend the General City Law.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Goodman, you asked to speak on the bill?

SENATOR GOODMAN: No, Mr. President. I was out of the chamber a few moments ago.

ACTING PRESIDENT KUHL: Senator Goodman, we're on a bill on a roll of debate right now.

SENATOR GOODMAN: I understand.

ACTING PRESIDENT KUHL: Could we take care of that first?

SENATOR GOODMAN: I'm sorry, Senator. I yield to the Senator.

Thank you.

SENATOR NOZZOLIO: Thank you, Senator.

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

SENATOR DOLLINGER: Just one question on this bill.

ACTING PRESIDENT KUHL: Senator Nozzolio, do you yield to a question from Senator Dollinger?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Just one short question. Since there's been a roughly comparable situation in the city of Rochester and I'm not familiar with the city of Auburn, are there any memos in opposition from the local plumbers union with respect to this -- this bill, do you know?

SENATOR NOZZOLIO: Senator Dollinger -- Mr. President, through you -- that, no, there have been no memos that I'm aware of in opposition. The situation is not similar to Rochester, Senator Dollinger, in the sense that Auburn has 33,000 people, and what they're having is a very difficult time finding the qualified plumbers to serve on these boards that reside within the city limits, and that's the sum and substance of the reason for the request that they're not asking for any -- any efforts to be not in compliance with the building code. It's just the training and other requirements and the supply of trained, skilled labor -

organized labor plumbers.

SENATOR DOLLINGER: Thank you for that clarification. It is not the situation in the city of Rochester. I appreciate the clarification.

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 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Velella.

SENATOR VELELLA: Mr. President, can we move to Calendar 1078, Senate 6459, by Senator Goodman.

ACTING PRESIDENT KUHL: We can. Just a minute.

Senator Leibell, why do you rise?

SENATOR LEIBELL: Mr. President, could I ask unanimous consent on Calendar 1189, Senate 7130.. 7133 to be recorded in the negative.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Leibell will be recorded in the negative on Calendar Number 1189.

Senator Leichter, why do you rise?

SENATOR LEICHTER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar 874.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 874.

Senator Goodman.

SENATOR GOODMAN: Can I too be recorded in the negative on 1189.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Goodman will be recorded in the negative on Calendar

Number 1189.

SENATOR VELELLA: Mr. President, can we -- can we -- there will be an immediate meeting of the Rules Committee in the Senate Majority Conference Room.

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

Now the Secretary will read Calendar Number 1078.

THE SECRETARY: Calendar Number 1078, by Senator Goodman, Senate Print 6459, an act to amend the Public Buildings Law, in relation to deleting the value limitation.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Goodman, an explanation of Calendar Number 1078 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR GOODMAN: Senator, this is a departmental bill from the department of general -- the Office of General Services, and its purpose is to remove the incapacitating and potentially severely detrimental maximum value limitation of $200,000 which restricts emergency construction contracts authorized to be let by the commissioner of General Services.

To get to the core of this, we occasionally have serious emergency repair requirements, and I'll give you an example or two to just illustrate this. In 1991, it was necessary promptly to repair ventilating and air-conditioning equipment on several floors of Building 8 of the Harriman State Office Campus to preclude the long-term loss of essential operations of the Department of Taxation and Finance, and then there was the necessity in July of 1993 to replace a major transformer following a fire and explosion in the Corning Tower building, each costing several million dollars.

These illustrate the

unpredictability of major casualties and the building space losses which must be restored by emergency contracts priced far in excess of $200,000. I may say just to fill this out that we do have -- there has been opposition to the necessary removal of the $200,000 emergency limitation emanating from a concern that the required emergency response by informal, competitive contracting be limited only to those measures which must be immediately taken and accordingly, this bill had previously been amended to develop -- and develop -- the amendments developed jointly with the state comptroller's office which authorized that emergency contracting method be used only for the -- be used only with respect to those aspects of the -- of repair work which has determined to be performed but 130 days following the emergency loss.

The remedial work not capable of being performed within such short period would be awarded through the normal formal contracting process.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Goodman has certainly established the threshold that would bring us into the equation. I just want to find out what the limitations or restrictions are, so if my distinguished neighbor and colleague would yield for a few moments to peruse this bill -

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes, I will, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, I can understand that a number of situations as you described, particularly the one in 1991, are really an example of what would be the catalyst for writing this legislation, that the limitation actually serve to be a hindrance in

an emergency situation.

What I am concerned with is the abuse of this new authority on behalf of not the current commissioner, but just a commissioner of the department of general services, and what I'm specifically talking about is that we now have no limitation in any contract could just be deemed an emergency and that's the way you would get around certain obstacles, and there's a tendency in these types of situations to feel that issues are rising to the level of an emergency when, in fact, there might be a better way to do them. So if you could just assure us or give us the criteria that would persuade us that there still are restrictions and that there is at least some method of determining what an emergency situation is, I'd feel a lot more comfortable supporting the bill.

SENATOR GOODMAN: Well, Senator, as I indicated, one of the major safeguards that have been instituted in this in consultation with the comptroller's office has been the provision that any work requiring more than 30

days will not be given the latitude within this bill, and I think that that is a safeguard that's quite comprehensive, and in the judgment of the comptroller's office having reviewed this quite carefully, their feeling is that the emergency authority granted is reasonable and appropriate and without it, actually there would be quite a crisis created, as I indicated a few moments ago. Unless we grant this authority, it becomes virtually impossible to make prompt repairs to major breakdowns, such as the type that did occur in the Corning Tower that I described and, therefore, I think the 30-day limitation is one which should respond substantially to your concerns.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Would Senator Goodman yield to just one question?

ACTING PRESIDENT KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: No debate would be complete, Senator, without having the

privilege of yielding to a searching question from you.

SENATOR DOLLINGER: Senator, the examples that you cited in your memorandum, were they all completed within 30 days?

SENATOR GOODMAN: Yes, they were, Senator.

SENATOR DOLLINGER: In each of those instances, the transformer was repaired within 30 days?

SENATOR GOODMAN: To the best of my knowledge, they were, yes.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I share Senator Paterson's concerns about deviating from our public bidding laws, even in instances in emergencies. It seems to me to spend $200,000 in public money in an emergency is a reasonable limitation on the authority to give to OGS to do this, and I for one continue to favor those laws

and believe that even in instances such as this, they can work, and so I'm going to be voting in the negative on this, Mr. President.

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.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 55, nays 1, Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1234, by Member of the Assembly -

SENATOR SEWARD: Mr. President.

SENATOR LARKIN: Mr. President, would you recognize Senator Seward.

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

SENATOR SEWARD: Mr. President, I would just like to announce that at 1:00 p.m., the Energy and Telecommunications Committee will be having a committee meeting in Room 123 here in the Capitol. 1:00 p.m., Energy and Telecommunications Committee, Room 123 in the Capitol.

ACTING PRESIDENT KUHL: There will be an Energy and Telecommunications Committee meeting at 1:00 p.m. in Room 123 of the Capitol.

Thank you, Senator Seward.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1234, by Member of the Assembly Colman, Assembly Print 8464, an act in relation to discontinuing.

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

Senator Holland, an explanation has been asked for on Calendar Number 1234.

SENATOR HOLLAND: Yes, Mr.

President. This is a bill that I have introduced this bill or similar bills for the last six years. We are privileged to have the Assembly on board finally this year, and they have already passed their bill, as you heard, sponsored by Assemblyman Colman.

This bill removes the Spring Valley toll barrier which straddles the middle of the Thruway in Spring Valley in Rockland County.

Somewhere around 430,000 autos and trucks go through that toll barrier every month and create a tremendous air pollution problem for Rockland County, a noise pollution problem for Rockland County, a serious congestion problem, not only for the Thruway but other roads off the Thruway, and accidents and, in fact, the state of Connecticut, because of toll barriers straddling their Thruway, removed all their toll barriers a few years ago because of the accidents.

Recently, Route 287 came through. You know what Route 287 is? It's

really like a beltway around the city of New York, like Baltimore has a beltway, like Washington, D.C. has a beltway, and because of the increase in traffic, the noise pollution, the air pollution and all the other problems have increased 20-fold. In fact, the truck traffic has increased by 100 -- over 100 percent, and the revenues for the Thruway Authority from 1994 to 1995 increased by $11-1/2 million.

The residents of Rockland and Orange County pay approximately 24 percent of the total tolls on the Thruway from Buffalo to Yonkers for only nine percent of the road, from Harriman to Yonkers. We believe this is totally unfair, forget the pollution, forget the noise pollution, et cetera. There are two tolls within 11 miles, Spring Valley and the Tappan Zee Bridge.

One of the arguments that some people will probably bring up is that there is a loss in revenue, and yet the Thruway Authority is planning to refurbish the Spring Valley toll

barrier -- it was supposed to be this year, I believe -- at the cost of about 96 -- at the cost of about $2.2 million.

Another problem that we have is that we in Rockland County paying that 24 percent -- Orange and Rockland County paying that 24 percent on nine percent of the roads are also supporting other aspects of the Thruway Authority that do not have tolls. We are - with our tolls, we are supporting the canal system, which is about -- budgeted about $26 million in 1996, the Syracuse inner harbor, $650 million; Exit 26 bridge, $234 million, the Stewart access road, half a million dollars, Interstate I-84, $9 million. Besides across - Interstate 84, no toll exists there. We support that with our tolls. The Cross-Westchester, no tolls exist there. We support that with our tolls.

Of course, before anybody else says it, the Thruway has opposed it, and they say it's for financial reasons, but I want to read something from the office of the

comptroller. It's an audit he did on the 1988 Capital Plan that was issued November the 22nd, 1995, and it says a few things, but one of the things it says is "Authority officials are in agreement with this report." It goes on to say, "According to the Authority's audit of financial statements for the year ended December 31st, 1994, the Authority had total operating revenues of 309... $339.5 million, of which 315.4, 93 percent was derived from Thruway tolls. Approximately 25 million was derived from restaurants and service stations, concessions, investments and other sources. Operating expenses for the year, including maintenance, operation and administering was $195.6 million. The remaining 143.9 million was either deposited in the Authority's reserve or spent on projects other than the Thruway, interest expense and other purposes."

This toll barrier is a pollution problem to the people of Rockland and Orange County, and the Thruway Authority has much money and can do away with this limited amount of

revenue that this creates.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Would Senator Holland yield to a couple of questions?

ACTING PRESIDENT KUHL: Senator Holland, do you yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Isn't the comment that you made, Senator, about this being a pollution source equally true of every single toll booth in New York State?

SENATOR HOLLAND: Well, it is true depending upon the amount of traffic that goes through it. This is one of the busiest tolls. It is a toll that straddles the Thruway. There are six tolls that straddle the Thruway and are not entrances or exits.

SENATOR DOLLINGER: Mr. President, if you come to western New York and go to the Depew station right as you get off the

express -- the Thruway to go to Buffalo where there's a toll station, I dare say I'm not familiar with how busy Spring Valley is, but I know that's extremely busy in western New York because all the Thruway traffic goes through it, and I'm not so sure that the argument that it's a pollution source or a source of air and emissions is a sufficient justification for us to do anything, otherwise we would abolish all of the toll booths, wouldn't we?

SENATOR HOLLAND: That was suggested -- they were supposed to be abolished in 1996, but Governor Cuomo, your governor, appointed a commission which suggested that it be maintained.

SENATOR DOLLINGER: Lastly, isn't the logic of closing this toll booth -- you talked about the fact that they're nine percent of the population but they pay 24 percent of the tolls. Isn't it because they use 24 percent of the total miles actually traveled on the Thruway system?

SENATOR HOLLAND: No. They use

nine percent of the total miles.

SENATOR DOLLINGER: Of the total miles.

SENATOR HOLLAND: Yes.

SENATOR DOLLINGER: Is that nine percent of the total miles in the two counties or nine percent of the use comes from -

SENATOR HOLLAND: Nine percent of the total miles runs from the Yonkers toll barrier in Westchester County to the Harriman toll barrier in Orange County.

SENATOR DOLLINGER: But if the people in Rockland County or Orange County were using that quite frequently, a natural volume of the use is more than nine percent, isn't it; because I think you said yourself it's very heavily used. So even though it's only nine percent of the road, of the total miles driven on the Thruway every year, it's got to be more than nine percent because so many people use it; isn't that correct?

SENATOR HOLLAND: They use it - we use it for commuting back and forth to work,

Senator, and we -- and it's right in the middle of the Thruway. You have no way to get on or off and you have to pay the 80 cents daily, yes.

SENATOR DOLLINGER: Well, the point I'm making, Senator, is that even though it's only nine percent of the roads in your community, as far as the total volume of miles driven by people in the Thruway itself, if you took all the miles driven by everybody that had driven it during that year, the percentage that's actually driven in Rockland County is more than nine percent because they use it - the volume is much higher, even though the road distance is relatively short.

SENATOR HOLLAND: I don't know how that figures, but I suppose you're right.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Even though this is a long way from Monroe County, I'm going to vote against this bill, Senator. I think

that this is exactly what the Thruway Authority describes it to be. I think it's unconstitutional. I think it does interfere with the rights of bondholders. I think we in a state in which our bond rating is shaky at best, we shouldn't be doing this. I don't think that we can stand here and tell the Thruway Authority what tolls to collect, what not to collect.

If the position is that we should abolish all of the tolls everywhere on the Thruway and turn it into a supported road from the general fund, let's have the courage to do that, but to do it on a piece-by-piece basis seems to make no sense and, frankly, I don't know why everybody in Monroe County wouldn't come in and ask for the same benefit that you're seeking here for Rockland and Orange.

I appreciate that all politics is local but in some instances, the public good, the broader public good has to overwhelm that public -- that purely parochial concern and while I appreciate it, I nonetheless cannot support it.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, just on the bill.

ACTING PRESIDENT PATERSON: Senator Paterson.

SENATOR PATERSON: As a matter of technique, I think what Senator Holland may have attempted was to change the Public Authorities Law 373, which really establishes the constitu tionality of what it is that Senator Dollinger is talking about, and it would be expressly unconstituional for us to pass this bill because the law specifically mandates that the Thruway has the authority to impose fees and also to engage in a bond covenant, and so since we already have that bond covenant, to lose $12.5 million a year -- or perhaps Senator Holland has a better assessment of how much money it is - would seem to be inappropriate right now given the budget crisis that we have in this state.

What I think is particularly interesting about this is that yesterday Senator

Bruno, in encouraging us to pass the pesticide registry bill, told us that one of the reasons that the bill was out here is because the Governor said he would veto the Assembly bill. Well, interestingly enough, the Governor has pretty much made it clearly that he would veto this Assembly bill. So I don't even know why we're debating it here today since it's not really going to get anywhere, but that's just a thought because actually, I think we should debate any bill that the sponsor feels is important, and I'm sure the residents of Spring Valley, through Senator Holland, do think that there is an undue burden placed on them and perhaps they are right, but it is something that probably in each of our districts and in each of the communities that we represent, there is some situation where there's an encumbrance upon us as state residents.

Very similarly, there are a number of other tolls on the Thruway where the individuals in that particular area are particularly discomforted by its existence.

Unfortunately, this is a contribution I think that we all make as state residents.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: I just want to comment on the constitutional question that the Senator brought up -- the two Senators brought up.

First of all, if the Legislature created the Thruway Authority, they can end it or change the Thruway Authority and secondly, if you talk about the bondholder's rights, we have recently put on them additional roadways in I-84 and the Cross Westchester highway, so we have changed what the bondholders are responsible for already. So I think that really throws out the question.

Last comment on the constitutionality, if, in fact, it is unconstitutional, which I do not absolutely believe, it wouldn't be up to us to decide that. It would be up to the courts to decide.

ACTING PRESIDENT KUHL: Senator

Paterson, you wish to speak on the bill?

SENATOR PATERSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: If -- it might be something that the courts would determine, but since the language in Public Authorities Law 373 is so specific, I don't know that it's prudent for us as legislators to just unduly burden the courts with reviewing something that is almost prima facie just in its writing.

However, what I was suggesting - because I'm not trying to suggest to Senator Holland that he has no remedy. I'm just kind of saying that it would be better to change that law because it's sweeping and there are other statutes that are somewhat -- that are also related, and I think we would have to go in that direction, if that's what he was willing to accomplish, and perhaps so because I recognize what the residents in Spring Valley are indicating to us through the attempt to pass

this legislation.

I'm just continuing to maintain that it is very analogous to situations that occur in other areas along the Thruway which was the actual underpinning to the concept of the Public Authorities Law and its grant to the Thruway Authority in the first place.

ACTING PRESIDENT KUHL: The 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.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

SENATOR GOLD: Just very briefly. I think Senator Holland and I are allowed to have an intellectual disagreement. I think there are a lot of times when

constitutional questions come up and we really don't know the answer.

On the other hand, Senator Holland, I think we, along with everybody else, raise our hand in the beginning of the session and swear to uphold the Constitution, and if something is clearly unconstitutional, I think it's a violation of the oath as I interpret it.

Lastly, let me say that Senator Goodman for years, I believe, had fought for a certain piece of legislation and it was finally determined that the idea might be good but it was not constitutional to do, and he changed it to an amendment to our Constitution. Maybe that's just something you may want to do.

This house will pass almost anything you want in order to -- in order to help you as one of the members of that side, and we could be passing something that perhaps would alter the Constitution and make it possible to do, but I think that -- God bless you -- I think that saying that when it's convenient for us - and I'm not suggesting that's what you're doing

-- to ignore the constitutionality because it's for the courts, I think there are times when those issues are fairly represented in that way.

I do not think this is one of them. I do not think we have the right to do this, and I vote in the negative.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1234 are Senators Connor, Dollinger, Gold, Kruger, Leichter, Markowitz, Nanula, Oppenheimer, Paterson, Santiago and Seabrook. Ayes 45, nays 11.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Gold, why do you rise?

SENATOR GOLD: If I could have unanimous consent to be recorded in the negative on Calendar Number 1189, by Senator Marcellino, please.

ACTING PRESIDENT KUHL: Without

objection, hearing no objection, Senator Gold will be recorded in the negative on Calendar Number 1189.

Senator Larkin.

SENATOR LARKIN: Mr. President, may we now return to reports of standing committees. I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT KUHL: We can and there is a report at the desk. I'll ask the Secretary to read the Rules report.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 766, by Senator Present, an act to amend the Tax Law, in relation to exemption;

906, by Senator Kuhl, an act to amend the Tax Law;

993-A, an act to amend the Tax Law, in relation to penalties;

1915-C, by Senator Waldon, an act to amend the Executive Law, in relation to

establishing;

2402, by Senator Johnson, an act to amend the Real Property Tax Law, in relation to granting;

3125-A, by Senator Marchi, an act to allow Michael Acito to receive credit;

3203, by Senator Nozzolio, an act in relation to authorizing the town of East Bloomfield;

3812, by Senator Volker, an act to amend the Civil Practice Law and Rules;

3948, by Senator Nozzolio, an act to amend the Criminal Procedure Law and the Executive Law;

4455, by Senator Hoblock, an act to amend the Executive Law, in relation to display of the prisoner of war and missing in action flag;

5321-A, by Senator Maziarz, an act to amend the Criminal Procedure Law, in relation to period;

5493, by Senator Santiago, an act to amend the Banking Law, in relation to

authorizing;

5500-A, by Senator Volker, an act to enact the Criminal Justice Omnibus Act of 1996;

5761-C, by Senator Stafford, an act to authorize the town of Ticonderoga;

5795, by Senator Hoblock, an act to amend Chapter 553 of the Laws of 1994;

5798-A, by Senator Hoblock, an act to amend the Education Law, in relation to tuition awards;

6157, by Senator Holland, an act allowing the village of Piermont, Rockland County to establish;

6334, by Senator Nozzolio, an act to amend the Navigation Law, in relation to regulation;

6535, by Senator Volker, an act to amend the Civil Practice Law and Rules;

6637, by Senator Stafford, an act to continue the existence of the Hamilton County Industrial Development Agency;

7010, by Senator Kuhl, an act to

amend the General City Law, in relation to excluding;

7090-A, by Senator Larkin, an act to establish the library district in the city of Kingston;

7206-A, by Senator Cook, an act to create the Wallkill Public Library District;

7301, by Senator Sears, an act to authorize the county of Lewis;

7302, by Senator Sears, an act authorizing the county of Lewis to issue serial bonds;

7511, by Senator Bruno, an act amend the Public Authorities Law, in relation to the membership of the board of directors;

And 7513, by Senator Larkin, an act to amend the Town Law, in relation to exemption. All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Senator Larkin.

SENATOR LARKIN: I move we accept the Rules -- report of the Rules Committee.

Is there any housekeeping?

ACTING PRESIDENT KUHL: The motion is to accept the Rules report. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted. All bills are directed directly to third reading.

Return to motions and resolution.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Skelos, on page 14, I offer the following amendments to Calendar Number 579, Senate Print Number 5730-B and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 579 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Larkin.

SENATOR LARKIN: Mr. President, we'll now stand at ease. We'll return to session at 6:00 p.m. tonight, and we'd like to remind everybody that they should make sure that their offices know where they're at in case we get an earlier wakeup call. We'll now stand at ease 'til 6:00 p.m.

ACTING PRESIDENT KUHL: The Senate will stand at ease until 6:00 this evening.

Before we do that, the Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, there will be a meeting of the Minority in the Minority Conference Room at 1:25 p.m. -- that's 1:25 p.m.

ACTING PRESIDENT KUHL: There will be a meeting of the Minority Conference in the Minority Conference Room, I believe that's 314, in one half hour, 30 minutes from now at 1:25. A meeting of the Minority Conference in the Minority Conference Room at 1:25.

The Chair recognizes Senator

Levy.

SENATOR LEVY: Yes, Mr. President. I was out of the chamber conducting a committee meeting. I'd like unanimous consent to be recorded in the negative on Calendar 1189, Senate 7133.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Levy will be recorded in the negative on Calendar Number 1189.

Senator Smith, why do you rise?

SENATOR SMITH: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 347, 1189 -- they're still trying to find the other one. I was in Transportation, so I was in -- and Number 1234.

ACTING PRESIDENT KUHL: Without objection, Senator Smith will be recorded in the negative on those three bills.

SENATOR SMITH: Thank you.

ACTING PRESIDENT KUHL: 347, 1189 and 1234.

Any other Senators wishing to

register a vote, change a vote at this time?

(There was no response.)

If not, the Senate will stand at ease until 6:00 a.m. All members are reminded -- excuse me -- 6:00 p.m. -- 6:00 p.m. All members are reminded to stay in touch with their offices subject to the call or the return to this chamber prior to that by the Majority Leader. The Senate stands at ease.

(Whereupon, at 2:00 p.m., the Senate stood at ease, until 7:17 p.m.)

ACTING PRESIDENT PADAVAN: Without objection, the Senate will stand adjourned until tomorrow, Wednesday, June 5, at 10:00 a.m.

(Whereupon at 7:18 p.m., the Senate adjourned.)