ALBANY, NEW YORK

June 13, 1996

10:03 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

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

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

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

We're very please to be joined by the Reverend Roy Olsen of the Calvary Assembly of God, Pleasantville, New York. Reverend Olsen.

REVEREND ROY OLSEN: Let us pray.

Almighty God, Creator of the heavens and the earth, we thank You for Your awesome love, for those of us gathered here as well as those over whom we govern. We pray, Father, for Your blessing upon us, upon them as well. We pray for Your wisdom, Your strength and Your convictions, that we might lead our state in Your righteousness and in Your ways

that we might all prosper in spirit, in soul and in body.

We pray, Father, for the business of this day that you will give us wisdom again to deliberate and to decide according to Your wisdom, which ultimately will prevail, as being the best. This we pray in the name of the Prince of Peace. Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, June 12th. The Senate met pursuant to adjournment. Prayer by the Reverend Walter Kortrey, Emanuel Evangelical Lutheran Church, Pleasantville. The Journal of Tuesday, June 11th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I wish to call up Senator Leibell's bill, Print Number 6004, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 343, by Senator Leibell, Senate Print 6004, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

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

(The Secretary called the roll on

reconsideration. )

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

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Present.

SENATOR PRESENT: Mr. President, on page 43, I offer the following amendments to Calendar 1512, Senate Print 7648, and ask that it retain its place on the Third Reading Calendar.

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

Senator Skelos, we have a couple of substitutions at the desk.

SENATOR SKELOS: Please make the substitutions at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: On page 42, Senator Maltese moves to discharge from the

Committee on Rules Assembly Bill Number 6212-D, and substitute it for the identical Third Reading Calendar 1509.

On page 44, Senator Hoblock moves to discharge from the Committee on Rules Assembly Bill Number 10968 and substitute it for the identical Third Reading Calendar 1523.

ACTING PRESIDENT KUHL: Substitutions are ordered.

Senator Skelos, we have a couple resolutions at the desk if you would like to take those.

SENATOR SKELOS: Mr. President, I believe there are four resolutions at the desk. I ask their titles be read and move their adoption.

ACTING PRESIDENT KUHL: Secretary will read the titles of all four resolutions. We'll vote on them at one time.

THE SECRETARY: By Senator Bruno, Legislative Resolution commemorating the Olympic Torch's passage through the town of Brunswick, New York, Friday, June 14, 1996.

By Senator Bruno, Legislative Resolution commemorating the Olympic Torch's passage through the Hoosick community on Friday, June 14, 1996.

By Senator DeFrancisco, Legislative Resolution honoring the Media Unit, 327 Montgomery Street, Syracuse, New York on the occasion of its 20th Anniversary in providing young people in the Central New York area with life skills.

And by Senator Connor, Legislative Resolution commemorating the Lower East Side Festival, Gateway to the American Dream, paying tribute to 100 years of the immigration of new Americans, to be celebrated at a gala street festival on Sunday, June 16, 1996.

ACTING PRESIDENT KUHL: Question is on the four resolutions before the house. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The resolutions are adopted.

Senator Skelos.

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

ACTING PRESIDENT KUHL: There is none right now.

SENATOR SKELOS: Then, Mr. President, if we could have a reading of the non-controversial calendar.

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

THE SECRETARY: On page 5, Calendar Number 142, by Senator Lack, Senate Print 1296, concurrent resolution of the Senate and Assembly, proposing amendments to Article 6 of the Constitution.

ACTING PRESIDENT KUHL: Question is on the resolution. Secretary will call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill -- the resolution is adopted.

THE SECRETARY: Calendar Number 354, by Senator DeFrancisco, Senate Print 1970, an act to amend the Workers' Compensation Law, in relation to licensed boxers and wrestlers.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 358, by the Assembly Committee on Rules, Assembly Print 7679, an act to amend the Labor Law, in relation to registration.

ACTING PRESIDENT KUHL: 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 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 390, by Senator Nozzolio, Senate Print Number 2138-B, an act to amend the Social Services Law and the Education Law, in relation to enacting the New York State Child Abuse Prevention Act.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect November 1.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 730, by Senator DeFrancisco, Senate Print 6772 A, an act to amend the General Municipal Law, in relation to the sale of raffle tickets.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 776, by Senator Saland, Senate Print 1434-B, an act authorizing the Commissioner of General Services.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. Secretary will -- lay the bill aside.

THE SECRETARY: Calendar Number 858, by the Assembly Committee on Rules, Assembly Print 10538-B, an act to amend the Criminal Procedure Law, in relation to orders of protection.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 960, by Senator Velella, Senate Print 6688-A, an act to amend the Insurance Law, in relation to making certain technical corrections.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 9. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 969, by Senator Trunzo, Senate Print 5985-B, an act to amend the Public Authorities Law, in relation to collective negotiations.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 974, by Senator Trunzo, Senate Print 7259-B, an act to amend the Retirement and Social Security Law, in relation to retirement of police officers.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR LEICHTER: Lay that aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: 1016, by Senator Nozzolio, Senate Print 7439-A, an act to amend the General City Law, in relation to the term of office of city supervisors.

ACTING PRESIDENT KUHL: Secretary will read the last section. Oh, excuse me. There is a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1067, by Senator Lack, Senate Print 7484-B, an act to amend the Judiciary Law.

SENATOR SKELOS: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: 1088, by Senator

Johnson, Senate Bill 575, an act to amend the Penal Law, in relation to the administrative provisions.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1109, by Senator Leibell, Senate Print 2713-A, an act to amend the Vehicle and Traffic Law, in relation to eliminating the fee.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 1st day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1154, by Senator Velella, Senate Print 6497-A,

an act to amend the Vehicle and Traffic Law, in relation to reports.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 31.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1165, by Senator DeFrancisco, Senate Print 7412, an act to amend the Public Authorities Law, in relation to reciprocal promotions.

SENATOR DeFRANCISCO: Lay it aside for amendment.

ACTING PRESIDENT KUHL: Lay the bill aside for amendments.

THE SECRETARY: Calendar Number 1198, by member of the Assembly Tokasz, Assembly Print 4513-A, an act to amend the Election Law,

in relation to contents of petition witness statements.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 1st day of December.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 32.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1243, by Senator Waldon, Senate Print 1915-C, an act to amend the Executive Law, in relation to establishing.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1260, by Senator Kuhl, Senate Print 7010-A, an act to amend the General City Law, in relation

to the residence of members.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 32.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1303, by Senator Present, Senate Print 7028-A, an act to amend the Environmental Conservation Law, in relation to inactive wells.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 32.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1332, by Senator Kuhl, Senate Print 6576-B, an act to amend the Alcoholic Beverage Control Law and the Tax Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1403, by Senator Skelos, Senate Print 2458-A, an act to amend the Family Court Act, in relation to orders of protection.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 60th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 34.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1405, by Senator Spano, Senate Print 2629-B, an act to amend the Retirement and Social Security Law, in relation to providing.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 34.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1406, by Senator Larkin, Senate Print 2807-A, an act to amend the Education Law, in relation to the reporting of school safety inspections.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1408, by Senator Padavan, Senate Print 4754-A, an act to amend the Administrative Code of the city of New York.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes -

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Leichter.

THE SECRETARY: Calendar Number 1410, by Senator Paterson, Senate Print 5486, an

act to authorize Richard J. Mason, the Executive Director of the Renaissance Health Care Network.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1423, by member of the Assembly Katz, Assembly Print 9809, an act to amend the Executive Law, in relation to penalties.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1454, by Senator Leibell, Senate Print 7143, concurrent resolution of the Senate and Assembly proposing an amendment to Section 1 of Article 6 of the Constitution.

ACTING PRESIDENT KUHL: Question is on the resolution. Secretary will call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The resolution is adopted.

THE SECRETARY: Calendar Number 1485, by Senator Skelos, Senate Print 6249-A, an act to amend the Public Service Law, in relation to the tariff filings.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Leichter.

THE SECRETARY: Calendar Number 1488, by Senator Stafford, Senate Print 6729-A, an act to amend Chapter 266 of the Laws of 1981.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1492, by Senator Present, Senate Print 7556, an act -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1496, by Senator Hannon, Senate Print 7580, an act to amend the Emergency Tenant Protection Act

of 1974.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1501, by Senator Kruger, Senate Print 302-A, an act to amend the Penal Law, in relation to increasing the penalties.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1502, by Senator Stavisky, Senate Print 2701, an act to amend the Penal Law, in relation to increasing the penalties.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1504, by Senator Wright, Senate Print 7594-A, an act authorizing the apportionment of transporta tion aid.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1505, by Senator Leibell, Senate Print 7612, an act to legalize, ratify and confirm the acts and proceedings of the board of education.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 36.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1506, by the Senate Committee on Rules, Senate Print 7613, an act to amend Chapter 268 of the Laws of 1989.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 36.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1507, by Senator Lack, Senate Print 7625, an act to amend the Surrogate's Court Procedure Act, in relation to the contesting of a will.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

1508, by the Senate Committee on Rules, Assembly Print -- Senate Print rather.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1509, by member of the Assembly Tokasz, Assembly Print 6212-D, substituted earlier today, an act to amend the Election Law and Chapter 659 of the Laws of 1994.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 1510, by Senator Stafford, Senate Print 7641, an act to amend the Retirement and Social Security Law, in relation to the date.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1511, by Senator Bruno, Senate Print 7643, an act in relation to authorizing Tier I status.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1513, by Senator Levy, Senate Print 7655-A, an act to amend the Transportation Law, in relation to establishing an engineering and technician career development.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1514, by Senator Rath, Senate Print 7656, an act to amend the Real Property Tax Law, in relation to the determination.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

1515, by Senator Tully, Senate Print 7657, an act to amend the Environmental Conservation Law, in relation to the general powers.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1516, by Senator Volker, Senate Print 7659, an act to amend the Executive Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 1517, by Senator Maziarz.

SENATOR SKELOS: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 1518, by the Senate Committee on Rules, Senate Print 7689, an act to amend Chapter 884 of the Laws of 1990.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1519, by Senator Maziarz, Senate Print 7707, an act to incorporate the Wheatfield Volunteer Firefighters' Benevolent Association.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 8. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Bill 1514 at the desk?

ACTING PRESIDENT KUHL: Do we have 1514? You want to just hold it at the desk.

SENATOR LEICHTER: Yeah. Could you just -- 1514, just hold it.

ACTING PRESIDENT KUHL: 1514 -

SENATOR LEICHTER: Yes, I just want to hold it.

ACTING PRESIDENT KUHL: 1519 was passed.

The Secretary will continue to call the non-controversial calendar.

THE SECRETARY: Calendar Number

1521, by Senator Kuhl, Senate Print 7710, an act to amend the Navigation Law, in relation to the use of life preservers.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1522, by the Senate Committee on Rules, Senate Print 7712, an act to amend the Alcoholic Beverage Control Law, in relation to licensing.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1523, by the Assembly Committee on Rules, Assembly Print 10968 -

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Leichter.

THE SECRETARY: Calendar Number 1524, by Senator Holland, Senate Print 7731, an act to amend the Retirement and Social Security Law, in relation to service.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay it aside at the request of Senator Leichter.

THE SECRETARY: Calendar Number 1525, by the Senate Committee on Rules, Senate Print 7734, an act to amend Section 20 of the Laws of -- of Chapter 231 of the Laws of 1993.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1526, by Senator Hannon, Senate Print 7764, an act to amend the Public Health Law.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Dollinger.

Senator Skelos.

SENATOR DOLLINGER: Mr. President.

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

SENATOR DOLLINGER: Mr. President, I understand that 730 has passed the house. May I have unanimous consent to be recorded in the negative on 730?

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Dollinger will be recorded in the negative on Calendar Number 730.

Senator Skelos.

SENATOR SKELOS: Mr. President, could we take up the controversial calendar, regular order.

ACTING PRESIDENT KUHL: Secretary will call the controversial calendar, regular order commencing with Calendar Number 354.

THE SECRETARY: On page 7, Calendar Number 354, by Senator DeFrancisco, Senate Print 1970, an act to amend the Workers' Compensation Law, in relation to licensed boxers and wrestlers.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT KUHL: Senator DeFrancisco, an explanation of Calendar Number 354 has been asked for by Senator Stachowski.

SENATOR DeFRANCISCO: Presently the workers' -- the individuals who promote fights licensed -- for licensed boxers in the state of New York have to pay Workers' Compensation premiums. However, the case law indicates that workers' -- boxers that are injured in the ring and wrestlers as well can not collect Workers' Compensation benefits. There was a recent case in 1993, so since it seems to be unfair -

ACTING PRESIDENT KUHL: Senator DeFrancisco, excuse me just a minute. We have a lot of motion going on in the chamber and a lot of noise. Can we have the members please take their seats.

SENATOR DeFRANCISCO: -- it seemed unfair to require promoters to pay for something that the boxers would never take advantage of; so that was the reason for it and that's the reason for the bill.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield for a question from Senator Stachowski.

SENATOR STACHOWSKI: If Senator DeFrancisco would yield.

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR STACHOWSKI: Senator, do you know when we started covering boxers and wrestlers with Workers' Comp' or has it always been, do you know?

SENATOR DeFRANCISCO: I don't know when we started, but I think it has always been. There's never been an exemption.

SENATOR STACHOWSKI: And we know for sure that they almost always lose? Have they ever won a case that we know of?

SENATOR DeFRANCISCO: I don't know if they have, but the most recent case, I don't know the name of it, in 1993 -- it's in

the memo -- where there were very, very serious injuries. I think the individual ultimately died as well, and he could not collect, so that seems to be a pretty extreme case.

SENATOR STACHOWSKI: If the Senator would continue to yield. Do you know, is the Athletic Commission in favor of this bill?

SENATOR DeFRANCISCO: I've had no correspondence from them, but the bill does say that this is true, this bill would apply provided that the boxer has the insurance required -- health insurance and liability insurance -- required by the Boxing Commission so I don't believe they have any objection.

SENATOR STACHOWSKI: I -- thank you.

I was asking a few questions mainly because we have a memo and I'm pointing out to the people in this room that the AFL-CIO opposes this bill, and I do understand the point that this would probably encourage more boxing and wrestling events if we dropped this coverage

which the boxers and wrestlers don't seem to be able to collect on anyway.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Would Senator DeFrancisco yield to a question?

ACTING PRESIDENT KUHL: Senator DeFrancisco, will you yield to a question from Senator Dollinger?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator, does the opinion that you refer to -- and this is all new to me -- does it refer to the injuries sustained in the ring? What happens if someone were walking toward the ring and slipped and fell and were hurt, or hurt their back or were in training on the facility, are they still covered? Would that be covered by Workers' Compensation? I can understand how, if your job is to knock the other guy out, that wouldn't be considered an injury covered by Workers' Comp',

but what about the injuries that happen in the normal course of business?

SENATOR DeFRANCISCO: Have you ever taught law school, Senator Dollinger? You seem to find all the exceptions in the world.

SENATOR DOLLINGER: I'm just trying to find out if we leave them unprotected for those other kinds of injuries that occur to boxers.

SENATOR DeFRANCISCO: I don't know of anybody slipping where they fell going into the ring where they made a claim for compensation. I imagine that's possible, but on the other hand the serious injuries where there should be recovery have not been taken care of because of the court cases, so I'm not concerned about that situation because one of the requirements of the New York State Athletic Commission is to maintain health insurance, maintain liability insurance so that those - there is a back-up for that type of instance.

SENATOR DOLLINGER: O.K. Thank you.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 776, by Senator Saland.

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

SENATOR SKELOS: Lay that aside temporarily.

ACTING PRESIDENT KUHL: That was Calendar Number 776.

SENATOR SKELOS: Yes.

ACTING PRESIDENT KUHL: Calendar Number 776 will be laid aside temporarily.

SENATOR SKELOS: Mr. President, I also inadvertently laid aside 1517 by Senator Maziarz. With the consent of the Minority, if we could call that bill right now.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1517.

THE SECRETARY: Calendar Number 1517, by Senator Maziarz, Senate Print 7667, an act to authorize the payment of transportation aid.

ACTING PRESIDENT KUHL: There is a local fiscal impact note at the desk, and 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 41.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, want to return to regular order?

SENATOR SKELOS: We could go back to regular order, Mr. President.

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

THE SECRETARY: Calendar Number 974, by Senator Trunzo, Senate Print 7259-B, an act to amend the Retirement and Social Security Law, in relation to retirement.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1067, by Senator Lack, Senate Print 7484-B, an

act to amend the Judiciary Law, in relation to disciplinary hearings.

SENATOR SKELOS: Lay aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1088, by Senator Johnson, Senate Print 575, an act to amend the Penal Law, in relation to the administrative provisions.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 1088 has been asked for by Senator Dollinger.

SENATOR JOHNSON: Mr. President, Section 400 of the Penal Law provides that two types of pistol licenses which -- may be issued by the authorities, either premises or carry. There's no provision for any other variety of license such as target or hunting, et cetera, and nevertheless in 55 jurisdictions in this state, local authorities are putting on restrictions which they have no authority to do

under the law.

What this bill says very simply is that the local licensing authorities must issue licenses in accordance with the law, either premise or carry, and not put any extraneous conditions in place.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Is there an amendment at the desk?

ACTING PRESIDENT KUHL: We're checking, Senator Dollinger.

Senator Dollinger, the amendment is at the desk. Apparently it was filed a couple of days ago. What's your pleasure?

SENATOR DOLLINGER: Mr. President, I'd ask that the reading of it be waived and I'd be allowed to be heard on the amendment.

ACTING PRESIDENT KUHL: The reading is waived and, Senator Dollinger, you

now are afforded the opportunity to explain your amendment.

SENATOR DOLLINGER: Thank you, Mr. President.

This amendment allows -- repre sents an opportunity for the people of this state to be freed from the continuing violence that occurs too often in our cities and throughout the rest of our state.

What this amendment will do is follow the example of the federal government and put New York State and its people in a position where dangerous semi-automatic assault weapons will be restricted and the access to those weapons, these terrible, dangerous weapons will once again be restricted so that we will decrease the violence that occurs too often in our state.

This bill -- this amendment will enact an assault weapon ban that includes the provisions of the current federal ban. It prohibits the possession of 20 specific weapons, copy-cat weapons, military style weapons, and

ammunition clips with a capacity of more than 10 rounds. It does provide for the licensing of some of these weapons for the sole purposes of use in shooting matches.

There has been a complaint by people that, if we restricted assault weapons, we would restrict the rights of those who want to engage in target shooting with these weapons. This bill will allow them to engage in shooting for competitive purposes with these weapons. So there's an exception. We've heard the complaints of those who have been afraid of a total ban on these weapons. In this amendment we have accommodated them by allowing their use in matches.

In addition, this law -- this amendment will prohibit the possession of an assault weapon or an assault weapon ammunition feeding device, the dangerous clips, the 20 rounds that you see people in the movies stick into the guns and then pull the trigger in rapid fire succession and kill people. It will make the possession of these weapons a Class D felony

unless the holder of the weapon is licensed at the time he's found in possession of it.

It requires imposition of an additional prison sentence upon conviction for use of a semi-automatic assault weapon during the commission of a crime. That sentence will be served consecutively. It also increases penalties for the possession of a machine gun. As we all know, fully automatic weapons in this state are illegal. They've been illegal for more than 70 years. This Legislature banned those weapons in the early part of this century, when machine guns became the weapon of choice for those involved in the anti-Prohibition movement and the rise of organized crime in the 1920s. When those weapons, fully automatic weapons, became too dangerous, this Legislature banned them.

What this amendment does is, it will increase the penalties for those who possess fully automatic weapons, and lastly it will enact a Gun Owner's Protection Act which requires the Division of State Police to assist

lawful gun owners in complying with the law. If you already have a semi-automatic assault weapon which may be legal in this state, that we are now going to make illegal, that we're going to prevent the possession of, we will allow the State Police to assist those lawful gun owners in the transition of complying with this law.

Why do we need this law? Because the incidence of crimes involving assault weapons is increasing. Rochester Democrat and Chronicle, back in my home town, April 14, 1996, "Assault Gun Use is Rising in Rochester." It refers to the tragic incident on the corner of Furman, Crescent and Goodman Streets two years ago, in which two young boys were sitting in a car, another car pulled up and the car was sprayed with bullets from a semi-automatic assault weapon and both of these youths were killed.

Three people have already died in Rochester because of the use of these weapons. They are the weapons of choice of drug dealers. They're the weapons of choice of organized crime

and just like this Legislature did 70 years ago with machine guns, when it said that certain weapons are too dangerous to be put on our streets, too dangerous to be put in the hands of 17-year-olds who want to use them when they're engaging in criminal activity, under those circumstances this Legislature had the courage to ban machine guns. Today we should have the same courage to ban these deadly weapons in our state.

The Congress has already laid a path, has already blazed part of the path of removing these weapons from the streets of our nation and this state, because as you all know, most of the prosecutions for gun offenses are going to be done by local prosecutors who are working in the name of the people of the state of New York. Let's give local prosecutors the ability to reduce the violence in our streets, to keep our streets safer. Let's put this assault weapon ban in effect.

A vote on this amendment is your one chance this year to say to the people of

this state, we're going to make our streets safer. We're going to take away fire power from people who don't deserve it and that we'll do exactly what we did 70 years ago to machine guns. We'll tell the people of the state they're too dangerous to be in the private possession of people. They're too dangerous and they pose too large a threat to our communities, to our neighborhoods.

Vote aye in the favor of this amendment, and we'll send a clear message to everyone that it's time that New York stepped back from the precipice of violence and made our neighborhoods and our communities safer.

Mr. President, I'll move the amendment. If anyone else -

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the amendment? Hearing none, the question is on the amendment.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President,

we'd like a slow roll call on the amendment.

ACTING PRESIDENT KUHL: On the amendment. Secretary will ring the bells. Call the roll slowly.

THE SECRETARY: Senator Abate.

SENATOR ABATE: Yes.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: No.

THE SECRETARY: Senator Babbush.

(There was no response. )

Senator Bruno.

(Negative indication. )

THE SECRETARY: Senator Connor.

(Affirmative indication. )

THE SECRETARY: Senator Cook.

(There was no response. )

Senator DeFrancisco.

(There was no response. )

Senator DiCarlo.

SENATOR DiCARLO: Negative.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Mr.

President, just to explain my vote briefly.

ACTING PRESIDENT KUHL: Senator Dollinger, to explain his vote on the amendment.

SENATOR DOLLINGER: Three years ago this body was called into session by Governor Cuomo to pass an assault weapons ban. Now three -- more than three and a half years later we've still failed to do the job. This is our chance this year. We ought to do it for the reasons I said earlier.

I'm voting aye, Mr. President.

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

Continue to call the slow roll call on the amendment.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: No.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Mr. President, explain my vote.

ACTING PRESIDENT KUHL: Senator

Gold, to explain his vote.

SENATOR GOLD: Mr. President, if there's anybody here who does not have a driver's license and would like to -

ACTING PRESIDENT KUHL: Senator Gold, pardon the interruption. Could we have some quiet in the chamber. Would the members please take their seats, staffs please find their seats.

Thank you for the interruption, Senator Gold. I apologize.

SENATOR GOLD: No, no, Mr. President. I appreciate the courtesy you've shown me, particularly after your crack yesterday about my four putts on the first green.

But if there's anybody that needs a driver's license, if you'd like to drive a car you know, you can't drive it without a driver's license. You can go down to Motor Vehicle, you can sign up, you can take a test, you can take lessons, you can learn to drive and maybe in about four or five months you'll have your

driver's license.

On the other hand, if you can't drive a car and you want something to do this afternoon, we can leave here now and if any of you want to take me up on this, I will do it with you, we can leave here now. We can drive eight, ten minutes, go into a gun store, be out of there in ten minutes and you can own an AK-47 or any other assault weapon and all you need to do is to sign a piece of paper, an honest - which you will be honest about, I know, telling the world that you have never been convicted of a crime, you've not escaped from a mental institution, et cetera, and they will take your word for it, by the way, as long as you got a few dollars to buy the weapon.

This is just a ridiculous, ridiculous situation. I made such a purchase a couple years ago and some reporter who's in the pockets of the gun lobby wrote a story about, well, I said it took ten minutes and it really took a half hour. It's nonsense. If you want to buy an assault weapon, anybody in this

chamber right now and you're over 18 years of age, I can take you to the store, you walk in and you can walk out 10 or 12 minutes later with an assault weapon.

Senator Dollinger, I want to congratulate you for your persistence in this area, Senator Oppenheimer for your persistence. We've got to do something. We are living in a morass of laws that make no sense and if you want proof of it, this is one major area.

I vote yes.

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

Continue to call the slow roll call on the amendment.

THE SECRETARY: Senator Gonzalez.

(There was no response. )

Senator Goodman.

(There was no response. )

Senator Hannon.

SENATOR HANNON: No.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: No.
THE SECRETARY: Senator Hoffmann.
(There was no response. )
Senator Holland.
SENATOR HOLLAND: No.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: No.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: Yes.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: No.
THE SECRETARY: Senator Lachman.
SENATOR LACHMAN: Yes.
THE SECRETARY: Senator Lack.
SENATOR LACK: No.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: No.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: No.
THE SECRETARY: Senator

Leichter.

SENATOR LEICHTER: Yes.

THE SECRETARY: Senator Levy.

(There was no response. )

Senator Libous.

SENATOR LIBOUS: No.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: No.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: No.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

(There was no response. )

Senator Nanula.

(Affirmative indication. )

THE SECRETARY: Yes.

Senator Nozzolio.

(There was no response. )

Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Explain my vote, please.

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

SENATOR OPPENHEIMER: We simply have to get a handle on guns. I was reading in the newspaper just a few days ago that the Centers for Disease Control and Prevention in Chicago just published a few days ago in the Journal of American Medical Association the numbers on our youngsters, our school children, that are being killed in -- in the violent deaths. There are 105 school-related violent deaths. Most of them were through guns at 101

different schools.

I mean I'm -- I am talking about the guns that are so available on the streets, but let me -- let me focus just on the assault weapons right now. The -- this bill does not prohibit ownership of -- of sporting guns or of guns that are held by collectors of guns or - or people who want to participate in marksman ship or in hunting. We're not talking about that, and that's why I have such difficulty understanding why we don't want to restrain these military style guns whose only purpose, as I see it when they were created, is weapons of war. We try and mow down in wars, I guess, as many people as possible as quickly as possible, but it confounds me why this would be in a civilian society. They have enormous killing power and what I am finding in part of my district is that innocent bystanders are killed, not the person for whom -- not the victim for whom it was intended but also innocent bystanders.

Also we are putting at a

disadvantage our police because in some departments they have not upgraded to the 9 millimeter weapons as they have in New York City and a few other places, and so they're really disadvantaged because they have just inferior weapons to -- to combat, and this is the -- the choice of weapon for our drug dealers. If we want to get a handle on drug dealers, if we want to get a handle on the violence in our society, if we want to get a handle on all these deaths of young children up to the age of grade -- of 12th grade, which is what I was reading in the beginning, we have to do something about this, and I think this is the most important first step.

I vote yes for the amendment.

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

Continue to call the slow roll call on the amendment.

THE SECRETARY: Senator Padavan.

ACTING PRESIDENT KUHL: Senator

Padavan, to explain his vote.

SENATOR PADAVAN: Mr. President, two things.

First, most of what Senator Oppenheimer was just talking about in terms of the ownership and violent use of guns has nothing to do with this bill. 99 percent of what you're talking about, 99 and 9/10ths percent of what you're talking about is other weapons other than covered by this bill, and it's a question of enforcement and not anything we have or have not done.

However, regard to the amendment itself, there's been no mention here of the fact that in this nation today we have an assault weapon ban. It was adopted by the Congress, and this amendment, if it became law, in certain provisions is in violation of the federal law. It contradicts it. So this doesn't make sense in any way you look at it.

Now, I happen to be personally in favor of a ban on assault weapons, but I'm not about to participate in a sham here in terms of

an amendment that not only does not do anything beyond that which we already have by federal statute but undermines that.

I vote no.

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

Continue to call the slow roll call on the amendment.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President, after consulting with Senator Padavan, I vote aye.

THE SECRETARY: Senator Present.

SENATOR PRESENT: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: No.

THE SECRETARY: Senator Santiago.

(There was no response. )

Senator Seabrook.

SENATOR SEABROOK: Yes.
THE SECRETARY: Senator Sears.
SENATOR SEARS: No.
THE SECRETARY: Senator Seward.
(There was no response. )
Senator Skelos.
SENATOR SKELOS: No.
THE SECRETARY: Senator Smith.
SENATOR SMITH: Yes.
THE SECRETARY: Senator Spano.
SENATOR SPANO: No.
THE SECRETARY: Senator Stachowski.
(There was no response. )
Senator Stafford.
SENATOR STAFFORD: No.
THE SECRETARY: Senator Stavisky excused.
Senator Trunzo.
SENATOR TRUNZO: No.
THE SECRETARY: Senator Tully.
ACTING PRESIDENT KUHL: Senator Tully, to explain his vote.

SENATOR TULLY: Thank you, Mr. President.

At the time this amendment was proposed, I was in the Judiciary Committee engaged in other activities and had I been here, Mr. President, when this amendment was proposed, I would have asked the Chair to rule on its germaneness. In my opinion, it has no bearing whatsoever on the bill before us, and it's merely a procedural sham to deal with a substantive matter, assault weapons.

I vote no.

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

Continue to call the slow roll call on the amendment.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: No.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: No.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Yes.

Senator Wright.

(There was no response. )

ACTING PRESIDENT KUHL: Secretary will call the absentees.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: Yes.

THE SECRETARY: Senator Cook.

(There was no response. )

Senator DeFrancisco.

SENATOR DeFRANCISCO: No.

THE SECRETARY: Senator Espada.

(There was no response. )

Senator Gonzalez.

(There was no response. )

Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hoffmann.

(There was no response. )

Senator Levy.

(There was no response. )

Senator Montgomery.

(There was no response. )

Senator Nozzolio.

SENATOR NOZZOLIO: Nay.
THE SECRETARY: Senator Santiago.
(There was no response. )
Senator Seward.
(There was no response. )
Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Wright.
(There was no response. )
ACTING PRESIDENT KUHL: Announce the results.
Senator Espada, did you want to vote?
SENATOR ESPADA: Yes, I would like to vote.
ACTING PRESIDENT KUHL: How do you vote on the amendment?
SENATOR ESPADA: Yes.
ACTING PRESIDENT KUHL: Senator Espada will be reported in the affirmative.
Announce the results.
THE SECRETARY: Ayes 18, nays

34.

ACTING PRESIDENT KUHL: The amendment is lost.

The question is on the bill. Is there any other Senator wishing to speak on Calendar Number 1088?

Senator Paterson.

SENATOR PATERSON: Yes, Mr. President. If Senator Johnson would yield to a question.

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

SENATOR PATERSON: Senator, rather than holding the license supervisors, those who are empowered to grant licenses to a statutory standard, did you consider in this legislation, or perhaps I would suggest that what might have helped the legislation be more effective would have been for we, as a legislature, to set out what the guidelines would be for the granting of licenses so the issue would be clear, such as someone is working

in an area involving valuable jewelry, so we would allow them to carry a license for that particular area rather than having a strict standard on an issue that is so sensitive because firearms are so dangerous.

SENATOR JOHNSON: Is that a question, Senator?

SENATOR PATERSON: Yeah. The question is, rather than restricting the authority of licensors to not go beyond the statute, why would we not, if you wanted to do that, why would we not lay out as a legislature what we think the guidelines should actually be rather than just adhering strictly to the statute?

SENATOR JOHNSON: Well, Senator, I think that's a suggestion of some merit. Certainly you appear to agree with me that the Legislature should make the laws and not the local licensing authorities make regulations which usurp or vitiate our laws.

So, yes, I think that's a good suggestion to consider that in the future.

SENATOR PATERSON: Thank you, Mr. President. I think I'll stop while I'm ahead.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1088 are Senators Abate, Connor, Dollinger, Espada, Gold, Goodman, Lachman, Leichter, Markowitz, Nanula, Onorato, Paterson, Seabrook, Smith and Waldon; also Senator Mendez. Ayes 37, nays 16.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees at this time. I believe there's a

report of the Judiciary Committee at the desk. I ask that it be read and that you recognize Senator Lack.

ACTING PRESIDENT KUHL: There is a report at the desk, Senator Skelos. Thank you. We will return to reports of standing committees. I'll ask the Secretary to read the report of the Judiciary Committee.

THE SECRETARY: Senator Lack from the Committee on Judiciary offers the following nomination: Judge of the New York State Court of Claims, Joan Carey of New York City.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Once again, it's my privilege to rise on the floor to move the Governor's nominees, in this case mainly reappointments to the New York State Court of Claims, and even though it's in alphabetical order, it's a privilege to stand first to move the nomination of Joan Carey as a judge of the Court of

Claims.

She's currently the deputy chief administrative judge for all courts within the city of New York. I would love to spend more than a few minutes describing, I think, what has been universal admiration throughout the court system for Judge Carey, but if I did I would be stealing Senator Goodman's thunder, so I should tell you, Mr. President, that it is with great pleasure that I will yield to my colleague, Senator Goodman.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Goodman.

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

Senator Lack, as chairman of the Judiciary Committee, I'm very appreciative of the courtesy of allowing me the privilege, my colleagues, if you will, to nominate someone who could be described as the crown jewel in the tiara of the judicial system in New York City.

This is an absolutely extraordinary justice whose career spans

innumerable immense responsibilities and I'd just like to share with you a few of these to give you some feeling for the remarkable judicial career which this judge has enjoyed to this date.

Starting as a law secretary in 1969 and serving in that capacity, she was in the borough of Queens and was law secretary to the Honorable Ann B. Duffy. She moved on to become an assistant district attorney in Queens County from February 1968 to May 1969. She then became the Special Assistant Attorney General for the Office of Special Prosecutor from December of 1976 to May of 1978. Moving on, she became a judge of the Criminal Court of the city of New York in May 1978 and served in that capacity until the following year, and then became the supervising judge of the Criminal Court of the city of New York from June 1979 to December 1982.

This becomes an important fork in the road in her career because it was at this point that she not only was charged with

judicial responsibilities but also with administrative responsibilities of a very high order indeed.

She moved on to become acting Supreme Court justice for the Supreme Court in the criminal term in the First Judicial District in January 1983, a post in which she served until December of 1992. I might note that at that point she was assigned to one of six so-called "blockbuster" parts where responsibilities were especially heavy in terms of moving a weighty calendar with more than 600 felony matters before her.

In January of 1993 she became the administrative judge of the Supreme Court criminal term in the First Judicial District. The administrative judge, of course, has vast responsibilities overseeing the operation of the largest branch of the state Supreme Court with a then average of 17,000 filings annually.

Moving right along, in January '95 to March '96 she became the administrative judge of the Criminal Court of the City and the

administrative judge in that court has administrative responsibility for the operation of the court in each of the five boroughs of New York City.

Then to bring this up to the present, in her present preeminent position she is now from January '96 to the present the deputy chief administrative judge in the city courts.

Mr. President, the deputy chief administrative judge for New York courts is charged with the responsibility of overseeing the operation of all state courts located within the five boroughs. The courts with a combined judiciary of nearly 600 judges, exercise both civil and criminal jurisdiction. The deputy chief administrative judge also determines disciplinary matters and personnel requests for more than 6,000 non-judicial employees and monitors the fiscal operation and the budget preparation of the combined courts.

Mr. President, I think it's generally known that the court system has under

gone significant improvement in recent years and if that is indeed true, which I believe it to be, no small measure of the credit for that monumental accomplishment goes to the nominee whose name is before us today, the Honorable Joan B. Carey, and it's with great pride that I second her nomination for a new term as a judge of the Court of Claims of the state of New York for another ten-year term.

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

Senator Abate, on the nomination.

SENATOR ABATE: Yes. I stand in enthusiastic support of Judge Carey. I too have had the honor to appear in front of her. She has a wonderful reputation as a jurist as well as an administrator. There are very few judges that earn the reputation by defense attorneys and prosecutors alike, and to hear from both sectors, this is a fair and impartial judge. That's an enormous, I believe, accomplishment

and it's to her credit.

But beyond that, she has played a role as a very strong administrator, and she's known to be a problem solver. She's able to bring people together. She's brought about enormous improvements in the court system. I've known Judge Carey for a number of years. This is a wonderful reappointment, and I ask my colleagues to join with me in enthusiastic support of her reappointment.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Joan Carey for reappointment to the New York State Court of Claims. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The nominee is unanimously confirmed.

Judge Carey is joined with us here today and with her husband. Welcome.

(Applause)

Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the following nomination: Harold J. Rothwax, of New York City, judge of the New York State Court of Claims.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Once again. It's my honor to rise to move the nomination of one of the more distinguished jurists in this state, Harold Rothwax, for another term on the New York State Court of Claims.

As with all the judges we're considering today, particularly those who have been reappointed to the Court of Claims, they've all appeared before the Judiciary Committee. Their credentials have been examined by the staff of the Judiciary Committee, and they've all been unanimously moved to the floor, and

that certainly includes Judge Rothwax, and once again it's my honor to yield to Senator Goodman.

ACTING PRESIDENT KUHL: Chair recognizes Senator Goodman.

SENATOR GOODMAN: Mr. President, before I proceed, may I just correct one matter that I referred to a moment ago. The term of a judge of the court we're considering is nine years and not ten years. As far as I'm concerned, in the case of those before us, they should be given lifetime terms because of the high merit of their particular circumstances.

Be that as it may, nine years is the correct number. Next I'm very privileged indeed to speak to the extraordinary merits of Judge Harold J. Rothwax.

Judge Rothwax is a graduate of the City College of New York and Columbia University Law School, served in the early 1950s as a First Lieutenant in the United States Army. In his legal career, he was a senior trial attorney in the Criminal Defense Division of the Legal Aid Society from 1959 to 1965. He

has been a consultant to the Vera Institute of Justice, previously known as the Vera Foundation, an adviser to the President's Committee on Law Enforcement and the Administration of Justice, an associate professor at the Columbia Law School, and co director of the Columbia Legal Assistance Resource.

He became a judge of the Criminal Court in 1971 and did serve in that capacity until 1986. In 1972, he became an acting justice of the Supreme Court. He has been a lecturer at the Harvard Law School and just to keep an appropriate balance, he was also a Guggenheim Fellow at the Yale Law School. He was a consultant on felony case processing at the John Jay College of Criminal Justice and in 1987 he became a judge of the Court of Claims of the state of New York.

Mr. President, I think it's probably well known to this membership but let me reiterate that time and again Judge Rothwax has been singled out and placed in positions of

high judicial responsibility, being asked to try some of the most difficult cases in the state of New York. His reputation as a fair judge who has great grasp of the legal implications of the things that he does, has been more than amply set forth on the record, and it is with a great deal of pleasure, Mr. President, that I second his nomination for another nine-year term in the Court of Claims.

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

Senator Abate.

SENATOR ABATE: I also stand in support of Judge Rothwax. I never thought I would be sitting in this chamber. The first judge I appeared in front of in 1972 for an entire year was Judge Rothwax. It was probably the longest year of my life, but in that year, I probably learned more about criminal law and criminal procedure and how to be a litigator.

He is, in fact, one of the most demanding judges on the bench, but I believe

part of that characteristic is his real and long-standing commitment to improving the delivery of justice in the criminal justice system. He is known, and it's not debatable, he has enormous intellect and knowledge of the law. He is a student of the law, and I think this is a fine reappointment and maybe some day, Judge Rothwax, I'll appear in front of you again.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination? The question is on the nomination of Harold J. Rothwax to the position of New York State Court of Claims judge. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The nominee is unanimously confirmed. Happy to have Judge Harold J. Rothwax with us. Judge, welcome to the chamber.

(Applause)

Secretary will continue to read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the following nomination: Judge of the New York State Court of Claims, Franklin R. Weissberg, of New York City.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Once again, I rise to move the nomination of Franklin R. Weissberg, of New York City, for reappointment to the New York State Court of Claims.

As with all the appearances by the judges this morning, Judge Weissberg appeared before the Judiciary Committee this morning and was unanimously confirmed to come to the floor, and once again I proudly yield to Senator Goodman.

ACTING PRESIDENT KUHL: Chair recognizes Senator Goodman, on the nomination.

SENATOR GOODMAN: Mr. President,

I must state at the outset of my remarks in this matter that I do not approach this with objectivity because the nominee before us has been a close personal friend of mine for the better part of 40 years. He is an extraordinary individual who has had both a distinguished career in private practice, and is an outstanding judge of the Court of Claims in which he has been noted for, again, the difficulty of some of the most complex cases, including some of the most serious felony cases that come before the court.

Judge Franklin Weissberg was a graduate of the Harvard Law School in 1957, having previously gone to Syracuse and graduated from the Bronx High School of Science. His military service included from 1953 to '55 the United States Army in Germany.

He was elected as a delegate to the 1967 New York State Constitutional Convention, has had an extensive career in teaching and lecturing at the faculty of the Practicing Law Institute and its programs

entitled Counseling Clients in the Entertainment Industry, in which he was a major factor.

From August '57 to '59 and beyond that through the year 1986, he was a partner in some of New York's most prominent law firms specializing in civil litigation, and in 1992 he was elected president of the Association of the Court of Claims Judges of the state of New York.

Judge Weissberg is known to me very intimately because it's an interesting point in his career to note that along the way he was offered a very, very high post in government which he declined because, as he described it to me at the time, he had a passionate interest in the work of a judge, a working judge, in the court system and thus he gave up an opportunity to be given an experience that was disassociated from the mainstream of his career interest, and in doing that, I think he showed his dedication and deep desire to be a judge of a high court and indeed when he became such a judge, he pursued his work with the

highest distinction.

So, Mr. President, not only because I've known him for 40 years and known him to be a gentleman and a scholar but because he is truly a superior judge, it's a special pleasure and a privilege to nominate -- to second the nomination of Judge Franklin Weissberg.

ACTING PRESIDENT KUHL: Chair recognizes Senator Maltese, on the nomination.

SENATOR MALTESE: Mr. President, there is very little I could add to the words of approbation by my good colleagues, Senator Good man, but I've known Judge Weissberg for many, many years and all the accolades that Senator Goodman and others can heap upon him are very very well deserved.

He has taken a leadership role on the Court of Claims, has served as a very, very distinguished judge and despite the fact he graduated from my old nemesis, Bronx High School of Science, nonetheless conclude he is superbly qualified for the appointment, and I

congratulate the Governor for this stellar appointment.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Franklin R. Weissberg to become a member of the New York State Court of Claims. All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The nominee is unanimously confirmed. Very pleased to have Judge Weissberg with us.

(Applause)

Judge Weissberg is also joined by his wife, who also happens to be a judge in our court system, Judge Marylin G. Diamond. Judge Diamond, welcome.

Secretary will continue to read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the

following nomination: Judge of the New York State Court of Claims, James G. Starkey, of Brooklyn.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack, on the nomination.

SENATOR LACK: Thank you, Mr. President.

It's my privilege to stand up once again to move the nomination of James G. Starkey, of Brooklyn, for reappointment to the New York State Court of Claims.

Judge Starkey appeared before us this morning, answered all questions put to him, and was unanimously confirmed by the committee and moved to the floor, and I would yield to Senator DiCarlo.

ACTING PRESIDENT KUHL: Chair recognizes Senator DiCarlo, on the nomination.

SENATOR DiCARLO: Thank you, Mr. President.

It is indeed a privilege to rise and second the nomination of James G. Starkey to the Court of Claims in New York State. I have

known the judge for a number of years. He is a friend of the family.

He is -- was an assistant United States Attorney from the Southern District of New York from 1957 through 1961. He was in private practice from 1961 to 1973. From 1973 to 1982, he was a judge of the Criminal Court of New York City. From 1976 through 1982, he was acting Supreme Court justice, Supreme Court in Kings County. 1982 through 1987 he was an associate professor of law at St. Johns University, and from 1987 to date, justice, Supreme Court, Kings County; judge, New York State Court of Claims.

It's a pleasure to rise and second the nomination not only because I know the judge and he is highly qualified, but because the judge comes from my home town, Brooklyn, New York, and we all know that the finest lawyers and the finest judges come from Kings County, otherwise known as Brooklyn, New York.

Let me also say that the

judiciary, in my opinion, in certain cases gets a bad rap, and we read about the bad judges but we don't hear about the good judges and not just Judge Starkey but the other nominees we have here today, who are fine examples of what is right about the judiciary, and Judge Starkey is certainly one of those, and it is an honor to second his nomination today.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of James G. Starkey to become a member of the New York State Court of Claims. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is unanimously confirmed. We're very pleased to have Judge Starkey and his wife, Suzanne Lawrence, in the chamber with us today. Judge Starkey, welcome.

(Applause)

Secretary will continue to reads.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the following nomination: Judge of the New York State Court of Claims, Lewis L. Douglass, of Whitestone.

ACTING PRESIDENT KUHL: Judge - excuse me, James Lack, on the nomination.

SENATOR LACK: Thank you, Mr. President.

It's a pleasure to rise to move the nomination of Lewis L. Douglass, of White stone, once again as a reappointment to the New York State Court of Claims.

He appeared before the committee this morning, was unanimously moved to the floor and I would yield to Senator Padavan.

ACTING PRESIDENT KUHL: Chair recognizes Senator Padavan, on the nomination.

SENATOR PADAVAN: Thank you, Mr. President.

Certainly an honor for me to have

the opportunity of seconding the nomination of Judge Douglass to the New York State Court of Claims as a reappointment. In looking over his background, one cannot help but be impressed not only with his judicial experience, having served in the Criminal Court, the Supreme Court and more recently on the Court of Claims, but to look at the things that preceded his elevation to the judiciary; to appreciate the depth of his background and experience in the New York City Department of Corrections, in the community as past president and member of the Medgar Evers Community Council, on and on the list goes.

He was well prepared, having not only served as an investigator for the city of New York, as a hearing examiner for the New York State Rent Commission and also certainly as a member of the Corporation Counsel's office of the city of New York and subsequent to that as an assistant United States Attorney in the Eastern District of New York.

Judge Douglass, I gather, did it the hard way. He worked his way through

college, started at Manhattan Community College, went on to New York College and then, of course, St. Johns University. Teaches graduate courses at John Jay College of Criminal Justice, again sharing background and the benefit of his broad experience.

I think we have a man of great qualities in terms of the judiciary, and it certainly gives me great pleasure to second his nomination.

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

Chair recognizes Senator Paterson.

SENATOR PATERSON: Yes, Mr. President.

There was a period of time that I worked for the district attorney's office in Queens County and was familiar with Judge Douglass at that time. He was in the -- he was in the Supreme Court, not that we were involved in that area, but his distinction was one that

was known around the area and around the City.

His work with Medgar Evers College and Nathan B. Allen Bar Association, his community service demonstrated that he is a full-time public servant, not only behind the bench but behind many endeavors in the community that have enured to the improvement of the quality of life all around the area he lives and I can't think of a more suitable candidate for appointment and just wanted to add my voice to Senator Padavan's. If you're around this chamber, Senator Padavan and I disagree on occasion, but we couldn't be in greater agreement than on this nomination.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? The question is on the nomination of Lewis L. Douglass to become a member of the New York State Court of Claims. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The nominee is unanimously confirmed. We're very pleased to have Judge Douglass, and also his wife Doris, in the chamber with us. Please welcome Judge Douglass.

(Applause)

Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the following nomination: Judge of the New York State Court of Claims, Norman George, of Floral Park.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Once again, it's my privilege to rise to move the nomination of Norman George, of Floral Park, for reappointment to the New York State Court of Claims.

Both the staff and the committee have examined the credentials of Judge George and have found him satisfactory in all

respects. He's been unanimously moved to the floor and, once again, I yield to Senator Padavan.

ACTING PRESIDENT KUHL: Chair recognizes Senator Padavan on the nomination.

SENATOR PADAVAN: Thank you, Mr. President.

I understand that, when Judge George appeared before the judiciary, he cited his many years of friendship and, as a matter of fact, served as my counsel when I first came to this body and the committee said they would overlook all of that and recommend his appointment in any event, and I appreciate that.

I had the pleasure of seconding the nomination of Judge George in 1988 as he began his tenure on that court. What I said on that occasion, I would like to repeat in part today. Judge George has had a distinguished career as an attorney for ten years. He served as a law secretary to a great jurist in Queens County, Henry Latham.

In that capacity, obviously, as those of you in the law know, for ten years he learned everything that he could possibly learn and his experience, both in terms of researching questions of significant importance and providing service to that great judge, stood him in good stead as he began to practice law as a private attorney subsequent to that, and then his elevation to the bench.

In addition to a very distinguished and laudable career since his graduation from Fordham University Law School, Judge George is an active member of the community, active in civics, active in educational institutions, as a family man certainly unparalleled, beautiful wife Harriet George, also a judge in the Housing Court, dedicated to law, but more dedicated as we would expect to his family and to his community.

And so it was my pleasure then to second his nomination and to offer him to the body for its full consideration. I do so once again today.

ACTING PRESIDENT KUHL: Chair recognizes Senator Maltese, on the nomination.

SENATOR MALTESE: Mr. President, there is very little that can be added to Senator Padavan's laudatory praises, but I would be remiss if I did not also rise to second the nomination of an old friend who, prior to serving as a distinguished jurist, served in so many quasi-judicial and judicial functions.

He -- if it could be said, he went through every step, every available step toward being an -- a fine and distinguished jurist. His background in Fordham Law School and certainly the fact that he was not only a Korean War veteran, but the father of six children and the father of -- and the grandfather of seven grandchildren gives him a compassion and concern that is unequaled on the bench.

I join in congratulating Judge George and his family and am proud and pleased to second the nomination.

ACTING PRESIDENT KUHL: Senator

Onorato, on the nomination.

SENATOR ONORATO: Mr. President, I too rise to join my colleagues in seconding the nomination of Judge Norman George, a very distinguished jurist, and it appears that the distinction runs in the family. His wife Harriet is also a jurist, doing an outstanding job, and I want to congratulate the Governor and the committee for their reappointment and wish him nothing but the best for him and his family. Everything that I wish for my family, I wish for him and his.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Norman George to become a member of the New York State Court of claims. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The nominee is unanimously confirmed. Judge George is here with us in the

chamber, along with his wife, Judge Harriet George.

(Applause)

Secretary will continue to read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the following nomination: Judge of the New York State Court of Claims, Dominic R. Massaro, of Pelham.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack on the nomination.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Dominic R. Massaro once again as a reappointment to the New York State Court of Claims.

He appeared before the committee this morning, was unanimously confirmed, nomination sent to the floor, and I would yield for purposes of seconding to Senator Velella.

ACTING PRESIDENT KUHL: Chair recognizes Senator Velella on the nomination.

SENATOR VELELLA: Thank you, Mr.

President.

It's my honor for the second time during my career in the chamber to rise and support the nomination of Judge Dominic Massaro.

Judge Massaro has served on the New York City Commission on Human Rights, the New York State Commission on Human Rights, has been the director of the Peace Corps for the Northeast Region of the United States, and in his record on the court has demonstrated an ability to listen to the problems that come before the court.

Judge Massaro has been honored by very, very many groups within the community and has received international honors from both the Colombian government and the Italian government for his writings on the law.

Judge Massaro has truly exemplified what we hold out to be the model of a good judge in a very difficult situation that all the judges we are confirming today will face dealing with the criminal laws and the laws of

our state as we pass them here and, in fact, I share the common problem that Senator Padavan has and the committee has decided to overlook the fact that Judge Massaro served as my counsel both when I was in the Assembly and during my term here in the Senate. He has been my personal attorney and he has done very, very well by Bronx County in representing us on the court.

It's my pleasure to second his nomination.

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

Senator Marchi, on the nomination.

SENATOR MARCHI: Yes, Mr. President.

Regrettably, I was unavoidably called off the floor so I couldn't speak to some of the prior nominees, Franklin Weissberg - Judge Weissberg, and Frank Rossetti, both - both cherished colleagues at the Constitutional Convention. We shared six months of service and

it was memorable service indeed, and the experience was an enriching one.

Judge Massaro, of course, is an old friend and to see him validated again in these proceedings is a source of comfort and assurance to the people that his valuable service will continue in that office. He's - he is a brilliant lecturer, very much in demand both here and abroad, and a highly cultivated learned person.

He's a man of many parts, not only in terms of judicial acumen, but also a broad cultural experience which he shares, much to the delight of many, many audiences, both here and abroad. So we are indeed fortunate, Mr. President, in the nominees that we have here.

I haven't seen Mr. Weissberg very often, or Mr. Rossetti very often, but they have worn well, and I'm delighted to see them and also to be present at this ceremony.

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

nomination?

Chair recognizes Senator Abate.

SENATOR ABATE: Yes, I too stand in support of this nominee. Judge Massaro is an old friend, and a measure of a man is not just what he accomplishes in one's professional life, but also what he gives back to his community, the small or larger community, and particularly the Italian-American community.

I agree with everything that's been said today. I just would like to concentrate on his leadership in the Italian American community as someone who understands his roots, is an enormously positive role model for young people in that community because of his intellect, his commitment, his integrity and I think also I can sum up the kind of man he is by some of the awards he has received: The Outstanding Young Man of America, the -- that was given to him last year. The Young Man of America award; the -- you're supposed to laugh -- the Distinguished Community Service Award in Bronx County; the Outstanding Citizen of Bronx

County; the awards go on and on.

Again, we're fortunate to have another good judge come before us today and we wish him very good luck and, hopefully, that he will have the strength and perseverence, the intellect, the vision to do justice on each day in his career.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Dominic R. Massaro to become a member of the New York State Court of Claims. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The nominee is unanimously confirmed. Very pleased to have Judge Dominic R. Massaro with us in the chamber today. Judge, congratulations.

(Applause)

Secretary will read.

THE SECRETARY: Senator Lack,

from the Committee on Judiciary, offers the following nomination: Judge of the New York State Court of Claims, Frank S. Rossetti, of Long Beach.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack, on the nomination.

SENATOR LACK: Thank you, Mr. President.

It's a privilege once again to rise to move the nomination of Frank S. Rossetti, of Long Beach.

When he appeared before us this morning, he mentioned that he has been nominated for this judgeship by five governors, which I assume is a record for those who are sitting in our gallery, but it is a real pleasure. He has appeared before the committee; the staff has examined his credentials. He's been found eminently satisfactory in all requests. He has been adopted unanimously by the committee and his nomination moved to the floor, and I would yield to Senator Skelos.

ACTING PRESIDENT KUHL: Chair

recognizes Senator Skelos, on the nomination.

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

I know that Senator Gold is going to want to comment after I speak and delighted to support the nomination of Frank Rossetti, Manhattan College graduate, New York Law School. He's been a partner in law firm; he's been a sole practitioner. He's been of counsel to law firms. So certainly he knows the difficulty there is in conducting a practice as attorneys.

He served in various legislative capacities. He was appointed an assistant counsel to the Honorable Stanley Steingut, then Minority Leader of the state Assembly, and he represented the Minority Leader in connection with the Temporary Commission on the State Court System, and then in -- on May 26th, 1972, was appointed by Nelson Rockefeller as a judge of the Court of Claims, reappointed by Governors Wilson, Carey, Cuomo and now Governor Pataki.

In Nassau County, he's serving as

an acting Supreme Court justice, presides over all matters involving guardians, conservator and committee proceedings brought in Nassau County Supreme Court. He resides in the city of Long Beach, certainly a beautiful area to live, and it's my pleasure to second the nomination of Frank S. Rossetti as judge of the New York State Court of Claims.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold, on the nomination.

SENATOR GOLD: Thank you, Mr. President.

Firstly, I'd like to repeat something that Senator Leichter and Senator Dollinger and I and others have said with regard to the nominees in general, and that is that while politics is politics and we can argue with the Governor on some of his appointments in the areas of commissioners, the Governor has really been outstanding in the way he's handled the judiciary. He has not only given us in his new nominees very, very talented people, even though we all understand they are now Republicans, but

he has -- with regard to his reappointments really been very, very non-political and very sensitive to the jobs that people have been doing on the bench, and I'm proud of the Governor in that respect.

This particular appointment has very special meaning to me, and months ago my wife and I went to California, and in California we were introduced in places as "Sue Gold's father", and I tell you I had a great pride when I was introduced as Sue Gold's father, after some years of taking her places and having her introduced as my daughter. I feel the same when I go places with my son.

But years ago when I worked for Assemblyman Weinstein as counsel to the Majority Leader, there was an Assemblyman Rossetti and one day he slapped me on the back, knocked me down about three or four steps, those of you who knew him, and Assemblyman Moe Weinstein got very upset and said, "What are you doing to the kid?" And Assemblyman Rossetti said, "I only did that because I love the kid," and having said that, I

met within a few days someone who I was introduced to as Assemblyman Rossetti's son.

I say that because Assemblyman Frank Rossetti, God bless him, I know, hears every word we say and has to be filled with pride that people for years now have referred to him when we could and even now, as Judge Rossetti's father, because Judge Rossetti has made an extraordinary name for himself.

Aside from hard working, which is almost, I think, an embarrassment to most of the judges he will tell a litigant and will tell the lawyers if there's a problem, he'll come in on a Saturday or Sunday and get a court reporter. Extraordinarily intellectual and hard working and has been, you know, it would be arrogant to say he's the best judge on the Court of Claims but I'll tell you, there is no better.

He is certainly one of the stars of that bench, and one thing which is very important to me is that you talk to the court personnel who deal with Judge Rossetti. There was genuine affection for him as a person. If

you talk to the lawyers who deal with Judge Rossetti, there is genuine affection for this judge as a person, and I have seen litigants who leave the courtroom and are satisfied that whatever happened in the case there was a fair shake in that courtroom, and they were treated with dignity.

So I am delighted that this wonderful human being has continued on the bench, that he has the capacity to understand that it was five judges -- five governors of different political parties obviously, who had enough faith in him and that the Legislature, in all these years, has had that same faith.

So I'm delighted to second this nomination, and we only wish him continued success and good health on the bench.

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

Chair recognizes Senator Marchi.

SENATOR MARCHI: Mr. President, when I was absent and I had -- I came back here

and made comments and references to Judge Rossetti when I was informed that his name had not yet come up, so it was by way of anticipation of the pleasure of participating now.

I remember his father well. He was a colleague in the Assembly. I guess I was a colleague to almost everybody going back to DeWitt Clinton; but the description that Senator Gold gave was very accurate.

Here on five -- on five successive occasions with different governors, different party, different political time frames, all coming up with a positive verdict on the kind of services that he was rendering, and I -- I remember him as young Frank and then greater things began to happen, but it really is a strong family presence that we've been blessed with in this state, and certainly what is happening here today assures the people of this state of added years of distinguished service in behalf of the administration of justice in this state.

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

Senator Velella, on the nomination.

SENATOR VELELLA: Certainly it's my pleasure to rise and support this nomination. The Rossetti family and my family are very, very close. The judge and myself were both born and raised in East Harlem. We've gone -- he's gone on to Nassau County, I to Bronx County, but our families were very, very close through the political process, his dad having been a Democratic district leader and my dad having been a Republican district leader. We fought many battles on the political field but certainly his dad was a man who was a great public servant and he started in that position.

They are an outstanding family and have made a tremendous contribution to the state of New York. It's my pleasure to second his nomination.

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

Hearing none, the question is on the nomination of Frank S. Rossetti to become a member of the New York State Court of Claims. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The nominee is unanimously confirmed. Very pleased to have Judge Rossetti joining us in the chamber today. Welcome, Judge Rossetti.

(Applause)

Secretary will continue to read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the following nomination: Judge of the New York State Court of Claims, John P. Lane, of Williamsville.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack, on the nomination.

SENATOR LACK: Thank you, Mr. President.

It's my privilege to rise to move

the nomination of John P. Lane, of Williams ville, as a new nominee of the Court of Claims and our only new nominee to a vacancy in the Court of Claims we are considering this morning.

His bona fides have been carefully examined by the staff of the Judiciary Committee. He has appeared before the committee, answered all the committee's questions and has been unanimously moved to the floor, and it's my pleasure to yield to Senator Rath for a second.

ACTING PRESIDENT KUHL: Chair recognizes Senator Rath, on the nomination.

SENATOR RATH: Thank you, Chairman Lack.

It's with great, great pleasure that I rise to speak about a gentleman in our community being nominated for the Court of Claims today who I've known for over 30 years in many, many capacities. It's wonderful always when judges are confirmed to hear the personal testimonies of so many of my colleagues, and

their experiences are not unlike mine with John Lane.

John Lane graduated from the University of Buffalo Law School, now known as SUNY at Buffalo, that great big megaschool up in my district, and it's a proud fraternity of lawyers and judges that graduated from the University at Buffalo.

John was admitted to practice in 1953, and has had a private practice in all of the courts, civil, criminal litigation, corporate, economic, development of land use activities, all fields of law, John has covered them pretty well.

He was an assistant district attorney from 1957 to 1961, an associate counsel to the New York State Commission on the Revision of the Penal Law, '61 through '63. For 20 years John served as the deputy town attorney in the town of Amherst and is presently the town attorney in the town of Amherst, a town of 115,000, a very large upstate town.

John's credentials, as you've all

looked at his resume, are impeccable for the work he goes to do.

But let me speak to you about John on a personal level. John has been a community and public servant in the town of Amherst and all of western New York all of his life, and it has not just been a job or something that he did as a hobby. It has been a way of life for John, whether it would be in the supermarket, whether it would be at a community meeting, or on Sunday at church. As we lived across the street from each other for 30 years and my husband being an attorney and, of course, John in the same field, there has been lots of conversations and lots of opportunity to rely on John's judgment, which was always objective, knowledgeable and well informed, and for the last 18 years that I've been elected, my first word to John when I would see him, because he knew there would be some questions coming, I'd say, "Counselor" and he would say, "What can I do for you?"

And it's been a real privilege,

John, to call you "Counselor" all these years and it will be a real pride as I call you "Judge" for the remaining years.

It's with great pride that I second the nomination of John Lane.

ACTING PRESIDENT MARCELLINO: Is there any other Senator wishing to speak on the nomination?

Senator Volker, please.

SENATOR VOLKER: Let me just say that I too have known John Lane for a long time, probably not as long as Senator Rath, but, in fact, if you look in his resume you'll see that he was assistant counsel to the New York State Commission on Revision of the Penal Law from '61 to '63. That was a time when my father was chairman of the Codes Committee, and I know of my father's immense respect for John and for his ability, and I can also say, I think, having been around the legal community in western New York for a number of years, there is hardly anyone I could think of more respected in the legal community in western New York than John

Lane.

In fact I, frankly, have never heard anyone have anything uncomplimentary to say about John. He's a very popular individual, and -- but more than being just a popular individual, he's a very good lawyer and I think he'll make an excellent judge, and I wish him the best of luck.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: Yeah. Would Senator Rath yield to a question?

SENATOR RATH: Yes, Senator Gold.

SENATOR GOLD: Senator Rath, I heard you talk about all of the public work and all of the things in the community that you say this individual did and, if that's all true, how did he have time to have 11 kids?

SENATOR RATH: It was always a mystery, and it's one of those wonderful things about this gentleman that will always be a mystery, but we applaud him for that as well as all the other things.

ACTING PRESIDENT MARCELLINO: Is there any other Senator wishing to speak? The question is on the confirmation of John P. Lane as judge of the New York State Court of Claims. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

John P. Lane is hereby confirmed as judge of the New York State Court of Claims.

(Applause)

Congratulations, Judge Lane, and we wish you well.

Senator -- oh, I'm sorry. Secretary will read.

THE SECRETARY: Senator Lack, from the committee on -

ACTING PRESIDENT MARCELLINO: Hold on. Hold on, please. Senator Skelos.

SENATOR SKELOS: For scheduling purposes, there's going to be a meeting of the Transportation Committee at 12:00 noon in Room 124 of the Capitol, and there will be an

immediate meeting of the Rules Committee in 332 of the Capitol. Immediate meeting of the Rules Committee.

ACTING PRESIDENT MARCELLINO: O.K. Transportation Committee at noon in 124, immediate meeting of the Rules in 332.

Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers the following nomination: Judge of the Chemung County Family, Surrogate's and County Court, Peter C. Buckley, of Elmira.

ACTING PRESIDENT MARCELLINO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Real pleasure to stand and move the nomination of Peter C. Buckley, of Elmira, as a triple-hatted judge in Chemung County. The Governor has sent us this nominee. We have carefully examined his credentials. We have found, in the course of our research, that he was a partner in a law firm, same law firm with

member of the Assembly George Winner.

Notwithstanding that, which would normally be disqualifying, we have (laughter) we have brought the nominee to the floor anyway. There was some rumor that member of the Assembly Winner might have wanted the job himself, but when he found out it was a triple-hatted judge and you had to know about family law, how to handle estates and practice law, County Court, all the criminal law that goes with it, member of the Assembly Winner immediately removed himself from contention. Good thing you can't talk on this floor, George.

But it's a real pleasure that we have Judge Buckley before us, and I'd yield to Senator Kuhl.

ACTING PRESIDENT MARCELLINO: Senator Kuhl.

SENATOR KUHL: Thank you, Mr. President.

It's my great pleasure to be able to rise and second the nomination of Peter C. Buckley to become, as Senator Lack has said, the

triple-hatted judge of Chemung County.

One of the things that's most difficult in any kind of a nomination like this is that you realize that, with the type of judgeships that Judge Buckley is being nominated to, that it is a more extensive one as far as demands.

As Senator Lack indicated, that not only does a person have to be conversant in family law but also have to be conversant in estate law and they also have to be in a position where they're familiar with criminal law and, as a triple-hatted judge in the vacancy of any Supreme Court judge sitting, they serve as an acting Supreme Court judge.

So if there is any all encompassing job in the rural counties of New York, it is the job for which Peter Buckley is being nominated today.

Judge Buckley first rose to the bench back in 1980, where he has continued to be seated as a City Court judge. He also has a practice in the civil area and does a lot of

litigation, and I don't hold it against him because he's a graduate of law school from St. Johns, being a graduate of Syracuse, because we know that that's not any threat any more.

But in any case, while his accomplishments in the legal arena have been outstanding and he has committed to civil service, such things as being the past president of the State Association of City Court Judges, the real interesting part about Judge Buckley is that he is what I consider to be one of the treasures of the community.

America is very blessed with a number of treasures. Some people think of our national monuments, some people think of the geography. Some people think of the wealth of our nation, but I treasure and I think of those people in our community as the treasure of our nation, and Judge Buckley is certainly one of those treasures of America, is one of those treasures of the state of New York. He's one of those treasures of the city of Elmira, and I just briefly would run over some of those things

that he has done and keep in mind that, when you talk about titles that people have held in their service to their community, they don't automatically just walk in off the street or be put in a position of president or chairman of this, but they rise to those positions through a lot of years of service.

For instance, Judge Buckley has been president of a high school board of trustees. He's been chairman of American Red Cross in Chemung County. He's been chairman of the Kiwanis Club. He's been president of what we call the Elmira Drug House which is a troubled center for youth.

He has been a member of an alcohol and drug abuse council. He's been a teacher. Imagine somebody filling all these positions having time to be a coach for a Small Fry League and a Little League, and also for a soccer association and he's been honored by several awards in the community.

So while I am happy to stand here and second his nomination, I'm also afraid that

the time commitment that he's willing to take in providing these duties that are so desperately needed in our criminal justice system and our civil justice system today, I am disappointed at his inability to continue to perform that continued service that he's done so well for the community.

So it's a great pleasure for me to be here to second the nomination of Peter Buckley. He will be an outstanding jurist in our area, who will continue to contribute to the community, and I know that seated to my right is Assemblyman George Winner, also joins in that and we're very, very, very happy to be able to second these nominations for you, Judge Buckley.

Good luck.

ACTING PRESIDENT MARCELLINO: Are there any other Senators wishing to speak on the nomination? The question is on the nomination of Peter C. Buckley, of Elmira as judge of the Chemung County Family, Surrogate's and County Court. All those in favor signify by saying

aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

Peter C. Buckley is hereby con firmed as judge of the Chemung County Family, surrogate's and County Court.

Congratulations, Judge.

(Applause)

Senator Spano.

SENATOR SPANO: Mr. President, can you please have the Secretary go to Calendar Number 1067.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 1067, by Senator Lack, Senate Print 7484-B, an act to amend the Judiciary Law, in relation to disciplinary hearings.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

SENATOR LACK: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Lack.

SENATOR LACK: Just if you would allow me to explain my vote if I could.

ACTING PRESIDENT MARCELLINO: O.K. Would you read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT MARCELLINO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

The bill we are passing would open up the judicial conduct hearings and it's very appropriate to do so after confirming the group of very distinguished judges we have to day.

This bill is certainly not in any controversy on the floor of the Senate. The

reason I stand, Mr. President, to briefly explain my vote is that I am somewhat troubled by the New York Law Journal article that appears this morning with respect to this bill. On the one hand, we've heard from the Assembly since I've introduced this bill that this bill was introduced on behalf of the Governor and the Mayor of the city of New York to bash judges. After I met with judges and we've presented what I feel to be a very fair and balanced piece of legislation on the floor this morning, lo and behold, yesterday when a memo was received from the Association of the Bar of the city of New York saying that, by raising the evidentiary standard by which it would be necessary to convict a judge before a hearing of the Judicial Conduct Commission, the Assembly is saying that I'm molly-coddling judges and that by raising the standards, I've made it harder to get rid of judges and that they don't know if they're going to do the bill.

Well, you really can't have it both ways, my colleagues and friends in the

Assembly, so I make this public appeal to you. It's not the usual way I negotiate bills, but I will immediately, if the Assembly is interested in passing this bill by tomorrow, restore the presumption of evidence standard in the bill to the preponderance of the evidence, immediately restore that, get a message of necessity from the Governor and re-pass the bill with that standard if that's what the Assembly wants and if that's what the Assembly requests, and we'll pass the bill that way tomorrow.

Until then, I think we've presented here today and we're passing right now a very fair and balanced bill that is supported by every member of this house that I know of and certainly by most of the judges in this state.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Results, please.

THE SECRETARY: Ayes 56, nays one, Senator Rath recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Spano.

SENATOR SPANO: Mr. President, can we go back to Calendar 776 and then continue with the regular order.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

We'll go back -- the Secretary will read Calendar Number 776.

THE SECRETARY: Calendar Number 776, by Senator Saland, Senate Print 1434-B, an act to authorize the commissioner of General Services.

ACTING PRESIDENT MARCELLINO: There is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1243, by Senator Waldon, Senate Print 1915-C, an act to amend the Executive Law, in relation to establishing "Native American Day".

ACTING PRESIDENT MARCELLINO: Senator Waldon.

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

Very seldom in life are you able to accomplish anything on your own, and that is evidenced by the proposal I have before you for your consideration.

It is with the cooperation of the chairman of the Judiciary Committee, Senator Lack, and even some assistance from our leader, Joe Bruno, that I'm able to bring this before you for your consideration today.

The word "honor" in Webster's Dictionary is described as follows: It is "a showing of merited respect, recognition, privilege, one's worth brings respect or fame, credit", and forever it seems in the Indian language and amongst those who are members of

the Indian Nation, honor has meant a great deal, and when we look at the history of the native Americans here in their indigenous lands, they have many honorable traditions. However, history has oftentimes dealt them a hard card, a wrong hand, but let me just share with you some of the achievements of our Native American sisters and brothers.

Way back in the Revolutionary War, the American Revolutionary War, Native Americans played a significant and crucial role. One example is when as allies with the colonists, the Oneida Nation people hiked in mid-winter with 600 bushels of corn on their backs to feed George Washington's starving Army at Valley Forge. The Continental Army had no money and could not send the necessary supplies. Consequently, in gratitude for the Oneida's loyalty and courage, the United States signed a treaty in 1794, guaranteeing the Oneida Nation their sovereign right to govern their lands and affairs. However, that honorable document was broken.

All too often in our history, promises to protect and support the rights of Native Americans, like so many others, was quickly forgotten. However, they made other contributions to us of a significant nature. When I say "us", I mean all of those who are Americans in this day in 1996.

A clear example: We were very successful in the east during the second World War, and one of the reasons that we were so successful in that battle and those battles was that there were 420 Navajo Marines who were able to communicate and the Japanese were not able to break the code, so to speak, of their native tongue, and so we were able to send our ships to send our troops and to deal most effectively with the enemy because of our Navajo Marines.

Some of you, like myself, love things like potato chips or french fries, but are you aware that the potato was first introduced to all of us by the Native Americans? It is not something that emanated in Europe.

Cotton was something that the Native Americans shared with us, and we have a great cotton industry in America.

Sunflower seeds that you see the baseball players spit out as they sit in the dugout of our major league games.

Furthermore, the Native Americans helped those who first arrived here from Europe to transition into our society, so to speak, by teaching them hunting techniques. They taught them how to trade in fur.

The architecture of the Native Americans was disregarded to a great extent. There were great pyramids in Cahokia in southern Illinois, the stone buildings at Chaco Canyon in New Mexico or Mesa Verde in Colorado.

One of the saddest recollections historically of America's, to wit, discovery by Columbus and the settling eventually by other people from Europe was that he actually - meaning Columbus -- actually began the slave trade. On his first voyage, he took 25 Native Americans back to Spain. On subsequent trips,

he took Caribbean Indians to sell to the Portuguese in the Azores. In fact, between 3,000 and 6,000 Caribbean Indians were the beginning of the slave trade as we knew it historically as blacks in America.

However, despite those historical downsides, I would hope that today would be a joyful day as for the first time in the history of America we create a recognition of the Native Americans, the indigenous people of this land. Nowhere in America is there any bill or law which recognizes the contributions of the people who were here when everyone else arrived, and though this is not a holiday -- that was not possible to do -- it is a day of commemoration, and so today when we pass this bill, we will be celebrating the great contributions of a great people, the indigenous people of America, the first Americans, the Native Americans, and so I applaud those who helped me to bring this to the floor for our consideration, and I applaud each of you in your vote. I hope this passes unanimously so that we could indicate to our

Native American brothers and sisters that we too recognize their great contributions to what America stands for in this day in 1996.

I thank you, Mr. President. I thank you, my colleagues.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to, on behalf of the members of this chamber, thank Senator Waldon for his tireless work on this particular subject. He has actually been raising this issue for a period of time, and I was not aware of some of the history -- I was always aware of the history in New York State of the Algonquin and the Iroquois tribes and their contributions. I did not know some of the issues that Senator Waldon raised, the issue of Columbus and the slave trade. I didn't know about the potato crop and its great use as it was offered by Native Americans, and I

did not know about the agreement in 1794, although I kind of got the picture through reading history that there must have been a number of agreements that were broken which caused the devastation to the native American nations around what is now the United States of America.

I think that it was shocking to hear that nowhere else, in no other state, in no legislature, had there ever been an apt recognition of the Native Americans, and so on Senator Waldon's part, he used a rare combination of skills and a great creativity in order to bring this before us to allow New York State -- to allow this legislature to be the first legislature to address this issue in a way that is suitable for the great contribution that so many Americans whose ancestors live among us today would hopefully be proud. It may not in any way repay the damage or mitigate some of the unfortunate circumstances that were caused by our government, but it certainly demonstrates that those of us living in this generation have

some recognition and have some understanding of their great value.

And we want to also recognize the great value of our colleague, Senator Waldon, from the 10th Senatorial District in Queens for his fortitude and his unyielding effort on this issue to bring this bill before us today.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: This worthy bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could you ask the Secretary now to call up Calendar Number 1509, by Senator Maltese.

ACTING PRESIDENT MARCELLINO: The

Secretary will read Calendar Number 1509.

THE SECRETARY: Calendar Number 1509, substituted earlier today, by Member of the Assembly Tokasz, Assembly Print 6212-D, an act to amend the Election Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Mr. President, could you now ask the Secretary to call up Calendar Number 1492.

ACTING PRESIDENT MARCELLINO: The Secretary will call up Calendar Number 1492.

THE SECRETARY: Calendar Number 1492, by Senator Present, Senate Print 7556, an

act to amend the Administrative Procedure Act.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Present, an explanation has been asked for by Senator Paterson.

SENATOR PRESENT: Thank you, Mr. President.

This proposal amends the State Administrative Procedure Act basically, and I think the administration, after having worked with it for a year, has determined -- and I'll read what the memo says.

ACTING PRESIDENT MARCELLINO: Senator Paterson, why do you rise?

SENATOR PATERSON: Would Senator Present yield for a question?

SENATOR PRESENT: Sure.

ACTING PRESIDENT MARCELLINO: Senator Present, will you yield to Senator Paterson?

SENATOR PRESENT: I would be glad to.

SENATOR PRESENT: If I could remember what the question was.

ACTING PRESIDENT MARCELLINO: He would be glad to, Senator.

SENATOR PATERSON: Senator, on the issue of the procedure act that we are referring to right now, in order to -- you have those issues that are major rules and those issues that are minor rules, but you also have a section devoted to those issues that would not create a rule itself, and in your legislation you state that any action that requires the approval of the Governor to become a procedure, that that would not be considered a rule. Therefore, there wouldn't be any publication, and what I would say is just for the purpose of -- of allowing for disclosure, why would we put that in the legislation that those rules that are -- cause an action, an approval to be taken by the Governor, would not be printed, would not be publicized, in a sense allowing any executive

-- not just this governor, but it is happening during this governor's term -- it would allow any executive the opportunity to promulgate a lot of rules without there being any real detection or any public scrutiny.

SENATOR PRESENT: Senator Paterson, I think that applies primarily to executive orders, and I think the same procedures will be followed as have been in the past.

SENATOR PATERSON: But the difference is -

ACTING PRESIDENT MARCELLINO: Senator Paterson, do you continue to yield - I'm sorry -- Senator Present.

SENATOR PATERSON: I'm sorry, Mr. President.

ACTING PRESIDENT MARCELLINO: Do you continue to yield?

SENATOR PRESENT: Yes.

ACTING PRESIDENT MARCELLINO: The Senator continues to yield.

SENATOR PATERSON: The difference

is on executive orders, there is a -- kind of a -- a publication of them just by the fact that they are executive orders. This is a little bit different. This is where we're having a rulemaking that requires the approval of the Governor and really it's pretty much undetectible. It's really in a lot of ways not discernible unless there's any apt publication, and the reason that we are distinguishing between the major and minor rules is so that we can have a procedural act in which the public can actually know, and in this era of disclosure, I just thought that it would be better to leave that as an official rule so it would be publicized.

I guess it's not really a question, but I'm just asking if it would not be a good idea to leave it as a rule and not put it under the classification where it would not be applied as a rule.

SENATOR PRESENT: Senator Paterson, I'm not aware of what you're referring to, what type of rule that the Governor signs.

Perhaps you can enlighten me as an example.

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

SENATOR PRESENT: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR PATERSON: I understand the question, Senator Present. The problem is I don't know the answer because I don't know of a situation where it's happened yet, and what I'm trying to find out is why this is in the bill. What kind of situation would this apply to?

SENATOR PRESENT: I don't know either. You've made one up and I don't know what it is.

SENATOR PATERSON: Okay. Thank you, Senator Present.

On the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson on the bill.

SENATOR PATERSON: I don't know if it's a major thing, but I would advise that it might not be a good idea to pass this

legislation until we know under what circum stances this would enable the Governor to actually give approval to a rule and by the nature of that, disqualify the issue as a rule itself, and I think that because we don't know what we're opening up by passing this, it might not be procedurally the best thing to do at this time.

Some of the other distinctions in the bill are quite excellent, and I can see why the bill was offered itself, but I'm just a little uncomfortable, to be honest, with the situation or the occasions that might arise where the requirement that there be approval of the Governor would disqualify a rule and would eliminate the possibility of publication.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 16. This act shall take effect on the 120th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I understand there's a Rules report at the desk.

ACTING PRESIDENT MARCELLINO: There is a Rules report at the desk, sir.

SENATOR KUHL: Could we return to the reports of standing committees, and I would ask that the Rules report be read.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Senator Bruno offers up the following bills directly for third reading:

By Senator Stachowski, Senate Print 1672-A, an act directing the Commissioner of the Division of Criminal Justice Services;

By Senator Kruger, Senate Print 1871, an act to amend the Criminal Procedure Law;

By Senator Velella, Senate Print 4309-B, an act to amend the New York City Civil Court Act and the Civil Practice Law and Rules;

By Senator Hannon, Senate Print 4318, an act to amend the Correction Law;

By Senator Stafford, Senate Print 4422-B, an act to amend the Education Law;

By Senator Skelos, Senate Print 4842-A, an act to amend the Civil Practice Law and Rules;

By Senator Tully, Senate Print 4908-A, an act to authorize the county of Nassau;

By Senator Goodman, Senate Print 5242-A, an act to amend the General Municipal Law;

By Senator Hoffmann, Senate Print 5921, an act to legalize, validate and confirm the establishment of a water district;

By Senator DeFrancisco, Senate Print 6069, an act to amend the Tax Law;

By Senator Holland, Senate Print 6152, an act to permit the reopening of the

optional 20-year retirement plan;

By Senator Larkin, Senate Print 6186, an act to amend the Judiciary Law;

By Senator Seward, Senate Print 6215, an act to amend the Real Property Tax Law;

By Senator Larkin, Senate Print 6504, an act to authorize the village of Washingtonville;

By Senator Saland, Senate Print 7668, an act to amend the Social Services Law;

By Senator Spano, 7703, an act to amend the Labor Law;

By Senator Hoblock, Senate Print 7726, an act to amend Chapter 30 of the Laws of 1996;

By Senator Hoblock, Senate Print 7738, an act to amend the Civil Service Law;

By the Senate Committee on Rules, Senate Print 7739, an act to amend Chapter 892 of the Laws of 1986;

By the Committee on Rules, Senate Print 7755, an act to authorize the conveyance of a permanent and temporary easement.

All bills directly for third reading.

SENATOR KUHL: Move to accept the report of the Rules Committee, Mr. President.

ACTING PRESIDENT MARCELLINO: All in favor of accepting the Rules Committee signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

We have a couple substitutions to read, sir.

SENATOR KUHL: Would you read the substitutions, please.

ACTING PRESIDENT MARCELLINO: Thank you.

The Secretary will read.

THE SECRETARY: On page 29, Senator Padavan moves to discharge from the Committee on Rules Assembly Bill Number 10694 and substitute it for the identical Senate Bill 7440.

On page 33, Senator Leibell moves to discharge from the Committee on Rules Assembly Bill Number 8906-A and substitute it for the identical Senate Bill 6800-A.

ACTING PRESIDENT MARCELLINO: The substitutions will be made.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I believe Senator Paterson has an announcement at this time for the Minority members.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, there will be a Minority Conference in the Minority Conference Room at 12:30.

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

ACTING PRESIDENT MARCELLINO: No, sir.

SENATOR KUHL: Then, Mr. President, I would ask that we stand at ease. We're going to allow the Senate Minority members

to conference at 12:30 and allow the Majority members to get a bite to eat and we will resume promptly -- promptly at 1:30 on the controversial calendar. So I would move that we stand at ease.

I see Senator Paterson has an additional announcement.

SENATOR PATERSON: Yes.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, I would hope that the Majority Conference members enjoy their lunch. We are already fed up, but the point is that since we're going to stand at ease now, we will have this Minority Conference immediately in the Minority Conference Room.

ACTING PRESIDENT MARCELLINO: Conference immediately. The Senate will stand at ease until 1:30.

(Whereupon, the Senate stood at ease from 12:25 p.m. until 1:36 p.m.)

ACTING PRESIDENT DeFRANCISCO:

The Senate is back in session.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could continue the controversial calendar, beginning with Calendar Number 1332, by Senator Kuhl.

ACTING PRESIDENT DeFRANCISCO: The Secretary will read.

THE SECRETARY: Calendar Number 1332, by Senator Kuhl, Senate Print 6576-B, an act to amend the Alcoholic Beverage Control Law and the Tax Law, in relation to a pilot program for interstate shipment of certain wines.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl, an explanation has been asked for.

SENATOR KUHL: Yes, Mr. President. This is a bill that has a history in this house, a rather short one. It's a bill that we have been trying to get in an approvable form and a bill that would hopefully provide and I believe would provide a significant economic impact to a segment of our agricultural

industry, primarily the wine-making industry.

The bill is what's commonly referred to as a reciprocal wine shipping bill. It is a bill which is meant to allow people who come and visit the state as a tourist and who participate in the tourism activities of this state by visiting one of our hundred-plus wineries the opportunity to go home to wherever that might be, in a state such as, say California, Oregon, Wisconsin, Arizona, Nevada, Michigan, Wisconsin, Ohio, Florida or whatever, and to be able to send a note back, either by mail or phone and ask that the winery they visited ship them some wine.

There are limitations in the bill. The limitations would only allow a person to buy two cases of wine from any one winery a year. It would only allow the deliverance of the wine to somebody who is legal to purchase the wine in this country, that being the individual would have to be older than 21 years of age. That is the basic essence of what the bill does.

ACTING PRESIDENT DeFRANCISCO: Senator Onorato.

SENATOR ONORATO: Mr. President, I am fully cognizant of the accomplishments that Senator Kuhl is trying to do with this bill, but I really honestly and sincerely believe that just the opposite is going to be the truth if this bill becomes law.

New York state is not necessarily known for its wine products, even though we have a wonderful winery. I think the problem lies not so much maybe in the quality of the wine but in the lack of promotion of the wine, and I think we could probably best accomplish assisting our wine growers in this state by perhaps giving some sort of a tax incentive by forming some sort of a coalition of all of the wineries in the state of New York where they can actually promote their product.

I remember a few years back, I discussed a bill with the wine coolers, how everybody thought it was going to be the answer that the wine growers in the state of New York

were going to have a bonanza. I think they did perhaps for the first -- when we created an exclusive market for them, but this is not the case here, and I believe that California at the current time supplies over 50 percent of the wine to New York State. They produce over 50 percent of it, and -

SENATOR KUHL: Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl, why do you rise?

SENATOR KUHL: Would Senator Onorato yield to a question?

SENATOR ONORATO: Yes, I will, Senator.

SENATOR KUHL: Senator Onorato, were you in this chamber in 1984?

SENATOR ONORATO: Yes, I was.

SENATOR KUHL: And are you -- or do you remember in 1984 this Legislature as a result of a tremendous economic difficult time adopted a piece of legislation which was meant to help the wine industry?

SENATOR ONORATO: Are you

referring to the wine cooler?

SENATOR KUHL: No, not that particular one. That was a piece of an overall product, but are you -- let me ask it another way, if I may, Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Onorato, do you still yield?

SENATOR ONORATO: Yes, I yield.

SENATOR KUHL: Are you aware that there currently exists by statute creation in this state an organization called the New York Wine and Grape Foundation?

SENATOR ONORATO: Yes, I am.

SENATOR KUHL: And last year are you aware that this state funded that organization to the tune of about $500,000?

SENATOR ONORATO: I was not aware of that.

SENATOR KUHL: And are you aware that in addition to the state obligation -- or I should say appropriation of $500,000, that the agricultural participants in that industry also participate by sending in a significant amount

of money?

SENATOR ONORATO: They probably do.

SENATOR KUHL: And if I may continue, Mr. President -

ACTING PRESIDENT DeFRANCISCO: Do you continue to yield, Senator?

SENATOR ONORATO: I continue to yield.

SENATOR KUHL: The point in asking these questions, Senator Onorato, is not one to cause you any embarrassment, but to try to get you to understand there already is an institution called the New York Wine and Grape Foundation in this state and their particular charge -- they are not allowed to lobby this particular institution, but are you aware that their specific legislative charge is to promote and to indulge in research for the benefit of that industry?

SENATOR ONORATO: Yes, I am.

SENATOR KUHL: Thank you.

ACTING PRESIDENT DeFRANCISCO:

Senator Onorato.

SENATOR ONORATO: I'm also aware that I don't see anything on television advertising the New York State products the way you see the California winery, the Gallo Wine Company, the imports from overseas.

As I recall, years ago I stated that perhaps one of the worst pieces of garbage that was produced by a winery in Italy was the number one seller in the United States because they had this little Italian fellow, debonair in a white suit with a white hat going "Do you want to influence all the women in this world? Buy Riunite on the rocks, under the rocks, alongside of the rocks", and they had all the girls swarming around him. That became the number one seller in the United States, believe it or not, and it was rated by -- not by myself, by wine critics as perhaps the worst piece of garbage that ever came into the country, but it became the number one seller, and this is what I'm trying to bring about that perhaps all of the money that was expended through all of these

organizations, they haven't learned how to market. That's the name of the game when you have a product, whether it's good or it's not good. Marketing determines the sales of your product, not a reciprocal wine bill, and are you aware now -- we also -- just recently, we have a -- a new organization called Sell Master that will accomplish exactly what you're telling us to do.

Sell Master is an organization in Illinois which will serve any winery in the country who has no distribution in any given state by setting up sales and delivery in that state. It's licensed as a broker in New York. They can serve any New York winery and can arrange delivery to a consumer in any open state where retailing is a private business and to do so in full conformity with the laws of the recipient state. There is no loss of taxes to any state. No out-of-state licensing is necessary and any wine consumer can be satisfied.

Now, there is in existence a

mechanism to do just what you're doing and still retain all of the taxes that would be coming into the state of New York. I'm not sure if you're aware of the fact that this concurrent bill, even the amended version, while I'm glad that you did amend it and put a sunset on it to three years, that it's opposed by the Metropolitan Package Store Associations, the Liquor and Sales Union Local Number 2 that handle all of the salesmen, the Federation of New York State Package Store Association, the Fine Wines Limited, the teamsters and warehouse handlers that handle the product. They will be losing jobs if this actually goes through by bypassing the wineries.

So, Senator, I really urge you to reconsider your position on this bill, and I would urge my colleagues for a no vote. There's absolutely no way you can enforce the teamsters or the deliverer to ensure that we're not putting this wine into an individual's home that is under 21 years of age.

Now, all of us are aware when you

get a delivery from UPS, nobody asks you for proof of age to receive the product. They're not going to start spending that kind of time to ask you for proof of age. It may be obvious if a three-year-old kid comes and answers the door, they may not deliver the packet of wine to them, but anyone else who looks halfway decent to them, they're going to deliver that package of wine.

So it's really not going to do us any good, but, again, overall New York State will not be the beneficiary of this legislation. California again will be the outstanding -- because they currently are out selling all of the wine coolers of New York State. I don't hear anything at all anymore about New York wine coolers.

So, again, Senator Kuhl, I would urge you to lay this bill aside and forget about it. If not, I would urge my colleagues on both sides of the aisle to vote against this legislation.

ACTING PRESIDENT DeFRANCISCO:

Read the last section.

Senator Dollinger -- Senator Paterson.

SENATOR PATERSON: Mr. President, I think that Senator Onorato made some excellent points. I voted for this legislation last year. The Governor's veto caused me to take a second look at it, and some of the points that Senator Onorato is making are kind of disturbing, particularly the one -- since we've had some legislation before us that everybody voted for -- involving the use of alcohol by those under the age of 21 and some severe restrictions that we are placing on these individuals.

It would seem a little bit inconsistent to pass this legislation when we have really no way of regulating the merchandise as it's sent to individuals and no way of knowing what their age is, but beyond what Senator Onorato said, there's a restriction now that it just be white wine. There's no real way of proving that. In fact, there's no real way,

when the packages are shipped, to know that they're even wine in the first place, and Senator Onorato went through a number of organizations and groups that have sent -- that have sent memoranda, and then he outlined this process that actually seems to be substituted, I guess almost like an FTD arrangement for distribution of alcohol which would probably accomplish what Senator Kuhl is trying to endeavor in this bill but without any of the - without any of the costs. The benefits would seem to go to other states, particularly California. The loss would go to New York State in the form of jobs and in the form of industry, and so, upon reconsideration, I would have to say that Senator Onorato has enlightened the chamber, and I'm certainly one who will heed the call.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

SENATOR DOLLINGER: Mr. President, may I ask Senator Kuhl one question?

ACTING PRESIDENT DeFRANCISCO:

Senator Dollinger.

Senator Kuhl, do you yield to a question?

SENATOR KUHL: I would be happy to.

SENATOR DOLLINGER: Senator, I understand that there were a series of letters in opposition that were delivered to the Governor asking him to veto this bill. Do you know who those entities were and whether they still are opposed to this bill or not?

SENATOR KUHL: I don't know as I ever saw, Senator, the memos in opposition that were filed with the Governor. I can guess as to it and I'll be happy to render a guess as to who might have filed in opposition. I have seen memos in opposition last year. I'm seeing the same kind of memos in opposition this year, and these are coming from organizations like the Metropolitan Package Store Association, the New York State Wholesale Wine and Spirits Dealer Association.

Those have been these people who

have a monopoly in wine sales in this state and who are fearful of a small wine seller selling two cases to some individual in another state who cannot get that wine any other way. They can't even come to New York and go to a liquor store and find that wine because these people will not carry these wines because they take up too much shelf space and they want to provide that shelf space to California wines. So, in fact, those wines are sold in New York over and above the local product. These are the people, these monopolistic purveyors who want to continue that monopolistic approach are the ones who are filing that opposition. Those are the only people that I have seen filing memos of opposition and they continue to oppose the bill because they don't want to see the New York wine industry thrive.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President. I'm not concerned about the monopolists. I guess I look at those memos from

the same perspective as Senator Kuhl. My question is what about the local wineries, Canandaigua, some of the -- Glenora Hills, some of the wineries in Monroe County and the Finger Lakes region. Do you know whether they favor this bill or not?

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl.

SENATOR KUHL: In response to your question, Senator Dollinger -- and it's a very uncomfortable position that these people who are in the wine sales industry find themselves, and let me go back to, you know, everybody seems to be throwing red herrings here around and I understand why, but let me tell you, there's one single purpose -- in response to your question -- there is one single purpose to this bill, and it's very simple. There are small wineries who have a request who would like to sell their wine to somebody from another state. There is no opportunity for those other -- those people in the other states to get that wine from any place other than from the winery

itself. They have developed a taste. They have acquired a liking for that particular product, and they can't find it through any other outlet so they have to come to the winery, and the problem is the winery is prohibited by law, unless we change it -- well, unless the other state changes it -- to ship to those particular people. That is the only reason for the bill.

Now, are there wineries that are saying they don't want this bill? Yes. There are some wineries who have said -- some large ones -- it's not going to make a difference to them because it's not going to affect their sales one way or another. They have outlets. There are -- small wineries have written to me and said, Yes, we support this bill because it's -- it will increase our business by 20 or 30 or 40 percent and they say 20 to 50 percent of our sales are to tourists and those tourists go home and that's where we want to.

Are there other wineries that are in the middle? Yes. There are other wineries in the middle who have been told by people who

have filed the memos in opposition, that if they don't -- if they don't write a letter in opposition to this bill that, in fact, their wine will never see one day of sunlight in that store that they provide this product to.

So they're using the strong arm of their economic position to force denial of the acceptance of this legislation. If there's anything in this world that infuriates me more, it is that, okay? There is nothing that infuriates me more than somebody using their position when they're in so-called the Goliath position in holding the thumb over that poor person who has no other outlet and who in the end result can fail.

So, yes, the answer to your question is that there are people who have filed wineries letters of opposition, but I can tell you it's under economic duress.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: I appreciate Senator Kuhl's extreme candor.

ACTING PRESIDENT DeFRANCISCO: Senator Onorato.

SENATOR ONORATO: Mr. President, I would just like to make a clarification.

Senator Kuhl, I don't know if you are aware that the SLA has licensed Sell Master, and I think it became effective in March of this year -

SENATOR KUHL: Sell Master -

SENATOR ONORATO: Excuse me - which will enable any winery in the state of New York, including those that you are referring to, to get their product out the same way. They can do it. You made a statement that you may not be aware -

SENATOR KUHL: Would Senator Onorato respond to a question?

SENATOR ONORATO: Yes, I will.

ACTING PRESIDENT DeFRANCISCO: Excuse me. Was there a question, Senator Onorato?

SENATOR ONORATO: I wanted to know if he was aware of Sell Master which can

accomplish exactly what he's asking this body to do right now.

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl.

SENATOR KUHL: Yes. I am aware of an organization called Seller Masters, okay? It is a new concept that has come in as far as marketing goes. My only question to you would be, seeing as though you rest -- you raised the issue, Senator Onorato, do you know what additional cost this is not only to the winery to participate in this but to the consumer in the end result?

ACTING PRESIDENT DeFRANCISCO: Senator Onorato, do you yield to that question?

SENATOR ONORATO: Yes, I will. I don't know how much more it will cost with Seller Master,* but there is also an additional cost by shipping it themselves as a shipping cost that they wouldn't have had to pay for it if they bought it locally. No matter which way you look at it, they're not going to be getting bargains because there's approximately a $3.50

per bottle charge in shipping it. I mean, they're not going to buy it any cheaper.

ACTING PRESIDENT DeFRANCISCO: Senator Kuhl, why do you rise?

SENATOR KUHL: Well, to ask Senator Onorato a question. The question simply was, are you telling me that Seller Master provides the service of distribution to the small wineries at no cost but just the cost of shipping?

SENATOR ONORATO: I don't know what -- I don't have the full detail as to what their -- as a middleman charge, but I do want you to know that there is a vehicle out there. I mean, I'm only clarifying a statement that you said there was no way that the small wineries can get their product out without this legislation.

SENATOR KUHL: If Senator Onorato would yield to another question.

ACTING PRESIDENT DeFRANCISCO: Senator Onorato, would you yield?

SENATOR ONORATO: Yes, I will,

Mr. President.

SENATOR KUHL: Senator Onorato, from getting -- from what you're saying -- you were saying that you support the concept of Seller Master which we know will cost something to the consumer rather than a cheaper methodology which I'm proposing in my bill, which is a direct sale. So are you supporting a concept of using something called Seller Master which is going to create additional costs to the consumer rather than supporting my bill which will allow for direct sales from the producer to the consumer without imposing the cost of the middleman to the consumer?

ACTING PRESIDENT DeFRANCISCO: Senator Onorato.

SENATOR ONORATO: I have to agree, Senator, that there will be -- I don't know what their commission charges are, but nobody in this world is doing anything for nothing. We know there's no free lunch around. So I agree that there will be commission charges. What they are, I can't answer you. I

just want to make sure that we do -- are aware that there is a mechanism out there for them to distribute their product.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first day of a sales tax quarterly period.

ACTING PRESIDENT DeFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT DeFRANCISCO: Senator Tully.

SENATOR TULLY: Thank you, Mr. President. To explain my vote.

I really wasn't sure what I was going to do to with respect to this bill, but I want to thank Senator Dollinger, Senator Onorato, Senator Paterson for bringing out from their Goliath side the best in the David of Senator Kuhl because his lucid explanation after the remarks made by my three colleagues that I

referred to earlier has totally convinced me that this bill is in the best interests of business in this state and particularly the wine industry of this state, and I vote aye.

THE SECRETARY: Those recorded in the negative on Calendar Number 1332: Senators Abate, Leichter, Markowitz, Onorato, Padavan, Paterson and Smith; also Senator Dollinger. Ayes 50, nays 8.

ACTING PRESIDENT DeFRANCISCO: The Secretary will read -- excuse me. The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 1408, by Senator Padavan, Senate Print 4754-A, an act to amend the Administrative Code of the city of New York, in relation to the establishment of a 25-year retirement program.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

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

ACTING PRESIDENT DeFRANCISCO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT DeFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 1485, by Senator Skelos, Senate Print 6249-A, an act to amend the Public Service Law, in relation to the tariff of filings for non-basic telecommunications services.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DeFRANCISCO: An explanation has been asked for.

Senator Skelos.

SENATOR SKELOS: Mr. President, what this legislation would do is reduce the time of notice for filing requirements for non-basic -- and I underline "non-basic" - services for telephone companies required by the Public Service Commission from 30 days down to 10 business days.

As we all know, competition in non-basic services in the telecommunications

area is growing. The tariff filings required by the PSC to protect the consumer from price increases is creating, in many instances, a disadvantage for New York State phone companies. Some of those companies are State Telephone, Crown Point Telephone Company, Citizens Telecom, Oneida County Telephone, Fishers Island, NYNEX, Rochester, Berkshire Telephone Company and the long distance carriers -- out-of-state carriers that they compete with are Sprint of Kansas City, AT&T of New Jersey, MCI of Washington, D.C.

The problem is that the out-of state carriers, when they make an application with the PSC, it has been the practice that that is approved within one day and New York State companies it will take 30 days.

What happens is during this period of time, the out-of-state carriers can review the new fee or tariffs that are set by the companies and then underprice them during this period of time. Therefore, what this legislation would say, bring it down to ten

business days so that our New York State companies can be competitive in non-basic services with these out-of-state carriers and, of course, the Public Service Commission would still have oversight and the ability to audit these services.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Leichter.

SENATOR LEICHTER: Yeah. Would Senator Skelos yield, please.

Senator, let me ask you to comment on this concern I have, and that in a ten-day period, that the Public Service Commission may not have an adequate amount of time to review whatever change in tariffs, rates, services are being made and, therefore, cannot act to protect the New York consumers.

SENATOR SKELOS: Well, first of all, the out-of-state, such as MCI, AT&T, Sprint, one day. The response is made one day.

New York State -- and we're talking about things like call waiting,

different, non-basic services. That's what we're talking about which is now a tremendous amount of competition. Rather than the 30-day period, we're talking about giving them ten business days. So it's actually more than ten actual days.

If the Public Service Commission can act for these out-of-state mega companies, I think they can certainly act appropriately within ten days for New York State companies, whether it's a large company like NYNEX or it's a small local phone company like on Fishers Island and many upstate committees.

SENATOR LEICHTER: Senator, will you continue to yield?

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, I'm not familiar with the procedures here. You say

that they act within one day on requests made by AT&T, MCI, and so on.

SENATOR SKELOS: Right.

SENATOR LEICHTER: Why is that? Why do they do that in one day and for -- the local companies take a longer period of time?

SENATOR SKELOS: I don't believe they're as regulated as our local -- and I think Kemp mentions, I think there's also preemption by the federal government.

SENATOR LEICHTER: Well, Senator, preemption is always a problem for us. We run into the same difficulty in banking where we want to protect New York consumers, but very often New York banks have to compete with national banks. We have to permit practices that maybe we would not like if we could totally control the situation and maybe -- maybe that's the same situation here.

I'm just a little concerned. You take these upstate communities. You take some of the services even in urban areas, and so on. These are expensive; they're important, and so

on. We want to have a process where people have sufficient time to respond. It just seems to me that if you reduce the amount of time, that ten days, I mean -

SENATOR SKELOS: Ten business days.

SENATOR LEICHTER: Ten business days.

SENATOR SKELOS: And, Senator Leichter, let me just point out again, we're talking about non-basic services where there is -- not basic services like a dial tone - non-basic services which is extremely competitive. So no phone company -- New York State phone company -- is going to go out and come up with outrageous tariff increases because, I'm sure as you get phone calls every day, MCI, Sprint and other companies are waiting to move right in and take this business away from our New York companies. We're talking about non-basic services.

SENATOR LEICHTER: Excuse me. If you would continue to yield, Senator.

SENATOR SKELOS: Yes.

SENATOR LEICHTER: I mean, how competitive are they? I mean, for instance, if I want to get voice call or phone waiting, and so on, I've got to go through my carrier NYNEX. Where is the competition?

SENATOR SKELOS: That's not true.

SENATOR LEICHTER: It isn't?

SENATOR SKELOS: You can go to Sprint. You can get it from other companies. They're selling it at extremely competitive and potentially lucrative areas for these companies, and all we're saying by this legislation is allow New York State companies to be competitive with these out-of-state companies.

SENATOR LEICHTER: Senator, one final question.

SENATOR SKELOS: Yes.

SENATOR LEICHTER: What does the Public Service Commission say about this bill?

SENATOR SKELOS: They're neutral. We have nothing in support or

opposition from them.

SENATOR LEICHTER: Has there been an attempt to ask them their view on this legislation?

SENATOR SKELOS: We have worked with them, but in all honesty, we do not have anything in opposition or in favor of the legislation.

SENATOR LEICHTER: Thank you.

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 58.

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

SENATOR GOODMAN: May I be recorded in the negative on Calendar Number 140...

ACTING PRESIDENT KUHL: Senator

Goodman, hold on just a minute. The bill is passed.

The Chair recognizes Senator Goodman.

SENATOR GOODMAN: Thank you.

Calendar 1408, negative vote, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Goodman will be recorded in the negative on Calendar Number 1408.

Senator Padavan, why do you rise?

SENATOR PADAVAN: Yes, Mr. President. With unanimous consent, may I be recorded in the negative on Calendar 1521.

ACTING PRESIDENT KUHL: 1520... Senator Padavan, 1520...

SENATOR PADAVAN: 21.

ACTING PRESIDENT KUHL: ...21. Without objection, hearing no objection, Senator Padavan will be recorded in the negative on Calendar Number 1521.

Senator Kruger.

SENATOR KRUGER: Mr. President, I would ask unanimous consent to be recorded in the negative on Calendar Number 1088.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Kruger will be recorded in the negative on Calendar Number 1088.

Any other Senators wishing to register a vote?

Senator Montgomery.

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

I would like unanimous consent to be recorded in the negative on Calendar Number 1088 also.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 1088.

Senator Gold.

SENATOR GOLD: Mr. President, with my deepest apologies to you personally, I

ask unanimous consent to be recorded in the negative on Calendar Number 1332.

ACTING PRESIDENT KUHL: Did I hear an objection? Without objection, Senator Gold will be recorded in the negative on Calendar Number 1332.

Senator Rath.

SENATOR RATH: Mr. President, may I request how was I recorded on Calendar 1067, please? How was I recorded on Calendar 1067, please?

ACTING PRESIDENT KUHL: You're recorded in the affirmative on Calendar Number 1067, Senator Rath.

SENATOR RATH: I would request with unanimous consent that I'd like my record to be recorded as an abstention, please.

ACTING PRESIDENT KUHL: Without objection, Senator Rath will be marked as abstaining from a vote on Calendar Number 1067.

Any other Senators wishing to register any votes at this time?

Senator Leichter.

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative on Calendar 1408, please.

ACTING PRESIDENT KUHL: Without objection, Senator Leichter will be recorded in the negative on Calendar Number 1408.

Any other Senators wishing to register a vote at this time?

(There was no response.)

Hearing none, Senator Skelos.

SENATOR SKELOS: Could you call up Senator Hannon's bill, Calendar Number 1496.

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 1496.

THE SECRETARY: Calendar Number 1496, by Senator Hannon, Senate Print 7580, an act to amend the Emergency Tenant Protection Act of 1974.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Hannon, an explanation has been asked for of Calendar Number 1496.

SENATOR HANNON: Yes. This legislation would exempt from the Emergency Tenant Protection Act of 1974 those housing accommodations known as lodging houses.

One might ask why are you just doing this now? And that is because in November of 1995 for the first time after long existence of these statutes a court in -- the appellate court said that there is no specific exemption of them, although the practice had been to exempt them, the seemingly acceptance of all the parties involved and since there was nothing specifically to exempt them in the statute, they were going to consider them included. This would simply ratify the existing practice.

SENATOR PATERSON: Mr. President, if Senator Hannon would kindly yield for a question.

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

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR PATERSON: Senator Hannon, when Emergency Tenant Protection Act was passed in 1974, there were 14 exceptions to the act which over the years have been well held in our law as we've ratified and extended the law many times since then.

The issue of the lodging houses is very important because, although it might appear that individuals who reside in those houses are transient or just there for a short period of time, the individual who is involved in the case that you're referring to, Grace Corp. Realty versus Hargrove was -- actually resided in this particular house since 1988 and brought the case in 1994 in state Supreme Court. Now, the appellate court upheld the fact that there is no exception to the Emergency Tenant Protection Act.

Now, Court of Appeals has leave to examine this case, but what I would like you to know is that this is a source of housing for individuals who cannot even meet the threshold

of protection that would exist in public housing, and should we pass this piece of legislation and make a law that would enable the owners of these lodging houses to just throw people out randomly, we could be opening the door to possible scams. We could see people who would take their apartment buildings and then try to have them declared lodging houses to maybe wipe out all the tenants, raise the apartments to the housing rate. There are a lot of things that could happen under this.

In the meantime, there are a number of individuals who would benefit greatly since the individual in the Grace Corp. Realty versus Hargrove case was a person that had lived there for six years.

So my question to you is why would we want to eliminate this protection under the -- under the Emergency Tenant Protection Act of 1974 when we would harm so many low income - very low income residents in this state?

SENATOR HANNON: Senator Paterson, I must respectfully, but very

strenuously disagree with the premises that are inherent in your question, and you're very clear to set forth those premises, so let me deal with them.

First of all, you said people would benefit greatly. I totally disagree. The practice has not been to have this group of buildings included within rent control. So there's no benefit. Whatever has been happening has been happening.

Second, you said conversion. Well, if you have to do the conversion, you'd have to get approval of DHCR, and I'm sure that's not going to happen and it has not happened. If it was an incentive, it would have been happening.

Lastly, you said this is a class of individuals who you want to make sure there's housing for. On that goal, I am in total agreement with you. I was very delighted to read recently in the paper how well the SRO housing at Times Square is doing. I personally carried the legislation to make sure there was

bonding authority to make sure that SRO was implemented. I remember going over in detail with the borrowing agency and the planning agency in the city of New York to make sure it would not be too large a problem. It would not be subject to any of the ills we had found in SROs in the past.

With that experience very vividly in my mind when we were going through changes in rent control statutes in the past, I know this never came up. This was not a class we were worried about. We looked into it. The vacancy rates in this area is in the area of one-third to 40 percent. I agree that we ought to have the SROs. I am not doing anything to undercut that.

So why are we doing this now? We're just really going back to the status quo of last November, not trying to make any great changes, not trying to make any great reforms.

ACTING PRESIDENT KUHL: Thank you.

SENATOR PATERSON: Thank you, Mr.

President. If Senator Hannon would continue to yield.

SENATOR HANNON: Yes.

SENATOR PATERSON: Senator Hannon, I'm familiar with your working involving the bonding agency and the SROs at 42nd Street, and no one is questioning your individual commitment to establish low income housing. However, as it's reflected in this piece of legislation, since you've dedicated the energy to challenge some of the points that I'm raising, what I'd like you to be aware of is, first of all, though you may maintain that this has been the tradition, that is not what the court held in that decision, and although I will grant you that the Court of Appeals may still rule on this, the fact is that the New York State Supreme Court and the Appellate Division in 1995 ruling on this case -- it was brought in 1994 -- of Grace Corp. Realty versus Hargrove that that -- the law says that it's always been that way, and if that's the case, then that would be the reason that nobody tried to convert

those houses because they knew under the law they could not, but the issue, as far as SROs, certainly seems to bother the Lower East Side SRO project, which is in Senator Abate's district, and also the West Side SRO project, which is in my district.

We understand that in 1980, there were 127,000 New York City residents that lived in SROs and because of the whittling away of housing in fashions such as we think this bill would accomplish, by 1986, there were 9,000 individuals living in SROs and it actually added to the 40 to 60 homeless people,** men, women and children who were wandering the streets of the city of New York.

So we could be wrong, but we are nonetheless sensitive to the fact that at SROs, there has been at least a form of housing for certain individuals and in these lodging houses because of the poor housing stock, that's the reason that the individuals are not transient since we don't have any housing available, since we have housing -- in my district, if you walk

through Harlem from First Avenue to Morningside Avenue, you see the burned-out and abandoned housing that is more synonymous with the urban life that occurred in the South Bronx or Brownsville 20 to 25 years ago.

This is the reason that we're so concerned about this legislation, and so what I'm trying to respond in kind is by letting you know that there is a great deal of paranoia, I will -- I will admit, about what's going to happen to SROs, but if we just stick to the point of lodging, the courts have not held what you're stating. You say that it's a tradition. They went to court. The court said it's not a tradition, and so I'm just asking how in the face of those court decisions we can be acting upon this legislation at this time?

SENATOR HANNON: To undo the court decision.

SENATOR PATERSON: Thank you, Senator Hannon.

Mr. President, on the bill.

Senator Hannon feels we should

undo the court decision and if he wants to change the law, then I'm glad that he's at least informing us that he wants to change the law, but I don't think that there's been any -- any -- anything other than adherence with the law since 1974, according to the courts, and that is the reason why we think that the individuals who are very much indigent who wind up often paying their rents on a daily basis in these lodging houses, we would not like to see them thrown out in the streets. They have -- really, in many places, have to take the place of SROs in New York City and we don't want to add to the burden that our city administration and all of our agencies and facilities have by increasing the number of homeless which we've finally gotten down to about 33,000 around the City and drive it back up to the numbers and the staggering statistics of ten years ago when we saw people living three stories down in Grand Central Station and in other places, in very squalid conditions creating all kinds of health hazards and nuisances to the residents that live around

New York City.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes. I would like to join with my -

SENATOR PADAVAN: May I?

Mr. President, would Senator Hannon yield?

ACTING PRESIDENT KUHL: Actually, Senator Paterson had the floor, Senator Padavan, and he yielded.

SENATOR PADAVAN: He did? My apologies.

ACTING PRESIDENT KUHL: You were next.

SENATOR PADAVAN: Thank you.

SENATOR ABATE: On the bill. I am joining my colleague, Senator Paterson, in opposition to this bill. I've spoken with a number of my -- the SRO projects in my district. I have read the court decision which clearly interprets the law and says that there is protection under the current law and that

it's subject -- these lodging and EROs are subject to rent stabilization and rent control protections. So on the law I understand and I'm glad Senator Hannon said it's not that we're clarifying the law. He seeks to change the law, and that makes it either -- even more strengthens the argument that there's a need to continue this protection.

The definition -- definition of a lodging house is a room without a kitchen or a bath, and by its very nature, if you look at the inhabitants of these residences, these are the poorest of the poorest people in New York City and many of the people live there for long periods of time and, as Senator Paterson said, the tenant in question who was the subject of this litigation lived in this residence for six years.

So we have an appellate term that confirmed the -- the lower court decision. We have an Appellate Division decision, and now it will be before the Court of Appeals.

So in terms of good public

policy, we need to continue this. There are many poor people that are relying upon this affordable housing as the only housing that's available to them.

So for these reasons and to protect a number of my constituents that rely on this housing, I will be opposing this bill.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: Would Senator Hannon yield to a question, please?

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PADAVAN: Senator, the bill refers to a lodging house as defined in Subdivision 14 of Section 4 of the Multiple Dwelling Law. I don't have that readily handy. Could you tell us what that definition is?

SENATOR HANNON: No. I don't have it with me. I don't have that definition with me.

SENATOR PADAVAN: Well, the

reason I had asked the question is because I'm concerned in a couple of areas.

For instance, in an SRO that we've talked about here, if an owner of a small SRO would set up a common eating area or a living -- or a lounge area, could that fall into the definition of a lodging house which basically, you know -- generally I assume to be a place where you have a room and no -- no other accommodations and everything else is common, bathrooms, and so on.

So what I'm asking you is could an SRO under certain modified circumstances fall under this definition and then, therefore, be excluded from the protection of the Emergency Tenant Act?

SENATOR HANNON: No. I don't think you can do it by change -- we can't change that definition.

SENATOR PADAVAN: But you see, Senator -

SENATOR HANNON: Do I have -- I don't have the statute.

SENATOR PADAVAN: -- the problem is we don't know what the definition is.

SENATOR HANNON: No one had brought -- the bill has been in March -- I'm sorry -- May 21st.

SENATOR PADAVAN: I realize that.

SENATOR HANNON: I have no memos against this. Nobody has asked any questions.

SENATOR PADAVAN: Well, sometimes -

SENATOR HANNON: You know, if anybody would like to ask questions, I'll ask the bill be laid aside. I'll deal with these technical areas. If you want to deal with it, fine.

SENATOR PADAVAN: There's one other area, Senator. Believe me, I was unaware of the bill.

SENATOR HANNON: Could we lay the bill aside, Mr. President?

SENATOR PADAVAN: Could I ask one other question so that when you're doing that research, you can look that up too.

ACTING PRESIDENT KUHL: Senator Hannon, do you yield?

SENATOR HANNON: No. It's in the -- it's over in my office. The whole file is over there.

SENATOR PADAVAN: No. I said when you're looking. If the Senator would just allow me to finish that one thought, a very simple one.

We have supervised living arrangements for mentally ill and retarded in apartments and other facilities that, again, based on what you determined to be the precise definition, could generally perhaps fall into this category as a lodging house. So when you're doing that review, I would appreciate it if you would clarify that as well.

SENATOR HANNON: Thank you.

ACTING PRESIDENT KUHL: Senator Hannon, was it your wish to lay the bill aside?

(Senator Hannon nods head.)

ACTING PRESIDENT KUHL: Calendar Number 1496 will be laid aside.

Senator Skelos.

SENATOR SKELOS: Mr. President, call up Calendar Number 1523 by Senator Hoblock.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1523.

THE SECRETARY: Calendar Number 1523, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 10968, an act to amend the Labor Law, in relation to the payment of wages.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Hoblock, an explanation of Calendar Number 1523 has been asked for by Senator Paterson.

SENATOR HOBLOCK: Mr. President, this bill changes the definition of the term "employer" and also ensures prompt payment by that new definition of "employer" which includes the agencies and appointing authorities in the state of New York.

ACTING PRESIDENT KUHL: Is there

any Senator wishing to speak on the bill?

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: We've served an amendment which I believe is at the desk, and at this time I'd like to ask you to call it up.

ACTING PRESIDENT KUHL: Senator Leichter, thank you for allowing the interruption. We were just clarifying whether or not we received it and we just received it, so we wanted to see what the amendment said. It would be most appreciated by those people at the desk, including myself, because there are certain rulings I might have to make on any kind of amendment that you get that to us, any amendment, as soon as you can but, in any case, are you offering the amendment at this time?

SENATOR LEICHTER: Yes, I am.

ACTING PRESIDENT KUHL: Offering to waive the reading of it and you want an opportunity to explain it?

SENATOR LEICHTER: Yes, I do.

ACTING PRESIDENT KUHL: All right.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT KUHL: The amendment is at the desk. The reading of it is waived and you are now afforded the opportunity to explain the amendment, Senator Leichter.

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

This is a very simple amendment, but I think a terribly important amendment because this is the minimum wage amendment.

Now, previously this session - in fact, just a week ago, we gave you an opportunity to vote for an increase in the minimum wage, but it was part of an omnibus bill and it may well have been that some of you didn't like some of the other sections, so we wanted to give you a chance to vote up or down -- and hopefully up -- a minimum wage amendment.

I just want to say very briefly, I think we all know the minimum wage has not

been increased for some eight years. The minimum wage, if -- which is still at $4.35, in real dollars -- in real constant dollars is around $2.35. Now, even this Congress, Republican dominated Congress, House of Representatives has just voted an increase in the minimum wage. I believe the increase will go up to $4.75 and by July 1 of next year will go up to $5.15.

This amendment provides that an increase of $5.05 will be effective after September 1, 1996 and should there be a federal increase, then we will similarly increase our minimum wage.

I just think that it is so important for the economic welfare of this state in fairness to workers who are working at jobs that pay an amount that does not allow them to survive. I think it's so important for those who are saying we've got to get people off welfare and into Workfare to see that people get a decent minimum wage. So I strongly urge everyone to support this.

I remember last year, I believe the Majority Leader said we're going to do a minimum wage increase. It's fairness. It's equity. We haven't seen it. Now another legislative session is coming to an end. The Assembly has passed this minimum wage. If we pass this -- we enact this amendment, we can have a minimum wage bill on the Governor's desk. It is fair. It is necessary. It's the right thing to do. I urge that the amendment be adopted.

ACTING PRESIDENT KUHL: The question is on the amendment. All those in favor signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

ACTING PRESIDENT KUHL: The Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the party line vote. Announce the results.

THE SECRETARY: Ayes 21, nays 37.

ACTING PRESIDENT KUHL: The

amendment is lost.

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 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, could you call up Calendar Number 1524, by Senator Holland.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1524.

THE SECRETARY: Calendar Number 1524, by Senator Holland, Senate Print 7731, an act to amend the Retirement and Social Security Law, in relation to service retirement benefits and disability benefits.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Holland, an explanation to Calendar Number 1524 has been asked for.

SENATOR HOLLAND: Yes, Mr. President. This bill amends the Retirement and Social Security Law to allow Rockland County the option of adopting a 20-year retirement plan for the Rockland County District Attorney's Office detectives/investigators, and it has been requested by the county executive as well as the union representing the investigators.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. If Senator Holland would yield.

ACTING PRESIDENT KUHL: Senator Holland, do you yield?

SENATOR LEICHTER: Senator, you and I, we had a brief moment to discuss the bill in the back of the chamber and I appreciated you doing that, and as I indicated to you at that time and what I want to ask you about is why a 20-year plan? I mean, most other counties have

25-year plans. Why should we have a county, Rockland, that has a 20-year plan?

SENATOR HOLLAND: The explanation from the investigators in the district attorney's office, Senator, is that some of the people who are already in as investigators are operating under a 20-year retirement program because they have come from other areas that had 20-year programs -- retirement programs and they're carrying it with them.

There is also a bill in to -- in this house to change the Westchester investigators from a 25-year retirement to a 20-year retirement as well.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: Yeah. You know, I -- I think my record here over the years shows my support of public employees, my desire to have a fair pension system, but I just think a 20-year retirement plan for people who will

hold these jobs of investigators, and so on, I just don't see that as being justified under any circumstances, and I think it's unwise when neighboring counties have 25 years. I think we really ought to try to establish a uniform standard, and I just want to tell you, you do this one, next year you'll have all the other investigative offices, all the surrounding counties coming forth and saying, Well, give us a 20-year plan just like Rockland County.

You know, you talk about local expenses. You talk about the difficulty that localities have in providing services. Certainly, if you have a pension system that is so rich and one that really only requires people to work 20 years before they can retire, particularly in a position of this sort where I don't think is that demanding physically, I just think it's really unjustified, and I'm concerned that you have people who are going to be leaving this sort of government service. They're at the prime of their working years. They'll be in their middle 40s. You can't afford to lose

people like that.

I am sorry, Senator Holland. I'd like to do it for you. I know you're a birthday boy. I would like to give you this present, but I just think that's unwise. You're being far too generous.

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.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1524, Senators Leichter and Paterson. Ayes 56, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time could you call up Calendar Number

1516, by Senator Volker.

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 1516, by Senator Volker.

THE SECRETARY: Calendar Number 1516, by Senator Volker, Senate Print 7659, an act to amend the Executive Law, in relation to the inclusion of certain offenders in the state DNA.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Mr. President, in 1994, after a number of years of working on the DNA data bank, or as it's termed the DNA identification index -- which is really the DNA data bank -- we were able to pass legislation under the then Governor Mario Cuomo, by the way, which established the data bank and established a list of designated offenders who would provide the DNA information that would constitute the data bank.

What this bill does -- and this

is the first actual expansion of that data bank. Number one, this bill would add attempts to commit the crimes that are already listed in the DNA data bank -- and I won't list all of them. There's the serious offenses, murder, assault and the various offenses where the law already says that blood must be provided to set up the data bank, and that is one of the things -- and that's the expansion where the attempts are included.

Probably more importantly, the second section of the bill actually does something that we've talked about, if my recollection is correct, back in the early '90s and into '94, and that is to provide that the failure to provide the required blood sample for DNA analysis would make the person guilty of a Class E felony and subject to the revocation of their probation.

The third part of the bill -- and some might say most significant -- says that in addition that the crimes would -- that are designated, those that are mandated to provide

blood samples for the DNA data bank would apply to designated offenders, that is, the people who are listed in the -- those that commit the crimes listed in the DNA data bank already that were convicted on or after January 1st, 1996 and it would apply to offenders who are convicted prior to that date are currently on probation, parole or under the custody of the Department of Correctional Services.

In other words, what this bill does is to expand the scope of the DNA data bank or DNA -- what do they call it -- DNA identification index as it's formally called and would also provide for a penalty -- a Class E felony penalty, should one of the individuals that is designated herein refuse to comply.

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

SENATOR PATERSON: Thank you, Mr. President.

If Senator Volker would yield for -

ACTING PRESIDENT KUHL: Would

Senator Volker yield? The Senator yields.

SENATOR PATERSON: Senator, actually I think you've outlined the formation of a fine piece of legislation. I just would like to ask you based on recent court cases involving what has happened to the legislation that we put forth under Megan's Law, if this case would have constitutional impact since there's kind of an after the fact and before the fact sort of problem, and the only thing I was going suggest is that since the DNA data bank is actually not punitive in the sense that Megan's Law would be because there's a sort of scarlet letter sort of impact that would accrue to the released felon under Megan's Law, that perhaps we might be able to get around the legal challenge in this case because there is no punitive action that's actually being taken, but my question is how would you respond to the argument that this is no more constitutional than Megan's Law is because of the ex post facto problem?

SENATOR VOLKER: I anticipated

your thorough staff and your thorough-going operation, and we -- and since my counsel tries to be thorough also, we began the case. We have a federal case here, Lawrence R. Jones versus Edward R. Murray and it specifically, as I understand the point, is a Court of Appeals - federal circuit case that was argued, finally decided in 1992 that stated, as I understand it, that this -- this type of statute is constitutional and that we can do this as long as -- as I understand it, as long as it is reasonably limited, and that's why, by the way, we talk about people who are presently on probation, presently incarcerated, whatever. We're not talking about people who might come back into the system and try to get their blood, and so forth, but these are people that are already in the system. My counsel tells me even further that the Virginia statute that this case involves in actuality talked about all felons, and I think that our -- our statute here doesn't go as far as the federal case indicated that we could go.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: If the Senator would continue to yield.

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

SENATOR PATERSON: Senator, within the limiting -- limitation factors, would -- the fact that an E felony is going to be the penalty for refusal to comply, would that, might that be considered excessive? How does the Virginia statute handle that? Are they exacting the same amount of punishment we are?

SENATOR VOLKER: I don't think they got into that in the Virginia statute, Senator. I don't think, though, that -- I think some sort of penalty is required. You're aware, obviously, that you're talking about serious felonies here to start with, and the failure to comply would have to have some sort of substantial penalty because the person is already presumably charged with a very serious crime to start with.

I don't believe that a Class E felony would be considered too severe a -- it would seem to me too severe a penalty given the nature of what is occurring here as far as the DNA data bank.

SENATOR PATERSON: Thank you, Senator.

Would you yield for one last question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: How would you distinguish the problem that the drafters of Megan's Law had in court with this particular federal decision that would uphold the ability to pass this law?

SENATOR VOLKER: I think the difference is that this is going into a DNA data bank. This is not something that's going to be distributed to the public. Remember, Megan's Law is a -- is a -- is a law that relates to disclosure. The DNA data bank is not a

disclosure bank. It's a bank that is retained and I'm sure you remember, Senator, in '94 that we put in some specific prohibitions in there against distributing the information other than for purposes -- other than for criminal purposes, and so forth, criminal justice purposes. In fact, I think we specifically - there's language in there -- there's a penalty in the prior legislation for disclosure.

So I think that to me is the prime difference between this DNA data bank legislation or -- as I call it, or the DNA identification index and the Megan's Law issue.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Volker.

Mr. President, on the bill. That's pretty much what I thought, that if this legislation withstands any prospective challenge, that it would be that there's a distinct difference in the impact and that this legislation would be not affecting anything that

happened prior to the fact because it's basically the same evidence as opposed to the ex post facto problem that exists in the Megan's Law issue.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Ayes 57, nays 1, Senator Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 1508, Senate 7627.

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 1508.

THE SECRETARY: Calendar Number 1508, by the Committee on Rules, Senate Print 7627, an act to amend the Public Authorities Law, in relation to exempting the New York City School Construction Authority from commissioning works of art.

SENATOR LEICHTER: Ex...

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

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Leichter asked for an explanation?

SENATOR LEICHTER: Yes, he did.

ACTING PRESIDENT KUHL: Senator Velella, an explanation of Calendar Number 1508, Senate Print 7627, has been asked for by Senator Leichter.

SENATOR LEICHTER: Yes. Senator, this is a bill which would limit the ability of the School Construction Authority to spend money

that is supposed to be appropriated to help repair schools and build schools from spending money on artwork which, in some cases, as has been reported recently in the New York Times, has resulted in large sums of money being expended on artwork in our schools when we feel, and I feel, that it would be much better spent putting that into bricks, mortar and repair work in the schools.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. Senator Velella, you remind me of the Times article. I remember you standing with -- in the picture with it looked like a big grin next to the Governor in front of -

SENATOR VELELLA: A picture that looked like what?

SENATOR LEICHTER: With a big grin.

SENATOR VELELLA: A grin.

SENATOR LEICHTER: You had a big grin in front of a work of art. Some people

looked at it and they didn't know -- they didn't know whether you were the work of art or the -

SENATOR VELELLA: Senator - Senator, the best piece of work in the chamber is you. There's no doubt about that. You're a work of art all to yourself, but certainly the grin that I was having was the joy in the Governor and I discovering wasted money in the School Construction Authority that could be better spent to help create a more comfortable educational environment for our young people, and that was what the grin was about.

SENATOR LEICHTER: Well, Senator, let me just point out to you that there's a long and rich tradition in New York City and throughout the country that schools are not supposed to look like factories. There are not supposed to be bare walls. The art that you talked about and that the Governor took all the trouble to go down to see and to point out of horrible waste, I believe the expenditure was somewhere much less than $200,000 in the school that probably costs some -

SENATOR VELELLA: 187,000.

SENATOR LEICHTER: Excuse me. How much?

SENATOR VELELLA: 187,000.

SENATOR LEICHTER: $187,000. I just think that art ought to be part of schools and, you know, it may -- listen. It made a nice headline and it's always nice to see your picture in the paper, Senator. I certainly enjoyed that, but I question whether, you know, that's the sort of public policy that the Governor and you ought to be spending your time on, and I submit to you that you were wrong then. I submit to you you're wrong with this bill. I think it's a mistake to say that our schools should be bare walled, unattractive places. Nobody's talking of buying Picassos or Monets or Rodins, but I think a little decoration in the schools is appropriate, and I would not support this legislation in spite of its very distinguished backing.

SENATOR VELELLA: Senator, if I might respond to that. On the bill, Mr.

President.

ACTING PRESIDENT KUHL: Senator Velella, on the bill.

SENATOR VELELLA: I guess this best -

ACTING PRESIDENT KUHL: Excuse me just a minute.

Senator Leichter, are you through with the floor?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: You yield to Senator Velella?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator Velella.

SENATOR VELELLA: I think this best exemplifies the difference between Senator Leichter and myself. By no stretch of the imagination are we talking about creating bare walls in schools. $187,000 for a tin arch that has some hangers dangling from it, and that's what we went and seen***, and I invite you to come and see it. It's an outrage when in that

same school building, the walls were falling down and some of the facilities weren't up to par. The elevator hasn't worked in that building so that handicapped kids cannot get to classes above the first floor. The principal of that school is pulling her hair out to try and keep the building going and we're spending 187,000 on art.

Now, we have many foundations in the city of New York that contribute their artwork. As a matter of fact, some of the kids in those schools produce better art than the $187,000 monster that was put on top of the roof that really very few people see.

I think it's an outrage that we would spend that kind of money on art when we can put it into bricks and mortar and perhaps that's the difference between your side of the aisle and our side of the aisle. We can do things, make an educationally acceptable environment, a pleasant environment, with reasonable expenditures. Your tendency is to go overboard and spend more. More isn't

necessarily better. Some of those artworks, like I said, by the kids hanging on the walls in the school are a hell of a lot better than that $187,000 monster that was created. We want to stop that and put the bricks and mortar and the monies that are available into the schools. If we have enough, great. Let's put it into artwork, but there are foundations to do that. There are people that lend art to schools. Let's utilize those charitable groups that want to do that.

SENATOR LEICHTER: Mr. President, if I could respond to Senator Velella -

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: -- just very briefly. Senator, you know, people differ on aesthetics and what you describe as an arch with hangers coming down from it, you know, some people would say that that is a good urban piece of architecture. I -- I -

SENATOR VELELLA: Will the Senator yield to one question?

SENATOR LEICHTER: Yes.

SENATOR VELELLA: You believe that's worth $187,000 of money that could be spent in schools?

SENATOR LEICHTER: Senator, I think that we ought to be providing more money to repair our schools, and I'd like to see your leadership which, frankly, I haven't seen in this -- in this area in trying to provide monies that are desperately needed for the city of New York.

You know, you want to talk about putting money into schools. If you would stop voting for budgets that cheat the city of New York, that cheat schools in your district -- and that's the reason that they're lacking in some of the -- some of the basics and have -- and are lacking in the repairs and the maintenance that are needed, Senator, not because of this artwork. Don't put it in this artwork. Don't make it sound as if, Oh, if we didn't have the artwork, all of the schools in the city of New York would be wonderfully maintained and

repaired. It's because this legislation, time and time again, cheats the city of New York and you're part of that. Stand up. Fight for your city. Don't take such cheap shots and then come here and say, Oh, you know why there are leaks in those schools? You know why the roof has a leak in it, because they have a piece of art in there.

SENATOR VELELLA: On the bill, Mr. President.

If it weren't for people like Senator Leichter, who has the audacity to stand up here and try to justify $187,000 for an arch with some hangers on it in our school system, it will make my job easier to sell my colleagues on the fact that New York City prudently uses their money, but as long as they squander it on stupid things like this and you try to justify it, it makes my job very difficult.

I don't know of any other schools in the state that spend $187,000 on such an idiotic cause, an arch with hangers dangling from it, but you think that's worth the money.

I wouldn't vote to give New York City money for more arches with hangers. You would. I have to convince my colleagues that we spend our money prudently, and you stand up here and try to sell ice in the winter. Ridiculous!

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Will Senator Velella yield to one question?

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

The Senator yields.

SENATOR GOLD: Can you just give me the address of that school? I'm dying to go down there and see it.

SENATOR VELELLA: I will take you down there. There are several other examples of that around. It just didn't hit the New York Times, and that's why, in all seriousness, this is important. Yes, there is a need to have an aesthetically suitable environment for our students; and, yes, if there is money around, we

should try to cultivate a better artistic temperament in our schools, but we're fighting for valuable bucks, and it really does injury to the city of New York to see money spent on things like that when there is such a great need to spend the money elsewhere.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, just to make Senator Velella's job a little bit more difficult still.

I want to rise in defense also of the "Art in the School" Program and, moreover, I believe we have a similar program in the state of New York for every facility that is built with state funding, and I think one of the reasons we in this state have chosen to invest in that extremely important part of the state's economy and history and legacy and culture is because it is so important. I think we are probably the center of the arts world in this nation, at least one of the centers if not the epicenter.

So, Senator Velella, I think what we've done in terms of creating that program is we've made it possible to bring into school buildings artwork of major artists and/or minor artists for certain people who live in those communities and who represent that important aspect of our state, and certainly, I probably -- there is a lot of different pieces of artwork that I have looked at, and I have been told they are worth a lot of money and, you know, they are very important but to me they don't look like anything. They don't turn me on at all.

But, nonetheless, I understand that the appreciation of art is very individual and very different for different ones of us, and I think that the message, it seems to me, that we want to portray to young people is that having an appreciation of art is part of being considered an educated person, an intellectual, if you will, or however you describe it. So we don't want them to grow up feeling that the arts are unimportant and that that part of their

development should not be viewed as significant in terms of their academic world, and so I think it is a good thing.

I certainly have gone into schools. I know that Boys and Girls High School, for instance, in Brooklyn, there is a display of artwork by major African-American artists, and I appreciate that, and it's very important, I think, for those young people to be exposed to that and to understand the significance of that and the relationship to them, so I support this.

And just, finally, on the whole issue, the question of whether or not the elevator works and that we're spending money on the artwork versus the elevator working, I think one has nothing to do with the other. The funding for the artwork does not, in fact, fix the elevator, and we're not talking even -- the amounts are so different. We are talking about the lack of ongoing maintenance. That is a problem, obviously, in New York City schools, and so I wouldn't want to pit the small art

program up against the need for a maintenance program, an upgrading program in the school, that requires a very, very different approach and a very different kind of funding and different level of funding, but I certainly wouldn't want to sacrifice the arts program for that.

Maybe you don't like the hangers on the arch, but someone views it as artwork. I probably wouldn't like it either. I'm sure I wouldn't like it either, but there it is. It's artwork for someone.

And so I just want to say I support it, too, Mr. President, and I hope that Senator Velella would reconsider because I think that he really has taken the opportunity to bash the arts, and we should not be doing that in this Legislature.

Thank you.

ACTING PRESIDENT KUHL: Senator Marchi, would -

Pardon?

SENATOR VELELLA: Does anyone

else wish to speak?

ACTING PRESIDENT KUHL: There were two other speakers. Senator Marchi had indicated a desire to speak on the bill. Senator Dollinger had indicated a desire to speak on the bill. Senator Waldon had indicated a desire to speak on the bill.

Senator Marchi is not in the chamber. The chair now recognizes Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just one thing to clarify the bill.

As I understand it, what this bill says is that the school authority, the construction authority, would not be required to buy art. It could still elect to buy art as part of its determination as to what should be on the walls. But what this says is that any requirement by the local boards or local authorities that there be 3 percent for art, that that requirement would not apply and they could still go out and buy things if they deemed it necessary. Is that what I understand the

bill to do?

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: Okay.

Mr. President, with that understanding, I'm going to support the bill because I value public art. Just go out of the chamber, you'll see Grover Cleveland on one wall. Obviously, somebody paid to have that painted. It's now an asset of the state of New York.

I don't mind government entities making investments in arts from the WPA, Works Progress Administration, Thomas Benton Hart, all the artists who needed government funding. Government has been buying art since the days of the Romans. I think it's a good idea, and I think this is a very limited bill. It says that any set-aside for art under the current emergency circumstances present in the city of New York would not apply to this Capitol.

My hope is that this bill, even if it's passed, will not discontinue forever the practice of buying art.

And, finally, Senator Velella, I just have to protest one thing. Senator Leichter is a work of art. He belongs in this chamber, and I certainly don't want anything that's said here to deface this work of art on the Democratic side.

ACTING PRESIDENT KUHL: Senator Waldon.

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

I want to support the tack that Senator Montgomery began, and I think what she was really driving at is that in commissioning art from the African-American and the Latino community so that the overwhelming number of black and Latino children who are in our schools today will have an ability to relate to something which looks like or bespeaks their culture, and one of tragedies of our school system and its failure rate is that the children are not truly aware of who they are. We do not have a true curriculum of inclusion. We don't have the kind of courses which are found in the

South, where I first went to school and where I went to college temporarily, and so I think anything we can do to promote awareness so that our children will know who they are, where they've come from and where they should be headed, is very vital to the success of the school system.

So I don't see this as an appendage or as an unnecessary item. I see having the ability for the school system to commission art, be it sculpture, be it painting in oil or acrylic or water color or whatever, that that ability ensures the ability of our children to be successful as students, and so I applaud that, and I will stand this time with my colleague from the great borough of Brooklyn, Kings County, the Honorable Velmanette Montgomery.

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

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

SENATOR MARCHI: I have been

moving about a bit, but seemed to be turning around the question whether we like art or don't like art. My father was a Beaux Art graduate, came to this country as a sculptor, so I believe in having art in the schools.

The crying circumstances that produced Senator Velella's bill are justified under the circumstances. That art was hanging in a building - was being displayed in a building where other students were getting their classroom instruction in a -- in the rest rooms because the rain was coming into the classrooms. Disastrous situation existing in the maintenance of these buildings. I'm not going to be pointing fingers of blame, but these are sins of omission.

We had the scandal with the asbestos, the schools being far behind in the asbestos cleanup when the nonpublic schools, parochial schools existing on charitable contributions, were up-to-date. Circumstances really that were most compelling, jobs that had been done and certification was not obtained for

payment, so that the City disbursed funds for work that was accomplished, not that the City felt they had to do it, but they had not had the proper clearances and were not reimbursed. The reimbursement schedules that are permitted under present policy is a disaster for the city of New York.

But it's these circumstances that bring a bill like Senator Velella's up. I mean there is no other way of meeting this crisis except meeting it head-on wherever it appears under all and every circumstance. We have a giant problem, and there's nothing that we have done up to now except to identify its nature and also establish the fact that under repayment schedules for work that was done years ago - there's something like a half a billion dollars out, of money that the City should have and simply was not forthcoming because procedures had not been followed.

On leasing, there's between 30 and $50 million. We held public hearings, and Senator Padavan -- I invited him in on the

hearing that we held by the committee. So there are very crying circumstances that are not a matter of punitive measures by the people of the state of New York in making appropriations for the support of government and schools.

It's not a matter of anyone who is evil, any particular governor or any particular administration, but there are very, very serious problems; and before we get out of the woods in the public schools of the city of New York, these children are operating under very, very heart-rending circumstances, poorly maintained schools and a situation which is rapidly unraveling.

So my heart goes out and my sympathy goes out, even to the board of education because they are trying hard. But believe you me, there is a big problem, and unless we do something a lot of children are going to be hurt in the city of New York and children who deserve a chance, and we're only treating it and addressing it, to some extent, symptomatically at this point, but it is a

prelude, I hope -- I hope -- to a real concerted effort to bringing some resolution, and it is not an Upstate/Downstate, Republican/Democratic conflict that is involved here. It's basic considerations going to the operation of the schools of the city of New York and, frankly, we do have what a Board of Regents member, Diane McGivern -- Dr. McGivern has termed as a "debacle". It's a bad thing.

I wish some of you had been able to attend the hearing that was held at the Association of the Bar last Thursday. Under the sponsorship of the Association of the Bar, we had people from the Speaker's office, from the Mayor's office, from the Governor's office. We had a representative presentation.

But it's a very, very serious problem. Senator Velella is addressing one piece of it and very properly so. It's not because anybody is against art. No, of course not. It's the circumstances under which all of this developed, and we have to get more serious than we have up to now on that problem down

there because, believe you me, it's very, very serious.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President. I think it's pretty heart-wrenching when we have to have it pointed out that there is sort of an artistic design that's in a public school where the elevators don't work and where school books are not available and where classrooms are not fit for use by students, and Senator Velella aptly points that out and says that there are some other examples of similar situations that he can cite.

What I would just caution is, that while we were limiting the requirement - and I think the requirement may actually be what led to this situation where superfluous amounts of money are being spent for this purpose, and we've got a situation where there becomes an institutionalization or a contract where we are just buying art for large sums of money with no real perusal of their cultural value, we might

want to look into that kind of thing.

However, what I'm afraid what this -- the message that this bill also might send is that when we are having a problem of a fiscal nature that we then ignore the whole issue of art at all, and I think that this is unfair to many students. Many of them come from poor, impoverished communities. Many of them come from the communities that many of us represent. There is a feeling that the first thing you do in their education is that you start cutting what would be the amenities, what would be the enrichment services, and that is as wrong as taking away books or, in many ways, truncating the facilities that would allow for the major academic areas of education.

I once had lunch with the president of the American Museum of Natural History, and they said in archeological study - this is what he pointed out to me that in archeological study, no matter how far they could trace history, even when they found the most primitive knives, there was always some

sort of insignia. There was always some sort of artistic identification that went with the artifacts that were discovered, meaning that the enrichment, the value of art and culture in our lives is really as endemic to our lives as it is to education -- as it is to any other form of education or acquiring knowledge in an academic fashion.

That's the reason why our chamber, if you look around, has a particular historic and cultural value to it, and there's an artistic value to many of the buildings that house our great agencies and halls of government. This should exist also in our schools. This is something that our children should become familiar with as well, and although the situation that Senator Velella points out is apt, I would caution that what Senator Montgomery and Senator Waldon and others, Senator Leichter, were trying to point out is that if we move totally away from this, we will be denying what may be a subtle but certainly important aspect of our children's

education, and we're just not sure exactly where all this is going when we have seen the cut to enrichment programs, the cut to the New York State Council on the Arts, the cuts to education that, unfortunately, on the local level school supervisors had to make those cuts in those areas in order to maintain their budgets.

And so, while I think Senator Velella is on the right track, we sort of think this legislation is sending the wrong message.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Marcellino, on the bill.

SENATOR MARCELLINO: I hear the debate going, and I was out of the room for a while, so I apologize if I repeat things that have already been said, but I would be the last one to foster the goal or the aim that we should not teach art in schools, we should not promote the arts in any way, shape or form; however,

when money is tight, as it is now at every level, we have to prioritize. We're not suggesting you don't teach art. We're not suggesting that you can't introduce and expose these young people to the fine arts. There are museums. There are means to getting there. There are ways to bring art to the kids without having to buy a print of a picture and place it on the wall or spend hundreds of thousands of dollars on artifacts, when youngsters in those very same schools have no books to take home at night. I know that from personal experience. Their workbooks can only be looked at, can't be written in. Many kids have to use the same book over and over again, and they are a disgrace. They are torn up. They are ruined. They are abused because of use.

When the fixtures don't work in the bathrooms, when the plaster falls off the walls, are you going to buy paintings or are you going to buy plaster? What is your priority? Is it safety? When an elevator doesn't work so that handicapped youngsters can't get to class,

what is your priority? Another painting?

I will be the last one to demean the arts. I have enjoyed them and I have used them and I treasure them like anyone else, and in my spare time you will find me in museums everywhere I go. But there is a priority here that has to be set, and if you were truly interested in the youngsters and their education, then you have to say we must maintain the facility that the youngsters have to go in.

They can do their own artwork. There is nothing precluding these youngsters from decorating the walls of their own schools with their own art as is done in many schools now, and that fosters the training of how to become an artist, and it allows the youngsters to express themselves in a positive way within their own school and take pride in the surroundings of their own school.

It's well known that when we take graffiti vandals and we give them a place which we say, "This wall is for you, do a design, make it yours," no one is going -- as long as it's

not obscene or out of good taste, but "Do your thing," that wall is never touched again. Other graffiti people will never go near it. Why? They respect the fact that someone has given them something.

I suggest to you that the schools would be in the same vein. If you allow young artists to work within the schools to display their own artwork, to display what their own talent can produce, you will produce pride in the buildings and pride in the schools. You don't have to spend hundreds of thousands of dollars on copies, because that's all you're getting.

Senator Leichter was correct. We're not buying Picasso's originals. We're buying copies. So fine. Let the youngsters do that. Take them to the museums, and let them see the originals. Buy them textbooks, buy them workbooks, buy them pencils, paper. Clean up the building. Make the fixtures work. Make the elevators work. Make the doors safe; make the locks work. Repair the windows that have been

broken. Clean up the exterior of the building. Get rid of the graffiti from around the building instead of spending money on a few paintings and a few artifacts.

It's a waste. It's a waste when you don't have the extra money. If you have the luxury, that's one thing. If you don't have the luxury, then you do what has to be done to give the basic education and to give the best education possible. If you are concerned for the youngster, you have to set the correct priorities, not some false ideal.

I will vote aye on this bill.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Just very briefly.

I oppose this bill. And what I have seen over the last decade is a decreasing commitment by government to the arts, and I think we need to be reminded that the arts not only feeds our spirit but also feeds our economy.

The proliferation of the arts, whether it's theater or graphic arts or whatever, produces jobs, an economy, makes young people understand the appreciation of the art, makes them expand their horizons to begin to think differently about themselves and the world around them.

So we can't even begin to put a dollar on if we put a commitment on the arts in the schools and everything else in the community, we're really creating a better society for our young people.

And I just want to end by saying this is how little the commitment that we give to the arts in the United States. Per capita, we spend 68 cents per year, Germany spends $27, France spends $32. That shows that we don't do a lot for the arts and we need to do more, and this bill brings us increasingly in the wrong direction.

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

Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I just wanted to ask Senator Maziarz if he would yield for a question, clarification or -- or Marcellino. I'm sorry.

ACTING PRESIDENT KUHL: Senator Marcellino, do you yield to -

SENATOR MARCELLINO: We look so much alike.

SENATOR MONTGOMERY: I'm sorry. No, you don't look like Senator Maziarz.

SENATOR MAZIARZ: Yes, I will, Senator, any time.

ACTING PRESIDENT KUHL: Senator Marcellino yields.

SENATOR MONTGOMERY: Senator Marcellino, you seem to imply that we should be including the graffiti artist and their work as legitimate artwork with the schools -- I don't want to misinterpret you -- which I may agree with, by the way.

SENATOR MARCELLINO: No, no. Graffiti vandalism is not something I promote at all at any level in any way; however, to a

certain extent, one has to be open-minded with respect to art because, today, one person's graffiti is another person's artwork a few years later. Art is what is in the eye of the beholder, so to speak.

So, in that sense, no. If it's a vandalism type of thing and a destructive type of thing, no, but you can venue that and you can turn it into a positive in the schools and not have to waste money on copies.

SENATOR MONTGOMERY: Thank you. I just wanted to clarify that, because I thought I heard him say that graffiti artwork could be part of the school and legitimate artwork. I think that's a good idea, but I understand your clarification in terms of the vandalism issue.

Thank you.

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.)

Record the negatives.

The Chair recognizes Senator Leichter to explain his vote.

SENATOR LEICHTER: Mr. President, I am really disappointed and disheartened that Senator Marchi, who really embodies the glories of the Italian Renaissance Civilization, where not any work of -- a public work was put up without having great art in it. All we're saying is that a minute amount of money ought to be spent -- ought to be spent, Senator Dollinger, not at the whim of some bureaucrat but ought to be spent, because, yes, art has a priority.

And, Senator Marcellino, you want to put up a first kindergarten drawing instead of having copies of a picture of George Washington and Abraham Lincoln? I disagree with you.

But the main point here is it's not a choice of whether we're going to have functioning elevators, roofs that don't leak,

plaster that doesn't fall off the wall because we're spending money on the arts, and that's where I say to Senator Velella, you may not know art but you are certainly artful because you are hiding and obscuring the issue, which is that we're badly, significantly, substantially under funding the schools of New York and the needs that they have to be repaired, to be maintained.

We are talking of billions of dollars that are needed for that purpose, and you make it appear as if we spent a couple of hundred thousand dollars less on art, that all of these problems are going to disappear. No, you are just making the schools cheaper. You are going to make the schools function less well because there's going to be less beauty, less attractiveness in the schools. That is a priority, too.

Mr. President, I vote in the negative.

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

Senator Velella to explain his vote.

SENATOR VELELLA: Mr. President, I just want to say to Senator Leichter that if anybody is trying to hide the issue it's Senator Leichter. What I have said here today is that when we spend $187,000 on so-called art, an archway with a couple of hangers dangling from it, I don't think that appeals to anybody I know's cultural sensitivities. I don't know anybody in that school -- I spoke to the parents, with the Governor, who didn't say, Take the arch down and give us some new textbooks and a couple of computers, and they were black and they were Hispanic, and they said, "That thing is a monstrosity," and it is. It's about spending the money wisely, and when you stand up, Senator, as a New York City Senator and say, "This is how we choose to spend money in our school system," it makes our job that much tougher because we're wasting money and you're trying to justify it.

ACTING PRESIDENT KUHL: Senator

Velella will be recorded in the affirmative.

Senator Gold to explain his vote.

SENATOR GOLD: Mr. President, I can cut some time down because I would indicate if I had more time, I'd say exactly what Senator Leichter said, so I can start from there.

The other thing which I think is interesting -- I guess, Senator Velella, you and I are on the same team in that, if Rockefeller didn't waste money for all the junk that's down in that mallway, we'd have an extra elevator in the LOB. I think you should make public your letter to the Vatican, when you wrote that letter that they should have given Michelangelo a can of paint and a roller and saved some time and money.

The answer is that there is a difference between the words "spend" and "waste". Senator Leichter has never suggested waste. That doesn't mean that if you take one situation that Senator Velella doesn't like that that means you end spending in this situation.

Having said that, again, I want

to adopt Senator Leichter's logic and his English, and I vote no.

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

Announce the negatives and the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1508 are Senators Abate, Connor, Espada, Gold, Kruger. Leichter, Markowitz, Montgomery, Paterson and Waldon. Ayes 48, nays 10.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please have Calendar Number 1526, by Senator Hannon read at this time.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1526.

THE SECRETARY: Calendar Number 1526, by Senator Hannon, Senate Print 7764, an act to amend the Public Health Law, the Insurance Law, Chapter 703 of the Laws of 1988,

relating to enacting the Expanded Health Care Coverage Act of 1988.

ACTING PRESIDENT KUHL: We're on Calendar Number 1526.

Senator Hannon, an explanation of Calendar Number 1526 has been asked for by Senator Dollinger.

SENATOR HANNON: This is the bill that will implement a new health care financing system for hospitals beginning on January 1, 1997. The current system expires as of July 1 of this year. The current system is a system which has two major elements.

ACTING PRESIDENT KUHL: Senator Hannon, excuse me just a minute. Let's see if we can get Senator Leichter in his seat and Senator Velella in his seat. It's a very important bill to a lot of people in this state. Let's see if we can get some order in the house. I ask the staff members to take their seats. Members to take their seats.

I think we're ready now, Senator Hannon.

SENATOR HANNON: Thank you very much, Mr. President. I appreciate that, so that those folks who want to listen can.

The current system of health care financing, known as NYPHRM V, expires at the end of this month, in June of 1996. This bill would replace that with a system of negotiated rates for inpatient hospital services. The negotiated rates would, for those portions affected, take effect January 1, 1997.

The current NYPHRM system has two major components. One is where every procedure of every hospital, except for those covered by HMOs, is subject to a fixed rate determined by the state or determined by the federal government, Medicare, federal Medicare payors. This has been the way in terms of fixed rates for almost 30 years. This state is the last of two states that has such a fixed rate method setting. Forty-eight other states have negotiations that go on. We, in terms of our HMOs, have negotiations that go on. We would propose to move into that current system.

In addition to the fixed rate system, the state levies certain surcharges and allowances now upon those rates for hospital inpatient services and uses the money that is resulting for various purposes, generically called in the health care field "public goods."

A major amount of money goes into what is called graduate medical education.

The next major amount of money goes into what is called the bad debt and charity pool, to pay for services rendered by hospitals for which they are not reimbursed.

In addition, there are several other programs that are financed, including the Child Health Insurance Program, various rural health grants, public health programs, EMS, et cetera.

Under the system that we would propose, we would finance many of those same items by virtue of additions to the negotiated rates so that we could continue to have a system of bad debt and charity care, a system of graduate medical education, in addition to many

of the other worthwhile programs.

Under our proposal, we continue the Child Health Insurance Program and expand the eligibility up to 18 years of age. That was something that was also done by the Governor in his proposal. In addition to that, we would expand the Child Health Insurance Program to include vision care and dental services.

What we have had to do is steer a very difficult course legally, a difficult course that the federal government has erected in regard to the statutes which guide what we can do in this area. The biggest difficulty, the biggest hurdle, the most difficult one to deal with is called ERISA, the Pension Reform Act of 1974, which said to the states that when it comes to the self-insured employer that you may not regulate, States, anything in regard to employee benefit plans, and that specifically means health care, and hundreds of federal court cases have said, "When you attempt to deal with that, you may not." It is up to the federal government to do that.

There is another whole body of law that's called provider tax, all of which arose from the efforts of states to take advantage of the various accounting rules that the Medicare and Medicaid system would allow us. A provider tax was passed in 1992 and has given rise to a big thicket of regulations that whenever we have any type of financing of public goods or charity, how those can be applied, how they have to be uniform throughout the state, how they have to be uniform throughout provider classes, et cetera.

In addition, we've had to be very wary of what could be done to anybody covered by insurance since 49 other states have retaliatory taxes, and if we were to be seen as imposing any type of tax on an insurance company that's domesticated in another state, one that would be foreign in this state, then the laws of the state in which they are domesticated triggers off retaliation against insurance companies and their premiums that are domesticated in this state.

Through those thickets of laws, we have had to erect a system that we think does the best for the health care of New Yorkers.

One other guiding principle has been to try to make sure that the money that is raised for graduate medical education is kept in the same area where that money is spent. Under the current system, about 77, 78 percent of the money for graduate medical education is raised in the city of New York and under the current system, 77 or 78 percent of the money is spent in the city of New York. We would believe that under what we are proposing -- and we have looked at it as best possible -- that the money that is spent upstate stays upstate; that the money that is spent downstate is spent downstate, so that we do not have the argument which has been felt very deeply and even more so in this field than in many others that one part of the state is subsidizing the other part of the state.

One must say that one of biggest questions that comes up is, well, if you are

moving to negotiated rates, won't this be a very sudden shock to the system? Won't there be a big change? Is six months from July 1 of 1996 to January 1 of 1997 enough time? We must look at what are the financing flow to the hospitals.

Right now, the average hospital in New York State gets 37 percent of its revenue from Medicare, the federal medical program. We continue that. If we wanted to, we couldn't affect it; it's a federal program for people covered by Medicare. So that 37 percent of the average hospital's revenues continue under that Medicare system.

In addition, the average hospital in New York gets about 25 percent of its revenue from the state Medicaid program. We would continue those monies from Medicaid until April 1, 1997. And by the way, we would also put Workers' Comp and no-fault into that 1997 beginning, but that's a very small one or two percentage points.

So the remaining third, roughly,

would be subject to the negotiated rates, but I would then point out that since HMOs are the only entity right now that can negotiate their rates, that they are part of that remaining third. My guess is 10 percent, 20 percent - one doesn't know -- already have negotiated rates.

So we believe that we have given a very good transition to the hospital community in order to go from the current "We know everything, government is best, we shall control you from beginning to end" system into a negotiated rate system.

In addition, by the way, we do broaden the procedures for which the allowances and add-ons are imposed. The current system says it's only for inpatient hospital procedures. The Governor's bill broadened that to the outpatient facilities of hospitals, and we would broaden it to also include the comprehensive diagnostic and treatment centers and freestanding ambulatory clinics and freestanding laboratories.

One of the things the Governor had done was to impose the add-ons to the public goods directly onto the hospitals. We have put a procedure in that I think will result in the impositions being made onto pools, creating pools as the counting devices, and putting incentives into statute so that anybody paying for health care would pay the add-on money directly into the pools, not going through the hospitals.

One of the things we had found in the Governor's bill was the ability of the local government of the city of New York to impose additional add-ons for procedures done in the city of New York, and that money would have gone as additional money for graduate medical education. The City had problems with that, probably very understandably, in terms of us dictating where the money would go and they having to do the optional work.

When the Assembly came out with its concept paper -- it hasn't yet ever come out with a bill -- in that concept paper, there was

a thought that you could put the add-on in in regard to how many individuals are covered by health plans, and we thought there were some difficulties with that under the federal statutes, but that was a very workable solution to use in lieu of the local City tax, and so that is into the bill, and we continue to raise as additional monies for graduate education in New York City, $350 million.

We have, in the course of doing this bill, also added in a provision for the continuation of the excess medical malpractice program, something that we felt was a worthwhile thing for the medical profession and actually giving greater assurance of continuity of care for New Yorkers. We put in for a slimmed down certificate of need process. The process now, where every -- basically almost all health facilities have to go through in terms of lots of paperwork, lots of proof, lots of applications, lots of procedures, we tried to slim that down so the procedures would only be applicable to those types of medical instances

that depend on quality, where quality has to be part of the review, such as open heart surgery, where a hospital offering such a procedure ought to be doing about 500 of those procedures a year in order to have the volume and skills necessary to assure a certain amount of quality operations.

I would think, Mr. President, that's a good overview of what we have tried to do, and if there are any questions -

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yes. Senator Dollinger, I know, has a lot, but one very brief short question?

ACTING PRESIDENT KUHL: Do you yield, Senator Dollinger, to Senator Gold's question?

SENATOR DOLLINGER: I will.

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

SENATOR HANNON: Yes, Mr.

President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Yes. Senator, you were very kind before the debate started to give me a copy of your memo. Is there a memo from the City of New York on this bill?

SENATOR HANNON: I have not received a memo from the City of New York.

SENATOR GOLD: Amazing. Thank you very much.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Just on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I have to commend the chairman of the Senate Health Committee and his staff. I think no one in the state has perhaps worked as hard as Senator Hannon has at a job that I would describe, frankly, as a juggler. There are so many balls

involved in the health care system of the State of New York that his hands have been working like mad to keep all those balls up in the air and at the same time keep it moving as we move to this notion of a competitive health care system in New York State.

For reasons that I'm going to describe, I perhaps think some of those balls may have slipped out of his hands, but I look at this as a first attempt to try to figure out how we're going to juggle the future, and what I hope we can do today is perhaps suggest a couple ways that some other things -- some other balls that have to be picked up off the floor and put back in the process before we can finally figure out how to finish this juggling exercise and get to a system that will achieve a better health care system for people in New York, and it seems to me that's the fundamental question that, in considering this bill, everyone should ask.

Do we end up with a better health care system that will improve the health care of New Yorkers? A recent study published suggested

that New York, based on a whole series of public health criteria, actually ranked number 32 in the nation in health care, and it seems to me that in the progress toward a competitive system, the fundamental values-based question that we should all ask is, When we get finished with this process, as we must before the 30th of June, do we end up with a system that provides better health for New Yorkers? Because if it doesn't, then it suggests to me that we have to go back and figure out, how do we get to that goal and how do we change this plan or any plan that might emerge from discussions with the Assembly and the Governor to achieve that fundamental value-based goal.

First of all, let me tell you what I think is good in this bill, and there are many good things in it.

Child Health Plus increasing it to age 18, expanding it to include dental and vision services. Good idea. I don't particularly have any opposition to the notion of a $2 co-pay. I think that's a very good

idea.

Increasing the assistance to small businesses to buy health insurance for their employees if the health**** of the employees are within 200 percent of the federal poverty limit. I think that's a good idea. It encourages small businesses to have health insurance plans, a good thing for everyone. With the emergence of more small businesses in this state, that's a good idea.

The increases of the individual insurance vouchers, another good idea as we try to expand the notion of assisting people and, instead of being uninsured, to assist them in getting health insurance.

The extension of the medical malpractice indemnification. That program, it seems to me, is one that has worked very well in this state to establish the cap. We've had very few claims against it. The extension of the medical malpractice is another good idea.

From my perspective from Rochester, New York, the concept of regional

pools is also an idea that I particularly find a good one because I think it gives communities that have worked hard, as Rochester has, in trying to set up a managed care system -- we have about 95 percent of our population insured; we have about 44 percent of our Medicaid population in managed care. My community, with the guidance of Eastman Kodak Company and other industries, worked very hard to solve the problem of health care and provide quality care in the Rochester area community. The regional pool concept, I believe, advances that interest and gives to our community not only an incentive to further hone the delivery of services there but, frankly, puts us in a posture where we are taking responsibility for our community. From my perspective, that, too, is a good idea.

I also like the idea that's mentioned in this bill about allowing the Commissioner of Health to accept regional proposals and how to deal with the problem of bad debt and charity care and graduate medical education. The Rochester community has been

planning for this for several years and is well down that road and I hope will be the very first community to make a proposal to the Health Commissioner under that.

I also think that the idea of the private sponsor in integrated health insurance networks is also an idea whose time has come.

So there are seven or eight things, seven or eight of those balls that I see flying through the air in the discussion of this end of NYPHRM. For me, all have pluses attached to them.

There are other minuses, however, balls that are also circulating, some of which are the flip side of what I just mentioned. One is, I think, in the subsidization of small businesses and individuals, there just is not enough money generated to make them work. The $6 million that is the scoring for this proposal for individual insurance vouchers is just not enough. If it could insure 4,000, 6,000, 8,000 people, I suggest that that is merely a drop in the bucket. With three million uninsured people

in this state, insuring 6,000 of them or even 10,000 of them or even 20,000 of them is trying to stop the Hudson River with a straw. If we want to build a dam, if we want to end the rising tide of uninsured in this state, which, as we all know, creates a greater public expense because it's going to draw down our dollars in the bad debt and charity care pool and put greater pressure on our Medicaid system, it seems to me we have to be willing to commit additional resources to do that.

I also believe that this proposal, at least as I've seen it scored through staff, is that the graduate medical education is simply not fully funded and that that will result in a very significant cutback of graduate medical education. The City of New York is the major center for graduate medical education, but there are other institutions such as Strong Memorial Hospital in the 54th Senate District which depends on money from the graduate medical education pools. We currently have about $3 billion that goes to graduate

medical education of which about a billion or so is a contribution from the federal government through the Medicare system. This bill, I don't believe, will generate the additional $2 billion to fully fund graduate medical education.

In addition, I'm concerned about graduate medical education because I believe, based on what I've heard in the discussions about the future of graduate medical education, we should take this opportunity to retool the system of graduate medical education, to take the large number of specialists which have been trained in the past to move and give greater incentives to push the residents and the interns who are getting graduate medical education to push them toward the primary care that we need to make both managed care in the private sector and managed care in Medicaid to continue to grow and thrive in this state.

So, we have an opportunity here to restructure graduate medical education, to move it more to primary care. What this bill, at least as I read it, continues to do is to

provide less money for graduate medical education but doesn't give the incentives necessary to shift from the old specialist, hospital-based type of education to a primary care-based system in which doctors are going to be out of hospitals performing works in neighborhood clinics, performing work on street corners and providing the true primary care, which I think holds the promise for all of us as reducing care in the long-term.

I also believe that this bill will underfinance bad debt and charity care, because it just doesn't seem to me that it's going to generate the -- the -- I don't know what the actual number is -- let me look it up here -- that actually is generated for bad debt and charity care. I just don't think the indigent care pool of $700 million that's anticipated from this bill will not be sufficient to fully fund bad debt and charity care; and, as a consequence, those hospitals and other institutions that need and rely on payments from the bad debt and charity care pool

are just not going to have significant funds.

What does that mean? In the long run, that means you are going to see hospital closures, particularly in the city of New York, and you are going to see a reduction in availability of health care, which comes back to the fundamental issue I started with.

If you believe in the value-based notion of quality health care for all, this bill by not fully funding graduate medical education, by not fully funding bad debt and charity care, will not achieve that goal.

I am also concerned about the SLIPA allocation and the financially distressed hospital allocation. At least to the best I can tell, when those systems expire back in December 31, I understand this bill to create an extension for three months that will allow them to be funded at a quarter of their prior year's total until April 1, 1997, when they will then be kicked into the budget allocation. They will require a budget allocation for funding. What that does is that takes the problem of those

hospitals and pushes it to an annual appropriation for this Legislature. Lord knows, if we don't have enough on the table already in the state budget, if we don't have enough trouble coming to agreement with the state budget for the last three months, we are now going to kick a several-hundred-million-dollar problem into the budget deliberations in which the hospitals, most of them in the city of New York, in the metropolitan area, will be saying, "If we don't get this money in the budget, we are simply going to have to close our doors."

In closing, it seems to me that this bill and the approach to health care in this state is being driven by two notions -- two notions -- important notions but two notions which, in themselves, compete against one another. One is the concept of competition and the notion that by allowing competition into our health care delivery system, we will achieve lower cost. Senator Hannon talked about the fact that for the last 13 years we have had a state-regulated hospital reimbursement system.

Our health care system has been grown up based on the incentives or the disincentives created in that system. So I think we all agree with the notion of less regulation and more competition.

But the other problem with all of this is that this bill suggests that one of the driving forces to get us to that system is the notion of significant savings to the government as one of the payors in that system, and it seems to me that by appropriating less money for graduate medical education, less money for bad debt and charity care, not fully funding the individual vouchers, not setting up standards for the individual vouchers, what we're, in essence, doing is we're creating a competitive new model, but we're trying to achieve enormous savings that will only deprive New Yorkers of health care, and that the health of New Yorkers will actually decline.

The notion that we put less money into the system but that the consequence is we get better care is one part of this debate that

I don't believe this bill resolves to my satisfaction. If we're more competitive but we're going to put less money into the system, how can we tell the people we represent throughout this state that the quality of their health, that their individual health, will improve? Will it stay the same?

I believe in a reading of this bill that the quality of health care will actually continue to decline, and for those reasons, although I believe there are many good things in this bill -- and I certainly won't criticize Senator Hannon, his staff or anyone on the Republican side, because there are lots of balls and there are choices with each ball as you flip it up in the air and try to keep all those balls in the air, and those are difficult choices. They're complicated choices. They're cost saving choices. They're saving government money, saving private sector money. They are public interest goals.

But from my point of view, at this stage in this debate, it's my opinion that

the balls that are negatives outweigh those that are positive. Although I understand the need to go forward, I still believe that this bill - those negatives outweigh the positives in this effort and, therefore, I will be voting in the negative, but I understand that at some point we will back here, as negotiations continue, to come up with a resolution of this.

And perhaps, although, again, I may not be satisfied with all the balls that are in the air, my hope is that at some point we can come back with a redesigned system in which all the balls are properly aligned. We can continue to juggle this system in the negotiations with the Assembly and we'll get to the right result, which is improved health care for all New Yorkers.

ACTING PRESIDENT KUHL: Chair recognizes Senator Abate.

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

SENATOR HANNON: Yes, Senator.

SENATOR ABATE: Senator, I don't pretend to understand the complexities of your legislation, but I have one grave concern that I would like to explore with you, and that's the monies that will be available for uninsured coverage.

It's my understanding that under the current system, there is $1.2 billion available for uninsured care and with your proposal that means a reduction of $500 million.

SENATOR HANNON: Senator, I'm glad you asked me that question because I see also that Senator Dollinger had pointed that out as one of the balls we had let slip through my fingers.

It's not true, the number is simply not that number. Under the current system, we have an expenditure for the indigent care pool of $702 million, and we keep that number intact. There is no diminution of that number.

If there is any change, there is in terms of the formula. We do try to change

the formula so there is no longer an incentive for accountants to game the system and to take costs in an unrelated part of the hospital and move it into the charity care and, therefore, get more money. But in terms of the absolute dollar amount -- and believe me, I have had to go through the press, and that, and we've had these numbers for months, $702 million.

The Governor's program -- someone may be reading it. The Governor's proposal, as I understand it, did have that at a smaller amount. But in order for us to go forward, we took the $163 million, the $163 million that the Governor's proposed budget would have taken from the bad debt and charity care pool and used to pay the State's share of Medicaid. We did not agree on that diversion. We kept that $163 million in the bad debt and charity care.

SENATOR ABATE: Certainly, all of us in this chamber are at a disadvantage. You are the only expert on this legislation. I applaud you. You are the sponsor of it. But the problem I have is I have received a number

of calls from SLIPA hospitals in my district who are concerned because they read the legislation as though the pool will be reduced by $500 million, so clearly that has to be clarified. And why I'm so concerned is -

SENATOR HANNON: Let me point out, some of them came to me the other day and -- long faces, serious tone, et cetera, and they started to go through it, and I realized - I said to them, "Fifteen months into this job I figured out what your job is." I said, "Your job is to keep driving the numbers up as high as possible," I said, "and our job in the Legislature is to understand that that's your job."

We have, because there has been this huge money spigot in Washington called Medicaid, seen the numbers go up under the entitlement program by double digits compounded every year since 1980. You know what? These are very talented folks, and they have devised programs. They have reacted accordingly, and whenever there has been any change where it's

been -- under whatever administration where it said, "We ought to slow down," they would come up and they'd run ads, and you can run ads about poor quality care, whether it's a change from one dollar to 90 cents or one dollar to 50 cents, and they have done that.

So we've encouraged them to do that, and they're going to try to do that, but I would point out to you that we have proposed here a Senate plan to bridge between the Governor and where the Assembly is. It's a bridge that's a moderate course and it moves health care forward in this state, and it's a moderate plan, and I would argue strenuously that we do meet the goal of a better health care system for New York.

SENATOR ABATE: Let me preface my next question. When these hospital providers and other health providers called me, I didn't ask for their advocacy. I was trying to separate fact from fiction, and their analysis -- and fiscal officers were looking at this as hard numbers, not in an exaggerated way. But

let's say you're right, that it stays within the current levels, there is no reduction in coverage for the uninsured, then how do we deal with the issue of year after year there's an increasing number of people that are uninsured in New York State?

And please correct me if I'm wrong. In New York State, the percent of uninsured people, 11.8 percent in 1989 to 16 percent in 1994. In 1994 alone, that number grew by 380,000 people. The total number of uninsured people in 1994 were 2.9 million people. New York City has 21 percent. The indication is year after year, the number keeps going up. So are we, in fact, planning for the future when the coverage is static, at best?

SENATOR HANNON: Your question is right to the center of the issue. We do have the uninsured numbers going up, and I would contend what has been happening is the major reason why we can not continue the present system, because the present system encourages the people who pay the bill, the businesses, to

either cut back sharply or drop insurance coverage for their employees. I would contend that we've allowed the rates to go up, and we move people from within our system to go into - to be self-insured, and if they're self-insured, they either have very minimal coverages or they drop it entirely.

So what we have to do is bring ourselves back to a little more of a rational system and to do it within the parameters that we ourselves can grasp, and we're not going to do that -- by the way, what we've also managed to do is to give them a total vehicle. We have a total regulated rate system except for the health maintenance organizations.

So who can go into the hospitals and say, "You want more patients? We will give you more patients. P.S., we want a reduction, 25 percent from your rates." The hospitals have to take it, and we have too many hospital beds which everyone seems to agree. But if you have an empty hospital bed and someone is coming in and saying, "I will give you at least 75 cents

on the dollar," they will usually take it. But that just drives people over to the HMOs, and then the whole system gets whacked out of shape.

So we do have these difficulties. If we continue the current system, we make those difficulties much more difficult unless we reshape this. The rest of the nation has gone to this, years ago.

The one last thing someone will say will be, "Wait a minute, Hannon. Hospitals will close." And you know that is a very difficult thing for all of us who have to represent areas who have to care about people.

I would point out to you, during the life of the NYPHRM system, 40 hospitals have closed. Forty. Just having this totally regulated system doesn't save us from closures. Last week, we read that in the middle of Brooklyn, Interfaith is in deep financial trouble, not to mention some of the other institutions close by to it, all with hundreds of beds.

This morning, we can read in the New York Times that Mount Sinai, NYU medical schools and hospitals will be merging. There is consolidation taking place. This is all with the current NYPHRM system going on.

So will there be changes in the future? I can guarantee you there will be changes in the future. I can also guarantee that unless we make these changes now, the changes in the future will be worse than they would be with this -- with what we're proposing to do.

SENATOR ABATE: Mr. President, would Senator Hannon yield to another question?

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

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: While we're in total agreement that the current system cannot remain in place, there needs to be a change, we

have to take a fresh look at how we reimburse and create enough pools for the underserved. My concern is your approach. Is it, in fact, going to create even greater problems than exist today?

My question is, what in this proposal -- many of us have districts where there are large numbers of financially distressed hospitals and SLIPA hospitals.

SENATOR HANNON: Excuse me, I didn't hear the last part of your sentence. My apologies.

SENATOR ABATE: Do you want me to repeat the entirety of the question? I think you heard that we don't disagree in terms of need for reform. It's a question of what approach is going to be successful.

My concern is, will this plan have a disproportionate negative impact on the districts that have a large number of SLIPA and financially distressed hospitals? And I'm talking about what the impact will be on the businesses, on the workers in those districts,

on rich, middle income and poor people if, in fact, those hospitals do not have a sufficient amount of money to cover their uninsured patients.

And I'm even more concerned because it's now going to be done regionally. If it's done regionally, it has some benefits and it also has some detriments. In those regions throughout the state -- and I think probably throughout the state, everyone has a region in their area where there is an inordinate number of SLIPA or distressed hospitals. How will this plan improve their financial viability?

SENATOR HANNON: We have spent an enormous amount of money on a small amount of hospitals. I actually think what will happen for some of the distressed hospitals is they will do quite well. They are the ones we've rebuilt. They are the ones we have made to be quality standards in those neighborhoods. They are the ones people drive miles and miles to go to. I think they are the ones that will

continue and continue to do quite well, because the folks running them are truly dedicated and talented.

The SLIPA hospitals, which is simply a category -- it's an extra aid we put in in 1991. They tend to do better when they look at individual numbers under this plan than the current system.

We are dealing with the medical care profession. There is no guarantee that you get things under the medical care profession. I wish there were. Every one of us has gone through heart-wrenching sickness in our families and our friends, and we -- all we can do or hope for is the art is going to do it the best possible. I think in looking at the system at home, we have to look at what is going to be the best possible. But can there be guarantees? I don't believe you can have a guarantee.

You are going to try to get, as Senator Hannon Dollinger said, to the goal of quality health care for all New Yorkers and what's the best way to do it. What we see now

is a system where we are artificially propping up a very narrow area, the hospitals, while throughout this state clinics are being formed, diagnostic centers, freestanding centers, group practices. People are delivering the care in many different ways. They feel it's much more efficient to do that.

We are artificially holding that back, and, in fact, this current system makes the HMOs the strongest players and puts the hospitals at a weakness because the hospitals are held and pinned down by the volume that the HMOs bring to them.

So we need to have this change. The question is: How soon? How quickly? How gradually? How responsibly? Change will happen. It's going to take -- those people who will call you, they will be concerned. They will be anxious. That's what happens with change.

I didn't want to do this. I would rather we be able to continue this plan for years and years and years, but it's not

going to happen. We have to build this system that's going to take care of those of us who are going to be 65 in 15 years. That's when the baby boom begins to be 65. Those of us who will need greater and greater health care, statistically that's when you do it, and that's what we're trying to do.

SENATOR ABATE: Thank you, Senator.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR SKELOS: Mr. President, if I can just interrupt. There will be an immediate meeting of the Rules Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: There will be an 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.

Senator Abate, hold on just a minute.

SENATOR ABATE: Senator Hannon, I

do not have any additional questions. I agree that change is imminent. We need to produce some reforms. I disagree, at this point, with the total approach. I think it needs some clarification and strengthening. We need to answer some of these questions.

I laud you that we all have the goal that rich, poor, middle class alike, all regions of the state, have to receive quality health care, and that should be our goal. We can never, in any way, undercut that goal. I look forward to the process as this bill is negotiated so some of my concerns are addressed, and I look forward to a time that I can support a NYPHRM bill that addresses the issues that I have raised.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, excuse me. I have a list going. Senator Espada was ahead of you, but if he wants to yield to you, that's fine.

SENATOR GOLD: I only need 90 seconds. All right?

ACTING PRESIDENT KUHL: Senator Espada yields to Senator Gold.

SENATOR GOLD: Thank you. I intend to be very brief. I notice that on today's main calendar and on the Rules first report, there are 75 bills, 75 issues. If you take a look at 1088 on the calendar, you find the only memorandum in either opposition or support or expressing any view from the Office of the Mayor of the city of New York, and that happens to be a memo that's a warmed-over David Dinkins memo. I find it incredible.

This bill, which I believe has a huge impact on the city of New York, has no opinion by the Office of the Mayor. I know the mayor is talking about selling off City hospitals, and maybe they've lost their interest. But the people in the city of New York, the people that pay insurance premiums, the employers, and the hospitals themselves in the city of New York trying to operate, trying to make it, have an interest.

Senator Hannon has a proposal.

It's very implicated. It's very detailed. It may be better than the Governor or worse, better or worse than the Assembly plan. It may be that if this passes today, there is negotiation. If it was up to the Office of the Mayor of the city of New York, it might be that this negotiation would go on with a unanimous vote from the City legislators in favor of this and then to find out later that maybe it hurts the City. I think it's really terrible.

The city of New York has real budget problems; and if they don't want to have an office up here that's helpful or that guides us in terms of what is good for our city and our people, maybe we could use that money, Senator Velella, in the schools and not worry so much about the artwork.

I'm told, thanks to Senator Dollinger's work, thanks to the staff work of the Minority, and thanks to some others and thanks to a very candid Senator Hannon, that this bill could, in effect, have some dire financial consequences in the city of New York,

and I am going to cast my vote today supporting the people in my district and their right to health care at a good price. I will be doing that, no thanks to the Mayor's office.

Thank you.

ACTING PRESIDENT KUHL: Senator Espada.

SENATOR HANNON: I would like to correct the record, Mr. President. The characterization of my prior remarks by Senator Gold is not correct. I did not say it would have dire consequences for the city of New York, and whatever interpretation he wants to make of it is entirely his.

SENATOR GOLD: Mr. President, if I may. In making my remarks, I was thanking Senator Hannon for his frankness, and for others. The record should be clear. I am not quoting Senator Hannon as saying it would have dire consequences in the city of New York. It is my conclusion after the comments that have been made by the individuals I mentioned. My comments about Senator Hannon were meant to be

only complimentary.

ACTING PRESIDENT KUHL: Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

This bill will have dire consequences for the city of New York, and if Senator Hannon won't say it, the City should say it. Let me say it on behalf of the 32nd District.

But also let me start, because it's amazing. I spent seventeen years in health care, and I can fully appreciate the effort that Senator Hannon has put into his work. With all the diligence and hard work that he has is done over 15 months, I have never heard a theory that has the increase in poverty and medical indigency directly be a byproduct of some Machiavellian plot by back-room accountants in hospitals and employers downsizing the industries that they are involved in all in the name of creating medical indigency to apply for more uncompensated aid that the state would

provide. If that be a premise, it really concerns me.

Let me just also say that this bill clearly removes the life support system for not only SLIPA hospitals but for other financially distressed hospitals that have only been kept afloat by the aid provided by NYPHRM; and while NYPHRM is too complicated, involves government too much in the affairs in the fiscal and the health care delivery system, not only of hospitals but of other providers, the pace at which these changes are being introduced will bring us to certain bottom lines, certain bottom lines that create far too many casualties, casualties not due to waste but due to the rapid pace of injecting into -- a system that has long been neglected, I agree; a system that has far too much waste, I agree. But to inject it with the kind of therapeutic assistance provided by our sponsor here will really create far too many casualties; and before I come back to the health care casualties, let's talk about the economic displacement.

Last year, Senator Hannon -- when we had the budget debate around the Medicaid cuts, the question was asked of him at the time, What kind of economic displacement would take place in a district like mine, in a county like mine, that owes so many of its new jobs to the health care sector, something like 40 percent of the new jobs created in the Bronx? Somehow, the answer came back, Well, the health care industry should not be in place to create employment. It is not a full employment -- a job creation sector, and I responded by saying, "It is neither A or B; it's both."

It is health care, the quality of health care, the availability and accessibility of that health care, and a necessary corollary is an analysis of economic displacement, because, without that, we are creating more medical indigency. We're creating more poverty, and those health care institutions at once will die and leave ghost towns and people and casualties behind it.

So a complete analysis has to

involve the economic displacement to the people that work for these facilities, free of no retraining, free of no other options to go to for employment, if only because of your interest in the economic health care of that community or if only because of your interest in what it would have -- the impact it would have on increased medical indigency and increased need for Medicaid assistance and other entitlements, whatever is left after this budget, if we ever get to that.

I thought your side was not about tax increases and, in fact, when we look at your bill and we look at the impact it would have on increased premiums to the people of my district and our City, it does, indeed, impose a health care tax on the working-class and middle-class people of my district of the City, and I would venture to say throughout the state.

The issue of regional pools. You know we are one state. We can't Balkanize it along racial lines or along ethnic lines. We shouldn't do it around health care dollars,

either. Mayor Giuliani has gone on record, United States Senator Moynihan also. Our City, the Big Apple, puts more money into the state largesse than we get back, period, end of story. We never get back enough, and so to somehow sneak in some system that will Balkanize, that will ration out the health care dollar is irresponsible. It's unfair and it won't work and, again, will result in casualties. I don't say that. The mayor of New York has said that. We don't get enough back.

This is one area where we can't be shortchanged. If you want equitable formulas, if you want to be fair, if certain regions aren't getting their fair share, if some regions are ahead of us in terms of cost containment strategies and better delivery systems, hey, we want to learn. Let's learn. We can apply some lessons Downstate that maybe Rochester and other areas have learned, but don't kill us in the process because then we have nothing to learn but our early deaths.

No sensitivity to economic

displacement. No sensitivity to the health care status of the community. Tell me a model which says we have to start by downsizing. We have to get to the core of the problem by taking money out of the system. I suggest to you that if you start with that premise, you are off base to begin with, because I would suggest to you that we should start with the health care status of a community. That, I think, is in our public interest. What are the resources? What is the health care status of the community? Is it in poor stead? Is it that the health care of the community is suffering for lack of resources, and how do we formulate modalities, approaches, delivery systems that could best use that dollar? This does not accomplish that. Absolutely not.

What we're doing is, we're setting up competing forces in areas that need the dollars the most. We are broadening out these eligibility pools for the uncompensated dollar. The hospitals, distressed hospitals, SLIPA hospitals, will die; and now what have we

done?

So, let's look at where the HIV problem exists. Let's look at where children are not being immunized. Let's look at where there are preventable early deaths, and let's go in there and develop some structures. Let's test out some ideas.

Let's not remove these residents from our public hospitals that provide the primary care, that provide the emergency care, the essential care, because there is nowhere else to go, and if you put in systems that will denigrate and hurt the ability of institutions to graduate students, medical residents that not only learn their craft and their trade in these hospitals but also stay there, if you do anything to hurt that, you are giving us a double whammy. You are removing the dollars and you are removing practitioners that will otherwise learn primary care skills and stay in New York State and not only stay -- I say in New York State because 50 percent of them not only learn their craft in New York City but then stay

and go on to suburban and rural upstate communities as well.

So this is a complex problem. This is a difficult problem, a multi-faceted problem, but certainly cannot -- cannot be resolved with a premise that says poverty, increased cost, medical indigency can be resolved by downsizing, taking out dollars in needy communities, creating massive unemployment, all in the name of arriving at a quick bottom line solution to a problem that is much too complex.

Thank you, Mr. President.

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

Senator Hannon to close.

SENATOR HANNON: In closing, I just want to, first of all, make a few comments about Senator Espada's comments.

Last year, we did have the debate about jobs, and I had made the comment then that one ought not to look at the health care system for jobs. Now, I know it's one of the biggest

employers, but you ought not to look at the health care system for jobs because, if you do, what you are going to get as a result of that is a poor health care system.

You ought to be looking to the health care system for good health care; and if you look at it for good health care, then the jobs that are created, the jobs that are kept are going to be good solid jobs. They're not going to be make-work jobs. They're not going to be makeup jobs.

And the irony, after all of that comment, Senator Espada, is that as a result of last year, when we looked at the numbers going into this year's budget, we did not lose jobs in health care, even though we had affected Medicaid cuts in last year's budget. In fact, the total number of jobs in New York State increased by 1,000. Now, that happens to be far smaller than the prior increases, but as of November '95, there was an increase of 1,000 jobs. It absolutely was astounding to different people.

What happened to the hospital community? There is a downsizing. But as there is a downsizing there, there is an increase in the other areas. Are we going to have devastation to the neighborhoods? I do not believe so, and I am not separate and apart. We have not Balkanized the state. That is a total miscalculation. That is a total misview of what's happening. The people who might work in hospitals in New York may well live next door to me, and they have.

We are not sneaking in some system. There is no way to do that. This has been as a result of a Governor who has taken on a complex issue, identified with it, appointed a task force, something that had been absolutely unprecedented in this state. The task force made a report within time that we could know what they said and deal with it. There was, as a result, a very intense effort by the Executive to come up with a proposal; made a proposal well in time. We've had some other thoughts about it. We are working on that.

This has been one of the more publicized changes one could ever think and one of the most debated.

And to those of you, by the way, who think you're getting a free ride, the vote against this and you get something better, I've got news for you. Come June 30th, if we don't have an agreement, this is either the bill or no system. So you may not be seeing another bill.

This bill works. When we put it out, lots of people came to us, the Hospital Association, different parts of the health care community. They said, We don't like this, we don't like that. Fine. We'll take all the alternatives. We're not wedded to it. Give us something that has four corners to it and works.

Lots of people made input, the Hospital Association of Greater New York, the Health Care Association of New York State, all the regional ones, Nassau, the Iroquois one which is Northern New York and Central. We have taken all the best of those things. We have

looked at what the Assembly has done. We tried to put it together.

We have a system, we think, that has four corners to it and works. We think it meets the needs of what has to be done for the future. It moves things along. We have networks in there which is the way of the future, I think, in terms of delivery of health care.

We've tried to be equitable to all parts of the state. We have not penalized any part of the state. We have not imposed any tax. Whatever you are referring to, Senator Espada, you look at the law, all we have done is a continuation of those allowances. That is in the law now.

I think we have achieved this. There has been an incredible amount of effort by our finance staff, by our program staff, by our counsel staff, and there has been good will in regard to the information we have gotten from both the Executive and from the Assembly, and so when I say we think this is a good bridge

between everything that has gone on, I really am convinced this is a bill everybody ought to support.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section.

Senator LaValle.

SENATOR LAVALLE: Mr. President,, on the bill just for a moment.

I would like to rise to congratulate Senator Hannon, staff, who have worked mightily on a bill, and I think if we look at some of the critics who were making comments back in January and February and March, I think they were probably saying that there wouldn't be a bill on this floor for a vote.

And I think, Senator Dollinger, Senator Hannon has kept almost all those balls in the air as only an impresario could do. There are always when we -- and I in the last number of months in a related but tangential issue of giving our SUNY hospitals greater flexibility, and there is a bill on the

calendar, and at some juncture there will be an agreed-upon bill before us. But with all the changes that are swirling around -- and I'm not sure whether the changes in the marketplace over the last year have driven the NYPHRM bill or whether NYPHRM or the fear of the changes that Senator Hannon has brought before us have pushed things out in the marketplace, but I have some concerns about the SUNY medical schools and SUNY hospitals that are a little different because they do not have the same kind of tools, the same kind of flexibility in how they will deal in the competitive marketplace.

And one of the things, of course, is that the people of the state of New York have made an enormous investment in the health science centers, in the medical schools - public medical schools in this state; and so how all this shakes out, I'm not sure, but it is something that we will have to create mechanisms to ensure that we protect those investments of the past, we do not jeopardize them in the future, and that they continue to do the job

that people in the past created them for, which was to do research, medical education, and provide health care in the respective regions of the state.

I certainly am going to vote for this, but I think as people have already indicated, Senator Hannon, I want to say, again, that you should be congratulated for taking this on, the intellect and the energy that you have demonstrated in moving the process in a proper direction and a right direction.

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

THE SECRETARY: Section 15. This act shall take effect immediately.

SENATOR PATERSON: Slow roll call, Mr. President.

ACTING PRESIDENT KUHL: Are there five members in the house requesting a slow roll call?

There are. A slow roll call has been requested. The Secretary will read the roll slowly. Ring the bells.

THE SECRETARY: Senator Abate.
SENATOR ABATE: No.
THE SECRETARY: Senator Alesi.
(There was no response.)
Senator Babbush.
(There was no response.)
Senator Bruno.
(There was an affirmative indication.)
THE SECRETARY: Senator Connor.
(There was a negative indication.)
THE SECRETARY: Senator Cook.
SENATOR COOK: Mr. President.
ACTING PRESIDENT KUHL: Senator Cook, to explain his vote.
SENATOR COOK: First, I would like to join with those who have congratulated Senator Hannon on what I and others have thought would be an almost impossible task and, indeed, think he's very skillfully dealt with this issue and all the many facets of it to a point where I am, frankly, amazed at the quality of the

product that has come out of it.

There is a desire on the part of the public, and that's reflected by people in this chamber, to never want to have any down sides to anything. There is a desire that somehow if we could just go along and never have anything change from what we've known, that it will be wonderful and, when we have legislation on this floor, we want to see things that will preserve the status quo.

The status quo doesn't happen. It doesn't exist in life any place. It particularly doesn't exist in the health care system. I think Senator Hannon has very adequately laid that out before us.

We have to deal not with so much making the change happen at this point but as channeling as best we can that change which is already inherent in the system and already moving forward, and I think that's what this bill does.

And, finally, in casting my affirmative vote, I want to particularly thank

Senator Hannon and his staff for their responsiveness on the issues of rural health. We have been working for a good many years in trying to protect and develop that most fragile part of our health care system for the less populated parts of the state, and Senator Hannon has been sensitive to that and helpful in that area, and I want to personally have everyone who lives in rural communities know that this downstater has really listened to us and responded to our needs.

And in that, I vote in the affirmative.

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

Continue to call the roll.

THE SECRETARY: Senator DeFrancisco.

(There was no response.)

Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: I agree with Senator Cook's conceptualization of nothing will remain the same. I guess I'm an old Heraclitean in that respect. I acknowledge that times change, things change. Hospitals ought to change. Everything ought to change.

But before we undertake any change, we ought to examine the risk. We ought to make a calculated risk. The way you best take risk is to make a calculation as to what the consequences of taking a particular action would be. Senator Hannon earlier talked about the task force. The task force happened to meet behind closed doors by the Health Commissioner, a task force that didn't seek public input, and only -- the one comment about this particular plan is that I think many people didn't know all the contours of this plan until Tuesday of this week, barely two days ago, and weren't able to

see how all the details of this plan would work out.

It's been impossible for me to find out from the hospitals I represent what the effect of this plan would be on them. So when I talk about taking a risk, I would like to know exactly what the people who are going to be affected by my vote think and would like to evaluate how they see this risk that this Legislature, this body, today is asking everybody in this room to take, which is to take the risk that going to the competitive model embodied in this plan will improve health care for New Yorkers.

We may get a competitive system, we may get cost savings, but will we end up with better health care for New Yorkers and healthier New Yorkers? My judgment is that taking that risk today, I'm not confident we will get to that goal. For that reason, I'm voting in the negative.

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

Continue to call the roll slowly.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: If I may, please.

ACTING PRESIDENT KUHL: Senator Espada, to explain his vote.

SENATOR ESPADA: I, too, agree that there is a need for change. I think there is a need for responsible change. This bill does not go far enough in that regard. There has been a targeting of the health care sector in this state. We understand where that emanates from. It is as responsible an act to do that as it would be for Michigan to target the Motor City or for Texas to target its petroleum industry.

We are hitting a real nerve here. We are destroying something that has been very viable. If we don't take care of it, if we don't nurture it, if we're not responsible about what the impact of what our new interventions will be, we will suffer far too many casualties.

It is because of all that, Mr.

President, that I think this is not timely. This is not complete enough. There will come a time, I think, when we combine the efforts of the Assembly -- of the Senate bill, of the health care advocacy community, where we could have real and responsible change.

Thank you so much.

I vote no.

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

Continue to call the roll slowly.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold.

SENATOR GOLD: No.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Holland.
(There was no response.)
Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Aye.
THE SECRETARY: Senator Lachman.
(There was no response.)
Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: Senator Leichter, to explain his vote.

SENATOR LEICHTER: I don't envy Senator Hannon for the job that he has. Trying to come up with a hospital and health care reimbursement system in this state is somewhat like trying to play three-dimensional chess. On the one hand, you have a national government that has failed to come up with a uniform national system which makes it extremely difficult and leaves it for the state of New York to deal with millions of uninsured patients.

Secondly, you have a Governor who has his usual simplistic, ideological driven approach, and, of course, Senator Hannon is right that change has to come, but that doesn't mean that this bill embodies the change that is going to be helpful to our health care industry.

Let me just say, as somebody who represents two world class hospitals, St. Luke's-Roosevelt and Presbyterian Hospital,

these institutions, including under the present system -- NYPHRM was certainly not the salvation for hospitals or patients in this state. It may have been a little bit like the Dutch boy with his finger in the dike, but it certainly was no great solution. But these hospitals, great teaching hospitals, have been driven to the brink of insolvency. These hospitals have taken on the burden of treating a large number of Medicaid patients. They treat uninsured patients. We require them to treat them, but we don't compensate them.

And what I'm concerned about is that in Senator Hannon's bill they will receive even less compensation. We have an interest as a state. This is not a local matter. This is not because it's important for Leichter's district or it's important for Manhattan or important for New York City. It's important for the State of New York. These are wonderful hospitals that bring in researchers, bring in doctors, train doctors, treat people. If any of you upstate have need for a heart transplant or

difficult surgery, you are probably going to go to go to Presbyterian or St. Luke's-Roosevelt.

So we have an interest, even an economic interest, in maintaining these institutions. The Hannon bill really discriminates against such institutions, discriminates against urban hospitals, makes it more difficult for them. It's not a step forward. It's a step backward.

Mr. President, I vote in the negative.

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

Continue to call the roll call slowly.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

(There was no response.)

Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Yes.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: No.
THE SECRETARY: Senator Nozzolio.
(There was no response.)
Senator Onorato.
SENATOR ONORATO: No.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: To explain my vote.

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

SENATOR OPPENHEIMER: I agree with the concerns that have been voiced about this bill. However, I know that HANYS is saying that it's a step in the right direction, even though it doesn't go nearly far enough. So I'm going to vote yes and hope that we will continue in the process of bringing more to the table when we sit down and negotiate a single bill between the two houses.

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

Continue to call the roll slowly.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Mr. President, I rise to explain my vote.

ACTING PRESIDENT KUHL: Senator Padavan, to explain his vote.

SENATOR PADAVAN: I will be voting yes for this bill, but in the process of doing so, let me share a simple fact that I think has been represented here at least once if

not twice, that we have sought information from the city of New York -

ACTING PRESIDENT KUHL: Senator Padavan, excuse me just a minute. There's a lot of noise in the chamber. I don't know how anybody can hear what you're saying, much less explaining your vote.

May we have some quiet in the chamber, please.

Thank you.

Senator Padavan, to explain his vote.

SENATOR PADAVAN: We have sought but not yet received input from the city of New York as it relates to certain provisions of this bill, in particular that area dealing with graduate medical education.

The city of New York, for very good reasons, has a high percentage statewide for the medical school residency programs, far more than half, and the pool and the sources of funds that are provided for those programs, as represented by Senator Hannon, would not be in

jeopardy but we do need the city of New York to review this legislation in detail, because there are sources of funds, including Medicaid here, that do impact or do have some relationship to the City's ability to sustain these institutions and the residency programs that they contain.

So I will be voting aye but looking toward additional information in the days ahead.

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

Continue to call the roll.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: (Indicating.)

ACTING PRESIDENT KUHL: Senator Paterson, is that a "No"?

(Senator Paterson nods head.)

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Mr. President,

to explain my vote.

ACTING PRESIDENT KUHL: Senator Saland, to explain his vote.

SENATOR SALAND: Mr. President, I had the opportunity to hear much of the debate, either here or outside off of the box, and I would like to certainly commend Senator Hannon for an extraordinary job of dealing with perhaps an even more extraordinarily difficult issue.

The reality is -- and I don't believe it was mentioned during the course of the debate -- if not for this initiative that Senator Hannon has crafted, we really would find ourselves in an extraordinarily threatened position as the entire NYPHRM system is due to sunset on June 30. This is a very constructive means by which to deal with a very, very difficult process, and I commend again Senator Hannon and thank him for bringing this bill to the floor.

I vote aye.

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

Continue to call the roll.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Seabrook.

(There was no response.)

Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

(There was no response.)

Senator Stavisky excused.

Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: No.

THE SECRETARY: Senator Wright.

ACTING PRESIDENT KUHL: The Secretary will call the absentees.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: Yes.
THE SECRETARY: Senator Hoffmann.
SENATOR HOFFMANN: Yes.
THE SECRETARY: Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Lachman.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: Yes.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Santiago.
(There was no response.)
Senator Seabrook.
(There was no response.)
Senator Stafford.
(There was no response.)
ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Aye 38, nays 15.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President. If we can return to reports of standing committees, I believe there is a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT KUHL: There is a report of the Rules Committee at the desk.

We will return to reports of standing committees. The Secretary will read the report of the Rules Committee.

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

Senate Print 4708B, by Senator Velella, an act to amend the Insurance Law, in relation to eliminating duplicate affidavits;

5133A, by Senator Marcellino, an act to amend the Retirement and Social Security Law;

5787, by Senator Present, an act to amend the Education Law, in relation to incentive operating aid;

6034B, by Senator Skelos, an act to amend the Navigation Law, in relation to personal watercraft;

6053A, by Senator DeFrancisco, an act to amend the Public Health Law, in relation to establishing;

6080, by Senator Smith, an act authorizing the city of New York to reconvey its interest in certain real property;

6110B, by Senator Hoblock, an act to amend the Education Law and the State Finance Law, in relation to providing;

6312, by Senator Farley, an act to amend the Education Law, in relation to providing a waiver;

6338A, by Senator Seward, an act to amend the Tax Law, in relation to imposition of sales tax;

6491A, by Senator Hannon, an act to amend the Criminal Procedure Law and the

Executive Law, in relation to imposing plea bargaining limitations;

6528, by Senator Volker, an act to amend the Civil Practice Law and Rules, in relation to juries;

6712A, by Senator Oppenheimer, an act allowing Leonard J. Rosa and/or Michael W. Siciliano, employed by the Village of Scarsdale;

6872, by Senator Velella, an act to amend the Insurance Law, in relation to risk based capital;

6932, by Senator Libous, an act to amend the County Law, in relation to establishing;

7066B, by Senator Velella, an act to amend the Insurance Law, in relation to provisions;

7195A, by Senator Skelos, an act to amend the Private Housing Finance Law, in relation to allowing limited liability companies;

7247A, by Senator Saland, an act in relation to authorizing a special district

payment;

7258A, by Senator Trunzo, an act to amend the Retirement and Social Security Law, in relation to participation;

7473A, by Senator Stafford, an act in relation to authorizing the village of Whitehall to convey certain land;

7507A, by Senator Maltese, an act to amend the Election Law, in relation to party recommendations;

7565, by Senator Leibell, an act to repeal Subdivision 30 of Section 3 of the Public Officers Law;

7581A, by Senator Velella, an act to amend the Insurance Law, in relation to issuance of capital notes;

7797, by Senator Onorato, an act to amend the Civil Practice Law and Rules, in relation to fees for referees;

And 7841, by the Senate Committee on Rules, an act to amend Chapter 708 of the Laws of 1992;

All bills ordered directly for

third reading.

ACTING PRESIDENT KUHL: The motion is to accept the Rules reports.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The Rules report is accepted.

The desk has been asked by Senator Skelos and by Senator Bruno to inform the members of the anticipated procedure for this evening, just so that you all know and can follow because order is going to certainly dictate how quickly we get through what is coming.

You have been distributed a Supplemental Calendar Number 1, which will be the first piece of business, and then you have also or are currently being distributed a Supplemental Calendar 2, which we will also be taking. That's in the process of making and will be placed on your desk shortly, an

additional active list which will go back to the original calendar placed on your desk today.

So don't send your calendars back. You will need the original calendar that we were dealing with, Supplemental Calendar Number 1, Supplemental Calendar Number 2.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: And we should possibly think about Supplemental Calendar Number 3.

So at this time, Mr. President, if we could have a reading of Supplemental Calendar Number 1, noncontroversial.

ACTING PRESIDENT KUHL: Secretary will read the noncontroversial part of Supplemental Calendar Number 1. Supplemental Calendar Number 1.

The Secretary will read.

THE SECRETARY: Calendar Number 1527.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1528, by Senator Kruger, Senate Print 1871, an act to amend the Criminal Procedure Law, in relation to definition.

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1529, by Senator Velella, Senate Print 4309B, an act to amend the New York City Civil Court Act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1530, by Senator Hannon, Senate Print 4318, an act to amend the Correction Law, in relation to

reimbursement.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Paterson.

THE SECRETARY: Senator Stafford moves to discharge from the Committee on Rules Assembly Bill Number 6219A and substitute it for the identical Third Reading Calendar 1531.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read.

THE SECRETARY: Calendar Number 1531, by Member of the Assembly Bragman, Assembly Print 6219A, an act to amend the Education Law, in relation to transportation contracts.

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1532.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1533.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1534, by Senator Goodman, Senate Print 5242A, an act to amend the General Municipal Law, in relation to authorizing any city.

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1535, by Senator Hoffmann, Senate print 5921, an act to legalize, validate, and confirm the establishment of a water district.

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1536, by Senator DeFrancisco, Senate Print 6069.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Holland moves to discharge from the Committee on Rules

Assembly Bill Number 8884 and substitute it for the identical Third Reading Calendar 1537.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 1537, by Member of the Assembly Colman, Assembly Print 8884, an act to permit the reopening of the optional 20-year retirement plan.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1538, by Senator Larkin, Senate Print 6186, an

act to amend the Judiciary Law, in relation to establishment of a fee schedule.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Seward moves to discharge from the Committee on Local Government Assembly Bill Number 8495A and substitute it for the identical Third Reading Calendar 1539.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 1539, by Member of the Assembly Abbate, Assembly Print 8495A, an act to amend the Real Property Tax Law.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1540, by Senator Larkin, Senate Print 6504, an act to authorize the village of Washingtonville.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1541, by Senator Saland, Senate Print 7668, an act to amend the Social Services Law, the Tax Law, the Civil Practice Law and Rules and the

Family Court Act.

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

THE SECRETARY: Section 8. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Spano moves to discharge from the Committee on Rules Assembly Bill Number 10853 and substitute it for the identical Third Reading Calendar 1542.

ACTING PRESIDENT KUHL: Substitution is ordered.

The Senate bill is high, but the Assembly bill is live.

Secretary will read the title.

THE SECRETARY: Calendar Number 1542, by the Assembly Committee on Rules, Assembly Print 10853, an act to amend the Labor

Law.

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

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1543.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1544.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1545, by the Senate Committee on Rules, Senate Print 7739, an act to amend Chapter 892 of the Laws of 1986.

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1546, by the Senate Committee on Rules, Senate Print 7755, an act to authorize the conveyance of a permanent and a temporary easement.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Skelos, that completes the noncontroversial reading of Supplemental Calendar Number 1.

SENATOR SKELOS: Mr. President, if we can have the controversial reading of Supplemental Calendar Number 1. I believe

Senator Velella's bill is the first bill.

ACTING PRESIDENT KUHL: We are on Supplemental Calendar Number 1. Secretary will read the controversial calendar, Supplemental Calendar Number 1, commencing with Calendar Number 1529, by Senator Velella.

THE SECRETARY: Calendar Number 1529, by Senator Velella, Senate Print 4309-B, an act to amend the New York City Civil Court Act and the civil Practice Law and Rules.

SENATOR PATERSON: Explanation.

SENATOR VELELLA: Mr. President, this bill would allow the city marshals in the City Court in the city of New York to execute money judgments in Family and Supreme Court the same as they do now in Civil Court. The enforcement procedures are basically the same; just the dollar amounts are different, and this would give a greater opportunity to enforce money judgments and particularly in the cases of child support where they would go out and aggressively supplement the sheriff's force in the city of New York only.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Velella would yield to a question.

ACTING PRESIDENT KUHL: Senator Velella, will you you yield to a question?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Is there a backlog of cases in the city of New York necessitating the need to make a conversion of the marshals to perform the same duties as the sheriffs?

SENATOR VELELLA: I would -- I'm not aware of that. I am told that this would help to speed up the enforcement of money judgments in the city of New York. I don't know how badly backlogged they are, but I see no harm in allowing the marshals who perform the service in the civil court to also perform it for Supreme and Family.

SENATOR PATERSON: Mr. President,

if the Senator on would continue to yield for one final question.

SENATOR VELELLA: Yes.

SENATOR PATERSON: And what caused me to ask the question is that we have men up here from the New York City and New York State Sheriffs Association and obviously there are some apparent reasons why they would be opposing this, but they do go on to indicate that this would be an additional cost. I don't know that that additional cost would be something that I would mind if we're having a backlog, if there's some real purpose, and so perhaps you can put all this to rest by giving us perhaps an explanation for why we're doing this.

SENATOR VELELLA: Well, we're doing it to provide a supplemental means for enforcement of money judgments. People who recover money judgments, the Family Court decisions that are made where child support is awarded to the parent who is dependent or the person who has to get assistance for the support

of the child, and this will give a better opportunity.

The City marshals basically run a private enterprise type operation whereas the City sheriffs are City employees. They don't - they don't produce the product of collecting the judgment, they don't get paid. City sheriffs do get paid. They're on the payroll, so -- so their motivation will be to go out and work that much harder on these. In addition, the City sheriffs also are involved in a car towing program and several other programs that do take a great deal of their time away from us.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Read the negatives. Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1529 are Senators Connor, Kuhl, Leichter, Maziarz and Saland. Ayes 54, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

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

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

332.

Secretary will continue to read.

THE SECRETARY: Calendar Number 1530, by Senator Hannon, Senate Print 4318, an act to amend the Correction Law, in relation to reimbursement.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1536, by Senator DeFrancisco, Senate Print 6069, an act to amend the Tax Law, in relation to the collection and allocation.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator DeFrancisco, an explanation of Calendar Number

1536 has been requested by Senator Paterson.

SENATOR DeFRANCISCO: Yes. This provides for the creation of a special assistant fund -- assistance fund for Central New York Regional Transportation Authority, CENTRO, and basically over the last couple of years there have been deficits in CENTRO which has caused great concern to the ridership, despite all kinds of cost cutting efforts that they have made.

Last year we had to take $600,000 out of the -- an emergency assistance fund in order to keep CENTRO rolling at the rate they're rolling right now. This year, the number was $1.7 million. So each year there's this problem because of the reduction in mortgage tax receipts in Central New York.

Back in 1987, a similar experience was felt by Erie County through the Niagara Frontier Transit Authority, and the MTA, and back then, special provision was made for what we're asking for today, namely, taking one quarter of one percent more out of the mortgage

recording tax, not a new tax, but taking that one-quarter of one percent more and using it for mass transportation which is more of a long-term solution like Niagara Frontier Transit Authority and the MTA got in 1987, and this would provide the same thing that those transit authorities already have.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Num...

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

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

1529.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Leibell will be recorded in the negative on Calendar Number 1529.

Secretary will continue to call the controversial calendar, Supplemental Calendar Number 1.

THE SECRETARY: Calendar Number 1538, by Senator Larkin, Senate Print 6186, an act to amend the Judiciary Law, in relation to the establishment of a fee schedule.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

1546, by the Senate Committee on Rules, Senate Print 7755, an act to authorize the conveyance of a permanent and a temporary easement.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR PATERSON: Mr. President.

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

SENATOR PATERSON: Is Calendar Number 1538 still in the house? May I move to reconsider the vote and have an explanation on that bill.

ACTING PRESIDENT KUHL: Yes, it is in the house, Senator Paterson. We'll -- the motion is to reconsider the vote by which -

read the title.

THE SECRETARY: Calendar 1538, by Senator Larkin, Senate Print 6186, an act to amend the Judiciary Law.

ACTING PRESIDENT KUHL: Motion is to reconsider the vote by which the bill passed the house. Secretary will call the roll.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is before the house. The Chair recognizes Senator Paterson.

SENATOR PATERSON: May we have an explanation for that bill?

ACTING PRESIDENT KUHL: Senator Larkin, an explanation of Calendar Number 1538 has been asked for by Senator Paterson.

SENATOR LARKIN: Mr. President, Senator Paterson, this bill provides for the establishment of fee schedules for capital defenders on a county-by-county basis with a cap based on 150 percent of the highest district

attorney salary.

Last year, when this bill was passed, we had four areas established, four departments -- when the death penalty bill was passed this was part of it, as you remember, and we had four panels, a First Department, a Second, a Third and Fourth, geographical across the state and it was set, the fees that would be paid.

Now, the problem with these fees, if enacted, would result in defense assigned paralegals earning more than double the income of the chief prosecutors in some of our cases. This bill ties the fees paid by the capital defender's office to 150 percent of the highest paid D.A.'s salary, provides that fees shall be established on a county-by-county basis rather than a districtwide basis, to better reflect the salaries of the different counties, and I have a list -

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: By way of explanation to you and to the Majority, this bill was laid aside by Senator Leichter and Senator Leichter is not in the chamber because he's in a Rules Committee, so -- I'm sorry. He's in Environmental Conservation meeting, I'm sorry, not Rules, but he is in a committee.

ACTING PRESIDENT KUHL: Senator Paterson, Senator Leichter is standing back in the back of the room or moving across the back of the room.

SENATOR PATERSON: Thank you, Mr. President. He's here now and -

ACTING PRESIDENT KUHL: Do you yield to Senator Leichter?

SENATOR PATERSON: I'll yield to anyone, Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter, we're on debate on Calendar Number 1538. Senator Waldon had also asked to talk on the bill. Would you like him to talk while you get prepared?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: Mr. President, thank you very much. I would like the gentleman to yield to a question.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Senator Leichter, thank you for your deference.

Senator, I'm concerned about many issues regarding this, but let me just -

SENATOR LARKIN: I can't hear you.

SENATOR WALDON: I'll try again. I'm concerned about many parts of this, but let me just walk through with you as my guide one or two or three of them.

Why did you choose the district

attorney as a yardstick against which capital counsel will be compared?

SENATOR LARKIN: Very simple, Senator Waldon, because the taxpayers are paying on both sides of this. They're paying for both the prosecution and the defense.

SENATOR WALDON: I don't -- Mr. President, may I continue?

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: I -- with all due respect, Senator Larkin, I heard what you said but I don't understand it. You said that the people are paying on both sides. If that's the case, we could have chosen an outstanding criminal defendant or an outstanding firm which handles criminal defenses. Why the D.A., is the question?

SENATOR LARKIN: I think it all

boils down to one thing, Senator. We're talking here about the taxpayers' dollars that are available. We have -- we're not as -- ready?

SENATOR WALDON: Mr. President, may I continue?

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: What about a county which has a part-time D.A.? Is that salary the same as say someone like an outstanding district attorney, D.A. Hogan, in Manhattan* County, for example?

SENATOR LARKIN: My proposal is based on average salary of a district attorney in those four departments, and we're looking at the average salary, the average work week, and that's how we come up with this figure.

SENATOR WALDON: I thought the bill said the highest paid district attorney in each county, not the average.

SENATOR LARKIN: The highest paid salary based on the yearly average.

SENATOR WALDON: All right. Let's, if I may, Mr. President.

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator Larkin, what happens when there are extraordinary expenses incurred by counsel? Is there a proviso that there is a loophole to find monies to cover the extraordinary expenses if we are to provide adequate counsel for cases of this nature?

SENATOR LARKIN: Senator Waldon, this doesn't change any of the language that's in the current law that we enacted with the death penalty and these provisions. It only pertains to this part of the salaries that are going to be paid, the monetary payments to the capital defenders' people in relation to the district attorney and their salaries.

SENATOR WALDON: Mr. President, if I may.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President. I appreciate your indulgence, Senator Larkin, but I'm just wondering if what you said now just then was true, then the $175 per hour would have to cover extraordinary expenses. There's no proviso to go beyond the $175 per hour.

SENATOR LARKIN: Once again, Senator Waldon, nothing in our proposal changes anything in existence except the hourly salary that we feel should be paid.

SENATOR WALDON: Mr. President, may I continue?

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator Larkin, are you an attorney?

SENATOR LARKIN: No, I'm not. I'm a taxpayer.

SENATOR WALDON: I'm glad of that. I would hate to see that any of us that sit in this chamber are not taxpayers. I appreciate your attempt at levity. I do not find it one that would cause me to join you in laughter.

But as an attorney practicing in the area of criminal defenses where major cases are your forte on a daily basis, I believe that you would understand that this is not a gravy train, meaning defending these defendants, that this is not a situation where one can approach it cavalierly, that this is an all-consuming exercise and occupation and if such is the case, at least in my perception and I'm sure if you ask any of those in this chamber who practice in

that area, how can we limit the trial counsel if we mean to have an adequate judicial system where the defense and the prosecution are on a level playing field, how can we limit that individual counsel or counsels to $175 an hour and feel in a state of good conscience?

SENATOR LARKIN: Senator Waldon, there's nothing in my bill that says $175. I think you're referring to something that the Court of Appeals talked about last week. My bill specifically says 150 percent of that -- of the prosecuting district attorney's office.

I think we ought to look at this twice. What you're saying a level playing field is exactly what this legislation proposes. The district attorneys who produce the same amount of hours as the capital defenders' office, there's no cap on the number of hours they may put into the case. It's just the salary per hour. The district attorney gets paid a flat salary per year regardless if he works 120 or 160 hours a week.

SENATOR WALDON: Mr. President,

may I continue?

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator Larkin, you just made my case.

If the district attorney's office has extraordinary expenses in regard to a case, for example, if the case lasts two years, there's adequate wherewithal to cover the expenses attached thereto. If the D.A. needs to have transcripts as thick as all of these books on this front row, all of these books, there's adequate money to cover it. If the district attorney requires extraordinary investigators, there's adequate funds to cover it. If the district attorney needs to assign not five but 15 attorneys to a particular matter, there is adequate money to cover it, but the private counsel, especially under the manner in which you say we will approach this, if this becomes

the law of the state of New York, will be limited to whatever his resources are and, therefore, it can never, ever be a level playing field. It will be a slippery slope down into chaos for those who are defending the defendants because you will not commit adequate funds to cover the extraordinary expenses, and I want you to tell me how, in the equation that you set up -- by the way, I came to the $175 by doing math on 150 percent of, you know, what four district attorneys salaries are, et cetera and that's how we came to 175.

Tell me how it can be a level playing field concerning what I just said to you.

SENATOR LARKIN: Senator Waldon, I'll try one more time. You're talking something outside of the scope of my bill. The death penalty bill, with the capital defenders information in it covered everything that you're talking about. We're not changing any of that. It -- there is no less money, nothing about the less salary of the attorneys but there's more

funds for expert witnesses and everything else that's in the death penalty bill remains the same. We haven't changed that.

All we're saying in our bill is that the capital defenders, 150 percent of the district attorneys. We're talking about the taxpayers for a change around here. I hear all the time on the other side of the aisle we don't worry about the taxpayers. Well, we on this side of the aisle are worried about the taxpayers.

I represent small counties, a lot smaller than yours, 160,000 people. Our district attorney in Ulster County makes $60,000 a year, and what we're saying is we want a level playing field. We don't want the taxpayers to have to pick up this. We're not depriving them of anything and if you're going to tell me that there's a lawyer in this room or a lawyer in this state that refuses to work for 150 or '60 or 190, whatever it might be because of the 150 percent, so be it.

Let's make it a level playing

field for both the victim, the defendant and the taxpayers of the state of New York.

SENATOR WALDON: Mr. President, may I continue?

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: My dear colleague, Senator Larkin, I never ever said that any lawyer here or anywhere in this chamber or anywhere in this state would refuse to work for that amount of money. I don't know what they would do, because that is a personal decision, but what I do know is that, if one side has all of the resources and the other side is sucking wind, it's going to be very difficult to have a level playing field.

I understand the nature of what happens in your county, but I also understand that you represent 300,000 people and that's how

you got here, and I represent 300,000 people and that's how I got here, and that is what makes us equal in terms of debating issues on this floor. We came here, sent here by the same number of people, so your sense of responsi bility for 300 people -- 300,000 people in your area is no less than mine for the 300,000 people in my area.

And so I ask you one more time, is there any sensitivity to ensuring that defense counsel will have the resources made available to him or her to try these major cases beyond what you've said so far?

SENATOR LARKIN: Senator, all -

SENATOR WALDON: Mr. President, I apologize to my colleague, Senator Larkin. I was listening to counsel. I did not hear his last statement.

SENATOR LARKIN: I didn't say anything. Out of courtesy to you, you were talking to your counsel, I did not respond.

SENATOR WALDON: Thank you.

SENATOR LARKIN: I waited for you

to finish your conversation.

SENATOR WALDON: Would you be so kind?

SENATOR LARKIN: I'll just say this once more. What we're talking about here is the salary. We're trying to make this a level playing field for the taxpayers who are going to pay for the defense and for the taxpayers who support the county district attorneys.

All of the other assistance and facilities that were laid out in the death penalty bill which addressed specifically the CDOs remain the same. All we're saying is that paying of a salary of a lawyer that's going to do this work is going to be 150 percent of what the prosecutor, the county district attorney in those respective counties, laying out in the four panels.

SENATOR WALDON: Mr. President, I thank you and I thank Senator Larkin. I'd like to speak briefly on the bill.

ACTING PRESIDENT KUHL: Senator

Waldon, on the bill.

SENATOR WALDON: I recognize that Senator Larkin really believes in what he's espousing. I do not find him to be a duplicitous individual. However, I believe that what will happen is we're going to have a series of cases which will be reversed on appeal simply because adequate counsel will not accept the amount of money that's being required by this proposal.

So in the short run it may be effective in terms of dollarwise concepts, but in the long run this will be again a penny-wise pound-foolish move because it's just going to create a backlog of cases on appeal and eventually we may have to reverse ourselves and pay the piper -- pay what is adequate -- pay what good counsel will bear in terms of having adequate defense counsel for those people caught in this situation.

I doubt very seriously if my colleagues on the Republican side of the aisle will listen to my plea in terms of voting with

me on this issue. I would hope that somewhere your conscience is -- is at least touched by some of the things that we say on this side of the aisle, but those on the Democratic side of the aisle, I would hope that you would recognize that this is not in our best interests as a state, as a people, or as taxpayers, because in the long run it's going to cost us money and that is not a wise thing to do, to crate, for sure, failures that will cost us money.

I encourage us all to vote in the nay on this issue.

Thank you, Mr. President. Thank you, my colleagues.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, Senator Larkin, when you passed the death penalty bill we told you it was going to cost money, big bucks, because death penalty cases are extremely complex, extremely difficult and obviously extremely important because you're dealing with the ultimate sanction, the ultimate

penalty.

Now, when the bill was passed, there was an agreement. I didn't agree to it. I voted against it, but there was an agreement by the two houses and the bill that passed, the Volker bill, set up a system to fix fees for people who would handle these capital cases.

Now, there was set up an office of capital punishment or whatever the exact title is, but there was also a system set up under the auspices of that bill where, in each judicial division, an effort was made to try to determine what the hourly rate should be, and not surprisingly and I think quite correctly, down in New York City, that area where legal fees run very, very high for top-notch attorneys, where 300, $400 an hour is not an unusual fee by any means, there was a recommendation that the fee could be as high as $300 an hour.

As I understand it, the Court of Appeals said they would not agree or approve any fee higher than $175 a hour. That's where we're

at. Now, Senator Larkin, you come along and you're tryin' to change that deal, and you're doing it really based in a very myopic way.

I just urge you and suggest that talk to your son who is an attorney. He'll tell you what legal fees cost. They're very expensive and, if you want and you're going to have to have, it isn't if you want, you have to have constitutionally the most competent lawyers. You can't just grab somebody who's fresh out of law school who's trying to establish a local practice. Here, would you handle this capital case? No, you're going to have to go out and get extremely experienced attorneys, and experienced attorneys command very high fees and unless you do that, you're going to find that your death penalty cases, if they should result in conviction and the imposition of the death penalty, are going to be reversed.

So you want to put people to death. Your bill is going to result in those people that you want to put to death not being

put to death because there's going to be a constitutional infirmity. You're going to have to pay attorneys.

I know this is a one-house bill, but, nevertheless, I think it's -- it's unfor tunate that in this somewhat not underhanded but it's a backhanded way, you're changing what was agreed on last year.

Now, maybe what it is is you're finally realizing, Hey, this is going to be really expensive, and let me just tell you it's going to cost an incredible amount of money because death penalty cases are very, very, very expensive.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR VOLKER: Mr. President, unfortunately, I think I have to speak because I think my -

ACTING PRESIDENT KUHL: Would you like to explain your vote, Senator Volker? This is the last bill on Supplemental 1.

SENATOR VOLKER: I understand.

ACTING PRESIDENT KUHL: We're about ready to move to Supplemental 2 and you're very soon going to have on your desk the active list for the calendar.

SENATOR VOLKER: I'll be very brief.

ACTING PRESIDENT KUHL: Can we read the last section?

SENATOR VOLKER: I'll be very brief, don't worry.

Let me just say very briefly.

ACTING PRESIDENT KUHL: I've been here too long, Senator Volker.

Recognize Senator Volker, on the bill.

SENATOR VOLKER: First of all, no one here, least of all myself or Senator Larkin, has any intention of breaking the agreement that we made as far as the capital defenders and the death penalty when it was passed last year.

If you work out the formula as I understand in that bill, it comes out to about $175 a hour. Now, Senator, let me tell you

something about death penalty cases. First of all, it's a huge hoax that death penalty cases are so incredibly expensive. It's a part of the culture we have when we attempt to combat the death penalty. It's one of the things that the anti-death penalty people say to try to combat the death penalty. I understand that.

It's incredibly expensive in part because a lot of attorneys have milked the system in a lot of states, frankly, and we are not going to let that happen in New York. Does that mean that we are not going to allow attorneys or get proper repre... or people that are involved in death penalty cases to get proper representation? Absolutely not and, by the way, Senator Waldon, and I think maybe you don't realize, this bill has nothing to do with all the periphery, all the things that, other than the salary of the attorneys which you know, there was a lot of expenses that will be covered during these cases for dictatorial work and all the rest of the things which are all included and we have set aside a good deal of money for

capital defenders for that purpose.

Yes, Judith Kaye, the Chief Judge, has issued a ruling although she has not necessarily issued a ceiling but has made a recommendation for $175, but I don't think anybody in this chamber intends to go back on the agreement that was made last year to provide proper and adequate fees for people who represent individuals in these capital cases, but I think you must understand that I think it is -- it is inherent on us to make sure that we do not allow to happen in this state what has happened in some other states, and that is that because of the necessity to provide proper and adequate representation, that we end up with some attorneys taking advantage of that and taking advantage not only of the individuals who are on the death penalty cases, by the way, it's sometimes even the defendants, but the taxpayers, and that's what Senator Larkin is talking about and that's why he has this bill and that's what it was really all about.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT KUHL: Secretary will -

SENATOR WALDON: Mr. President.

SENATOR GOLD: Mr. President. I know that loving look.

Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you so much.

Mr. President, the only thing that bothers me is that there are -- there have been a number of bills this year which are not so much aimed at saving money, not so much aimed at doing anything social but basically what they do is they create unfair political inferences and basically set up enemies.

What is needed to defend a case has no relationship and shouldn't have relationship to the price you're paying for prosecutors. You've got private lawyers doing private work and you've got people who decide to go into government work, and I want to tell you

something.

We have lawyers who work for the Legislature, and there's a couple of them right behind me who, if they went into private practice, might do better for themselves financially. That has nothing to do with the price of tea in China.

There are people who go into D.A.s' offices. Some of them are part time, some of them are not, and the bottom line here is not whether we give college classes to prisoners when they can't get them if they're on the farm, et cetera, et cetera. The bottom line is making sure that, in capital cases, there is proper representation properly funded and, Senator Larkin, you are a gentleman. You're a nice man. This bill does the wrong thing in the wrong way.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, I've been out of the chamber for this debate, and I regret it, but it seems to me that putting a cap on the fees that would be paid to a lawyer in a capital case makes little sense. Lawyers have to carry overhead, they have to carry benefits. They have to carry assistants, none of which an assistant district attorney has to bear, and none of which, it seems to me, are taken into account in this bill and, for those reasons, Mr. President, I think this is a fair and reasonable amount. The Court of Appeals has done a great deal of work to decide on this amount to be paid to lawyers and, as I said at the time we passed the death penalty, if we're going to expose anybody to that penalty, we should be assured that they have the best lawyers in this state available.

This bill, if it some day became

law, would be a step away from that commitment, and I'm not willing to step away from it.

I'll be voting in the negative.

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

Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I'm going to vote yes, but I just want to mention a couple of things. It sounded, the way this bill was debated, that lawyers are simply mercenaries looking for the highest paid dollar that you can possibly get to handle certain cases.

People in Onondaga County on the assigned counsel list, handling murder cases, murder cases, not capital cases but murder cases, are earning $25 an hour out of court, $40 an hour in court. It's absolutely totally outrageous, but I believe that competent lawyers have stepped forward to handle these cases and the judges are very careful in making certain that the people who they assign these cases are competent.

So it's a very difficult bill. I'm going to vote yes, but I really really take offense at the inference made by some that lawyers somehow do not provide anything for the public good, that they're looking out to feather their nests because there's a lot of good lawyers who are making a lot less than they would normally make in regular cases in handling very, very serious cases as we -- as we speak today.

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

Announce the negatives and the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1538 are Senators Abate, Connor, Dollinger, Gold, Leichter, Montgomery, Paterson, Smith and Waldon. Ayes 50, nays 9.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Stachowski, why do you

rise?

SENATOR STACHOWSKI: Mr. President, could I have unanimous consent to be recorded in the negative on Calendar 1529, please.

ACTING PRESIDENT KUHL: Without objection, Senator Stachowski will be recorded in the negative on Calendar 1529.

Senator Abate, why do you rise?

SENATOR ABATE: Mr. President, I ask for unanimous consent to be recorded in the negative on Calendar Number 1529.

ACTING PRESIDENT KUHL: Without objection, Senator Abate will be recorded in the negative on Calendar Number 1529.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: For the same reason. I would like unanimous consent on 1529 to be recorded in the negative.

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

Calendar Number 1529.

Is there any other Senator wishing to record a vote at this time?

Senator Dollinger?

SENATOR DOLLINGER: Mr. President, would you also record me in the negative, with unanimous consent, on Calendar Number 1529.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Dollinger will be recorded in the negative on Calendar Number 1529.

Have a couple housekeeping matters, Senator Skelos. Return to motions and resolutions.

Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President.

First, there'll be a meeting of the Finance Committee tomorrow morning at 9:00 a.m., in Room 332.

Also, Mr. President, I was out of the chamber and had I been here when there was a

vote on Calendar Number 1526, Senate Number 7764, I am in the affirmative.

ACTING PRESIDENT KUHL: The record will reflect, Senator Stafford, that had you not -- that you were out of the chamber when the vote was taken on Calendar Number 1526 but had you been in the chamber you would have voted in the affirmative.

We are on motions and resolutions. Chair recognizes Senator Seward.

SENATOR SEWARD: Yes, Mr. President. On behalf of Senator Wright, on page 51, I offer the following amendments to Calendar Number 988, Senate Print Number 2029-C, and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 988 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Yes. Mr. President, on behalf of Senator Levy, please

place a sponsor's star on Calendar Number 68, 6-8.

ACTING PRESIDENT KUHL: At the request of the sponsor, Calendar Number 68 is starred.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I wish to call up Senator Kuhl's bill, Number 3981, having passed both houses and not delivered to the Governor.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 721, by Senator Kuhl, Senate Print 3981, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

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

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is restored.

Senator Marcellino.

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

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Maziarz.

SENATOR MAZIARZ: Yes, Mr. President. I'd ask unanimous consent to be recorded in the negative on Calendar Number 1332, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Maziarz will be recorded in the negative on Calendar Number 1332.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President,

I appear to have developed a torn rotator cuff and apparently I didn't get my hand up on Calendar Number 1529. With unanimous consent, I'd like to be recorded in the negative there too.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Paterson will be recorded in the negative on 1529.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. I ask unanimous consent to be recorded in the negative on Calendar Number 1332.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Alesi will be recorded in the negative on Calendar Number 1332.

Any other Senators wishing to record a vote? Hearing none, the Chair calls on Senator Skelos.

SENATOR SKELOS: Mr. President, as we move on to Supplemental Calendar Number 2,

there's still the good possibility that the pasta could be al dente tonight, so if we could take up Supplemental Calendar Number 2 non controversial.

ACTING PRESIDENT KUHL: Just for the benefit of members, the new active list on the regular calendar has been distributed. That is on your desk. You should be looking at that in anticipation that that will be next, but in the meantime we will return to, or go to Senate Supplemental Calendar Number 2.

Secretary will read the non-controversial reading of Supplemental Calendar Number 2.

THE SECRETARY: Calendar Number 1547, by Senator Velella, Senate Print 4708-B, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1548, by Senator Marcellino, Senate Print 5133 A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1549, by Senator Present, Senate Print 5787, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1550.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1551.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: An inquiry was just made of me by Senator Stachowski with regard to 1548, Senator Marcellino's bill, which just passed where there's a memo in opposition

from the City, but that's on the original print, and since they didn't bother to do anything on the "A" print I guess that they agree with the "A" print as does, I guess, all the unions that have filed. So I don't want you to recall the bill.

ACTING PRESIDENT KUHL: Thank you for your observations, Senator Gold.

Secretary will continue to call the non-controversial Supplemental Calendar Number 2.

THE SECRETARY: Calendar Number 1552, by Senator Smith, Senate Print 6080, an act authorizing the city of New York.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. 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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Hoblock moves to discharge from the Committee on Finance Assembly Bill 8816-A, and substitute it for the identical Third Reading Calendar 1553.

ACTING PRESIDENT KUHL: The Assembly -- excuse me. The Senate bill is high but the Assembly bill will be substituted. Secretary will read the title.

THE SECRETARY: Calendar Number 1553, by member of the Assembly Tocci, Assembly Print 8816-A, an act to amend the Education Law and the State Finance Law.

ACTING PRESIDENT KUHL: Bill is live before the house. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1554, by Senator Farley, Senate Print 6312, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1555, by Senator Seward, Senate Print 6338-A.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 1556, by Senator Hannon, Senate Print 6491-A, an act to amend the Criminal Procedure Law and the

Executive Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 8. This act -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1557, by Senator Volker, Senate Print 6528, an acted to amend the Civil Practice Law and Rules.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1558, by Senator Oppenheimer, Senate Print 6712 A, an act allowing Leonard J. Rosa and/or Michael W. Siciliano.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1559, by Senator Velella, Senate Print 6872, an acted to amend the Insurance Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1560, by Senator Libous, Senate Print 6932, an act to amend the County Law.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1561, by Senator Velella, Senate Print 7066-B.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of the acting Minority Leader, Senator Paterson.

THE SECRETARY: Calendar Number 1562.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill a side.

THE SECRETARY: Calendar Number 1563.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1564, by Senator Trunzo, Senate Print 7258-A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar number 1565, by Senator Stafford, Senate Print 7473-A, an act in relation to authorizing the village of Whitehall.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill the passed.

THE SECRETARY: Calendar Number 1566, by Senator Maltese, Senate Print 7507-A, an act to amend the Election Law.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Senator Leibell

moves to discharge from the Committee on Rules Assembly Bill Number 8854 and substitute it for the identical Third Reading Calendar 1567.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1567, by member of the Assembly Matusow, Assembly Print 8554, an act to repeal sub division 30 of Section 3.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1568, by Senator Velella, Senate Print 7581-A, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: There is a message of necessity at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 1568. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 1569.

ACTING PRESIDENT KUHL: The bill is high. Lay the bill aside.

THE SECRETARY: Calendar Number 1570, by the Senate Committee on Rules, Senate Print 7841, an act to amend Chapter 708 of the Laws of 1992.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: There is a message of necessity at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar 1570. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the non-controversial reading of Supplemental Calendar Number 2.

SENATOR SKELOS: I believe if we could move on to the controversial reading of Supplemental Calendar Number 2.

ACTING PRESIDENT KUHL: Secretary will read the controversial reading of Supplemental Calendar Number 2.

THE SECRETARY: Calendar Number 1555, by Senator Seward, Senate Print 6338-A, an act to amend the Tax Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator

Seward, an explanation of Calendar Number 1555 has been requested.

SENATOR SEWARD: Yes, Mr. President.

This legislation is very narrowly focused. It merely requires hotels that are operated by colleges and universities with more than one hundred rooms at these hotels to collect the normal sales tax from the non-exempt guests at these hotels.

The idea behind the legislation is that the customers who are guests at the hotels and not traveling on university or government or other exempt business should not derive the benefit from the institution's tax-exempt status.

Such hotels operating in the manner that they have been are in direct competition with privately operated hotels and this bill would merely clarify the law and establish a level playing field.

ACTING PRESIDENT KUHL: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, I'd like to point out that Cornell has a memo in opposition to this bill pointing out that some of the reasons that they are exempted from the sales tax law in particular is because operating their hotel on their campus is already significantly above what other hotels not functioning as educational program at the hotel that they have and that they have additional kitchen space and facilities, for example, that drive the costs up because of the teaching capacity of the hotel and that the staff of the Statler have instructional responsibilities to the students at the School of Hotel Administration, and these duties increase their compensation levels substantially above comparative hotels not engaged in the education of students, and the list goes on about all the responsibilities and details that make that hotel more expensive to operate, and the reason that this hotel has always been exempted from sales tax were these various educational responsibilities.

So I'd have to ask if the sponsor of the bill would yield to a question, please.

ACTING PRESIDENT KUHL: Senator Seward, do you yield to a question -

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: -- from Senator Stachowski.

SENATOR SEWARD: Certainly.

SENATOR STACHOWSKI: Senator, were you aware of all these additional costs incurred by the operation of this hotel because it is an educational facility and that that was probably the reason that it was exempted from the Tax Law in the first place?

SENATOR SEWARD: Well, Mr. President, I represent Ithaca, and the Cornell area is in my district, and I am aware of the memo issued by Cornell, and I believe, in all due respect for Cornell, and there's not a greater supporter of Cornell than myself in this chamber. It's a great institution, and I certainly would do nothing to impair its fine - it is a fine institution.

I am not, in sponsoring this legislation, doing anything that would negatively impact Cornell University. This is not a tax on Cornell University or its proceeds. It is merely having the sales tax imposed on the non-exempt guests at the hotel at Cornell, and it would not in any way affect Cornell funds.

SENATOR STACHOWSKI: Would the Senator yield for another question?

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR STACHOWSKI: Then I mean my question is, if it doesn't have any effect, then why would Cornell University care whether you have this bill or it doesn't, if it doesn't affect their funding, their operation, and only affects guests that aren't -- that shouldn't be exempt?

SENATOR SEWARD: Well, Mr.

President, I think that would be a question you'd have to ask the Cornell people. I -- we have a honest difference of opinion here with Cornell and, as I say, I think their criticism is misdirected because it will not impact their funds in any manner.

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

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR STACHOWSKI: Are there any other hotels on any other campuses in the state that would be affected by this legislation?

SENATOR SEWARD: The only one that could potentially be affected, and I'm not sure of the number of rooms at the hotel, would be possibly the hotel at Paul Smiths College.

SENATOR STACHOWSKI: Thank you.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: I'm surprised at the debate. As one of the people who a New York Times reporter who never spoke to anybody indicated, I guess, I was listed as part of the Cornell connection, and I can tell you that I got no call from Hank Dullea or anybody else, and I'm surprised to even hear there's a memo. I would assume that Senator Seward and I, as part of the Cornell powerhouse, would have certainly heard from them and not having heard such, I'm going to support the bill. I assume it's necessary.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1556, by Senator Hannon, Senate Print 6491-A, an act to amend the Criminal Procedure Law and the Executive Law.

SENATOR HOLLAND: Lay the bill aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1561, by Senator Velella, Senate Print 7066-B, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Senator Velella, an explanation of Calendar Number 1561 has been asked for.

SENATOR VELELLA: This bill - Mr. President, this bill is a bill that deals with technical relationships between insurers. It removes certain provisions that were put into the law in the 1980s when we had an insurance crisis in this state, and we put a battery of consumer protections into the law across -

covering all insurance transactions.

This will eliminate some of those consumer protections in sophisticated trans actions such as mortgage guarantee insurance and credit insurance which is dealt with amongst companies and insurers. There will no longer be, if this bill passes, the need for each company to notify the other of cancellations and non-renewal protections that we maintain in the other consumer transactions. These are consumer protections that are given in commercial relationships.

The reason for doing this is that very few states, if any, have this protection in the law for commercial transactions, and it will -- it is giving New York State a tougher time than its competition in getting these types of transactions to occur within our state.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I won't ask Senator Velella a question. I'm just going to reflect on what I'm understanding

and if Senator Velella cares to comment, he can, but I guess what Senator Velella is saying is that in the case of mortgage guarantees and credit insurance, they don't really involve much of a consumer presence or activity in those transactions and, therefore, the consumer protections that we granted when we passed the sort of omnibus bill in 1986 don't really have much meaning and, therefore, we're just alleviating what is an unnecessary duty on the part of companies to inform each other.

I assume that's the reason, and if that's the case, then there's much less consumer impact than I might have thought when I first looked at this bill, then I guess this bill is fine.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: If Senator Velella would yield, please.

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

SENATOR VELELLA: Yes, Senator Leichter, I certainly will yield and try to do my best to answer.

SENATOR LEICHTER: Senator, maybe I missed something in your explanation, in which event I apologize, but you're adding as forms of insurance which are excepted from the regulation of the department or some of the other supervis ory functions that the Department now pursues and, as I read it, policies providing mortgage guarantee or credit insurance.

Now, are you saying that only inter-company or does this cover all mortgage guarantees or credit insurance?

SENATOR VELELLA: The way I would read it is that it would carry all mortgage guarantees and credit insurance. Credit insurance is more of the technical one. Mortgage guarantee is not as sophisticated but certainly is something that is provided for

within the insurable community.

SENATOR LEICHTER: Right. And, Senator, I understood you to say that these are transactions that rarely touch the common consumer. I mean a mortgage guarantee.

SENATOR VELELLA: A blanket -

SENATOR LEICHTER: Let me just finish the question. A mortgage guarantee, it would seem to me, is extremely common. That's something that most people in this state who are home owners are going to have occasion to get.

SENATOR VELELLA: It does not affect the individual policy, company to policy. It affects the bundling and the groups that purchase these en masse.

SENATOR LEICHTER: All right. So you're saying, and that's why I asked you -

SENATOR VELELLA: And this section applies to that. This section we amend applies to the mass commercial sections.

SENATOR LEICHTER: O.K. So then your answer to my previous question was, it does not cover all mortgage guarantees. It only

covers mortgage guarantees where there is a bundling of mortgage and you're selling it to another company. Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland, that completes the calendar, Supplemental Calendar Number 2, with the exception of Calendar Number 1556, which you laid aside temporarily. What's your desire now?

SENATOR HOLLAND: Could we now, Mr. President, go to the non-controversial for the supplemental active list, please.

ACTING PRESIDENT KUHL: We'll now go to the supplemental active list which is on

your regular calendar, the yellow calendar.

Secretary will call the non-controversial supplemental active list on the Calendar Number 62.

THE SECRETARY: Calendar Number 115, by Senator Volker, Senate Print 587-A, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is a message of necessity at the desk. Motion is to accept the message of necessity which is at the desk on Calendar Number 115. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Secretary will read the last section.

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

November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill the passed.

THE SECRETARY: Calendar Number 132, by Senator Marcellino, Senate Print 5134, an act in relation to granting.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 171, by Senator Holland, Senate Print 2470-A, an act to repeal section 147 of the Social Services

Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Secretary will lay the bill aside.

THE SECRETARY: Calendar Number 661, by Senator Cook, Senate Print 6882, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 19. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 667, by member of the Assembly Farrell, Assembly Print 8533-A, an act to amend the Domestic Relations Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 58, nays 1, Senator Tully recorded in the negative.

THE SECRETARY: Calendar Number 736, by Senator Santiago, Senate Print 2889-B, an act to authorize the city of New York.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. 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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 907, by member of the Assembly DiNapoli,

Assembly Print 8856, an act to amend the Executive Law and the Real Property Tax Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 926, by Senator Cook, Senate Print 6275-A, an act to amend the General Municipal Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first day of July.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1000, by Senator Volker, Senate Bill 1262-B.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar 1009, by Senator Maziarz, Senate Print 7312-A, an act to amend the Public Health Law and the Mental Hygiene Law.

ACTING PRESIDENT KUHL: Secretary will read the last section. Lay the bill aside.

THE SECRETARY: Calendar number 1066, substituted earlier today, by the Assembly Committee on Rules, Assembly Print Number 10,694, an act in relation to authorizing and directing.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1080, by Senator Wright, Senate Print 6733, an act to amend Chapter 541 of the Laws of 1991.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1081, by Senator Wright, Senate Print 6734-A, an act to amend Chapter 914 of the Laws of 1984.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1110, by Senator Levy, Senate Print 2817, an acted to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1313, by member of the Assembly Weisenberg,

Assembly Print 1465, an act to amend the Public Health Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: The roll call is on Calendar Number 1313, Assembly Print 1469, or excuse me, 1465. Negatives please raise their hands. Record the negatives. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1313 are Senators Cook, Hoblock, Leichter, Onorato, Smith and Tully.

SENATOR GOLD: Lay it aside, please. Could we lay that aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Stachowski, why do you

rise?

SENATOR STACHOWSKI: Is bill, Calendar 1081, 6734-A still in the house?

ACTING PRESIDENT KUHL: Is there anything still in the house? No, it's not, Senator Stachowski. It's on its way to the Assembly.

SENATOR STACHOWSKI: Well, let it go; it's not that important. O.K.

ACTING PRESIDENT KUHL: Secretary will continue to call the non-controversial Sup plemental 2 calendar,supplemental 2 active list.

THE SECRETARY: Calendar Number 1380, by Senator DiCarlo, Senate Print 6611-A, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1404, by Senator DiCarlo, Senate Print 2481-B, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1479, by Senator Velella, Senate Print 7729.

SENATOR ONORATO: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Holland, that completes the non-controversial reading of the

supplemental active list on Calendar Number 62.

SENATOR HOLLAND: Yes, sir. Mr. President, now can we do the controversial portion of this calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial reading of the supplemental active list on Calendar Number 62 commencing with Calendar Number 171.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator -- let's get the bill before the house.

THE SECRETARY: Calendar Number 171, by Senator Holland, Senate Print 2470-A, an act to repeal section 147 of the Social Services Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Holland, an explanation of Calendar 171 has been requested by Senator Paterson.

SENATOR HOLLAND: Mr. President, this bill does not impose any new laws or penalties. The bill simply moves the penalties for food stamp fraud that are currently in the

Social Services Law to the Penal Law.

The New York County District Attorney's Office recommended this change in order to enhance the ability of prosecutors to prosecute instances of food stamp fraud since the courts and D.A.s are more familiar with the Penal Law than they are with the Social Services Law.

ACTING PRESIDENT KUHL: Senator Paterson. Senator Paterson, excuse me just a minute. It's kind of noisy in here. I think maybe we can shorten this up if we can hear each other. Members, please take their chairs, take the conversations out of the room.

Senator Holland, do you yield? Senator yields.

SENATOR PATERSON: Senator Holland, other than the New York County District Attorney's Offices, has there been any outcry to have this -- this designation switched by any place else around the state?

SENATOR HOLLAND: No. I believe they're the only one that requested it, Senator,

but we did check with other district attorneys, people in the business, and it did -- they thought it would be easier for them, for people to recognize it in the Penal Law rather than overlooking it in the Social Service Law, more than the -- just the Manhattan District Attorney's Office although there were no specific requests.

SENATOR PATERSON: All right. Thank you very much, Senator.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1000, by Senator Volker, Senate Print 1262-B, an act to amend the Public Health Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: I would remind the members if you have a bill on the calendar, we're trying to get through this, it's going to just delay the process and you may lose a bill on the way if you're not here to defend it or present it to your fellow colleagues.

SENATOR HOLLAND: Lay aside temporarily, please.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1009, by Senator Maziarz, Senate Print 7312-A.

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

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

THE SECRETARY: Calendar Number 1313, by member of the Assembly Weisenberg, Assembly Print 1465, an act to amend the Public Health Law.

ACTING PRESIDENT KUHL: Somebody requesting an explanation of Calendar 1313?

SENATOR GOLD: Yes, please.

SENATOR HOLLAND: Mr. President. Mr. President.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 1313 has been asked for by Senator Gold.

SENATOR JOHNSON: Mr. President, the title of this bill is fluoridation, but what it really says is that we believe in the democratic system. We believe that the elected officials in the various communities should make decisions on behalf of their constituents and not a non-elected bureaucrat who has a particular mission which may not be in accord with the wishes of the members of that community.

So this permits decisions on fluoridation of water to be made by the local elected body.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah, I want to

thank Senator Johnson. I had noticed very quickly that there was some support for the bill and also some opposition, including the office of the mayor, and I wanted to read the memo since they apparently took the time to file one today. But in reading the memo by the office of the mayor, apparently their opposition is the fact that it gives this authority to the city Council which is the locally elected body in our city, and if the memo of the mayor is not necessaryily for the good of the people but just a power play between him and the City Council, I think I can support the legislation.

Thank you.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Senator Cook, to explain his vote.

SENATOR COOK: Explain my vote. Mr. President, normally if there were a home rule bill, I would certainly be supportive of it. The problem is that, if there is a water system that's serving more than one municipality it's going to be pretty difficult to sort out the water going to that municipality from that which goes to everybody else which means that one municipality could then deprive all the other municipalities that might be served by the same system from having fluoride in their water, so I think that if it were a home rule bill, I would certainly support it, but I really don't see it in that -- in that light, and I'm voting in the negative.

ACTING PRESIDENT KUHL: Senator Cook will be recorded in the negative. Read the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar 1313 are Senators Cook, Goodman, Hoblock, Kruger, Leichter, Libous,

Marchi, Onorato, Rath, Seward, Smith and Tully. Ayes 47, nays 12. Also Senator Marcellino. Ayes 46, nays 13.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to Calendar 1009, Senator Maziarz' bill and then do Calendar 1000, Senator Volker's bill, please.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar 1009.

THE SECRETARY: Calendar Number 1009, by Senator Maziarz, Senate Print 7312-A, an act to amend the Public Health Law and the Mental Hygiene Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Maziarz, an explanation of Calendar Number 1009 has been requested by Senator Montgomery.

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

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

Secretary will read the title to Calendar Number 1000, by Senator Volker.

THE SECRETARY: Senate Print 1000, by Senator Volker, Senate Print 1262-B, an act to amend the Public Health Law, the Multiple Dwelling Law, the Multiple Residence Law and the Executive Law.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of Calendar Number 1000 has been requested.

SENATOR VOLKER: Mr. President, since 1975, Assemblyman Arthur Eve and myself have been attempting and have been dealing with a problem that has occurred in this state for many years relating to lead contamination.

I think many of us are aware that we have made huge strides in this state, not reported a great deal because good news is sometimes not reported, but we have made great

strides in cleaning up lead, lead gasoline and all sorts of areas.

One of the areas that remains a big problem is the issue of lead abatement in housing across the state, particularly frankly in New York City, and we passed a bill here some years ago, Assemblyman Eve and myself, which began the process of dealing with this issue.

The major problem that has occurred is that there is a federal program for lead abatement but, in order to access that federal program, the state needs to develop a training -- lead abatement training and certification program.

The primary purpose of this bill is to provide that training and certification program. What does that program mean? For instance, as a starter, it means $6 million which has been proposed to be given to the city of Albany would flow, 3.75 million to the city of Buffalo would continue to flow and 6.7 million to the city of New York with a considerable amount of money, more money, to be

available during the coming year.

We have, in the last two weeks, significantly amended the bill that has been on the calendar for about a month and a half or two months. We have worked with the Health Department, we have worked with housing people, we have worked with all sorts of people in attempting to amend this bill to deal with, number one, the certification, the ability to clean up lead wherever possible without, by the way, creating such havoc as they did in Connecticut and Massachusetts, particularly in Connecticut where they passed a wonderful bill made all sorts of announcements that they were doing a wonderful job and then couldn't do anything because they had overkilled.

SENATOR LEICHTER: Mr. President. Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter, excuse me. Why do you rise?

SENATOR LEICHTER: Yes. Would Senator Volker yield, please.

ACTING PRESIDENT KUHL: Yes.

Senator Leichter, before we do that, could we get a little order in the house? Have a little order in the house, please. We're getting very, very close. It's liable to be very confusing because we're going to be bouncing around supplemental calendars and regular calendars, so listen tight.

Senator Volker, do you yield to Senator Leichter.

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator Volker, I appreciate what you're trying to do and certainly lead-based paint is a very serious problem and affects hundreds of children and maybe thousands of children, and we certainly need to act against it, and I applaud your trying to do this.

I have one concern. The city of New York has a number of laws dealing with the removal of lead paint. It has a very active program. I want to make sure that there is

nothing in your bill that in any way preempts the City's program and imposes less strict requirements as to the removal of lead paint.

SENATOR VOLKER: One of the major arguments, the disputes that went on during this debate, and I'll be very honest with you was that very issue and the decision was, I think, by the Health Department, the advocates and everybody involved was that there should be no preemption, so there is nothing in this bill that says any stronger attempts by any municipality or any -- any individuals is preempted.

In fact, the City, by this bill, will now be able to access additional money and be able to use their own rules and will be able to develop more people, more certified training people and will be able to do a much better job of trying to clean up lead themselves, but there's nothing in this bill that preempts the city of New York.

SENATOR LEICHTER: Well, Mr. President, if Senator Volker will continue to

yield.

SENATOR VOLKER: Sure, sure.

SENATOR LEICHTER: Senator, is there language in this bill which states that nothing herein is intended to preempt, because my concern is that, while that may not be your intention, the bill doesn't state so and there is right now going on a real debate within the city of New York as to the nature of the enforcement of laws on lead-based paint.

I want to make sure that we're not going to have somebody go to court and say the City's laws are now overridden by this law. Well, you shake your head and say that -

SENATOR VOLKER: Senator, Senator, please. Would you -- just a second, Senator. I mean let's -- the City, by the way, realizes this already, and there's been a discussion with the City, and their concern is that this may broaden their exposure in a way because you know that there's ambivalence going on in the city of New York. They want to move ahead but they don't. The City Council has been

arguing on this for three years.

Senator, there is absolutely nothing in this bill that will cause the city of New York rules to be preempted. In fact, some of the rules in this bill, by the way, will greatly assist the City in dealing with the lead-based problem, but there is nothing in this bill and I know of -- the City, by the way, has been looking at this bill, and the City Council, as you know, has been debating this for three years. In fact, one of the problems that we had in trying to get this set up was that many of the health people were waiting for the City to decide where it was going.

What this bill does, it does not impact on the city of New York directly as far as what they have done, but it will provide certified people that will be able to do these kinds of -- kinds of clean-up jobs. It will allow, in fact, voluntary groups to help participate also, because it sets up a training program for people who are not certified trainers but who can help out in certain cases.

It also provides a fee schedule and it will access the money that is absolutely necessary for the city of New York as well as other cities in this state to be able to really do a proper program.

SENATOR LEICHTER: Mr. President, if Senator Volker continues to yield.

SENATOR VOLKER: Sure.

SENATOR LEICHTER: Senator, I have no question but there's a lot of good in this bill, and I accept what you say, that this will allow us to access the federal monies. I just want to make it perfectly clear that the city of New York will not be negatively impacted and my question is, you say you've reviewed this with the City. Do they support the bill?

SENATOR VOLKER: The City has not said one way or another, but they have not, as I understand it, talking today to the Health Department people and to -- to the various people involved, they have not said that they oppose it either.

SENATOR LEICHTER: Well, Senator,

I -- if you continue to yield.

SENATOR VOLKER: Sure.

SENATOR LEICHTER: Certainly not your responsibility and I think Senator Gold before, has expressed, you know, some concern that there are important bills affecting the city of New York and we don't know what positions the city of New York has taken.

Senator, I will accept your word that this does not preempt any of the City's laws and justifies so that we're perfectly clear so that we have the legislative intent, I will ask you, is it your intent by this in any way to override local laws anywhere in the state? That's the question.

SENATOR VOLKER: The answer is no, it does not intend in any way, shape, form or manner to override local -- local laws and rules.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Excuse

me. Senator Gold, why do you rise?

SENATOR GOLD: Well, Mr. President, I'm rising because this is a "B" print. I have a memo from EPL on the "B" printed. They have, as we now sometimes smile about but it's really serious, three chimneys on it. They obviously think that it is a serious matter and, while my friend and the gentleman who I respect as much as anyone in this house, Senator Leichter, may casually make reference to the City, I'm annoyed. I'm annoyed. I'm annoyed at wasting taxpayers' money, if the City doesn't do its responsibility and has an office up here.

I can't believe that EPL believes that this is a danger in the -- to the extent that they declare it and we have nothing from the city of New York for guidance, and I think they ought to close up that shop. It's ob viously a no-show operation and save the City some money.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT KUHL: Senator

Volker.

SENATOR VOLKER: I just want to point out, this bill is supported by the New York State Health Department, the Medical Society of New York, the New York State Association of County Health Officials, Campaign for Healthy Children, Statewide Youth Advocacy.

I just thought that should be on the record.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect December 31.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Hoblock to explain his vote.

SENATOR HOBLOCK: Mr. President, thank you.

I just wanted to thank Senator Volker for bringing this bill forward and all of the work that he has put in to produce this

product.

This is a very significant issue in many parts of the state and here in Albany County and particularly the city of Albany, it's something that they've been looking for for some time in order to access the $6 million that they would otherwise be eligible for to take on this lead abatement project in the city.

So, again, Senator Volker, I want to thank you for working this legislation through. Looking forward to it being signed into law to benefit those of this city and so many others across the state.

ACTING PRESIDENT KUHL: Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, as much work as Senator Volker and Assemblyman Eve have done on the subject, this particular bill is opposed by NYPIRG and EPL. They give it three chimney stacks, and they must really be upset about this bill. Usually they reserve three chimney stacks, but these chimney stacks are red, and I think the reason that they're so

upset is that there is an exemption for what's called largest buildings and what this really does is exempt a whole lot of areas from the lead abatement and from the lead-based activity work, and also there's a feeling that the legislation has so many exemptions in it that it's going to be void for vagueness.

The bill has been passed in the Assemblyman by Assemblyman Eve. It is accept able to those groups, and we feel that perhaps a bill of similar strength might pass the Senate at a future date. We are in favor of what Senator Volker is trying to do, and that is to establish an effective lead-based abatement program, and remove hazardous conditions that are caused by lead in many buildings all over our state.

SENATOR LAVALLE: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, you're voting in the negative?

SENATOR PATERSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator

Paterson will be recorded in the negative.

The Chair recognizes Senator LaValle to explain his vote.

SENATOR LAVALLE: Mr. President, I would like for the record to -- since Senator Gold raised the issue of the EPL memorandums and -- I think it's important for the record to show that on the initial bill, S.1262, the memorandum in opposition after Senator Volker made a -- made major changes and major amendments in the bill, the memorandum that was put out today on Senate Bill 1262-B is exactly the same memorandum.

So it is apparent that EPL - word for word, the memorandums are the same - it appears that someone at EPL did not read the amended bill and did not understand that there was a change, and so with that, Mr. President, I am voting in the affirmative on Senator Volker's bill.

ACTING PRESIDENT KUHL: Read the negatives. Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 1000 are Senators Abate, Connor, Dollinger, Gold, Goodman, Hoffmann, Kruger, Leichter, Levy, Marcellino, Oppenheimer, Paterson, Smith, Tully and Waldon. Ayes 44, nays 15.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Senator Maziarz.

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

SENATOR MAZIARZ: , Mr. President, I'd like to request unanimous consent to be recorded in the negative on Calendar Number 661, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Maziarz will be recorded in the negative on Calendar Number 661.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to the first active list of the

day, Calendar Number 1512, Senator Present's bill. Is there a message at the desk?

ACTING PRESIDENT KUHL: We'll return to Calendar Number 62, first calendar of the day, the yellow back -- or bound cover. I'll ask the Secretary to read Calendar Number 1512, by Senator Present.

THE SECRETARY: Calendar Number 1512, by Senator Present, Senate Print 7648-A, an act legalizing, ratifying and confirming.

ACTING PRESIDENT KUHL: Senator Holland, there is a message of necessity at the desk.

SENATOR HOLLAND: I move we accept the message, please.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. There's

a local fiscal impact note at the desk.

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Libous, why do you rise?

SENATOR LIBOUS: Mr. President, could I have unanimous consideration to be recorded in the negative on Calendar Number 667, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Libous will be recorded in the negative on Calendar Number 667.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

My apologies. Earlier I stood up and asked to be recorded in the negative on Calendar Number 661. I meant 667.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Maziarz' vote in the negative on Calendar 661 will be reversed and placed in the affirmative. Senator Maziarz will be recorded in the negative on Calendar Number 667.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like to be recorded in the negative on Calendar Number 1000.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 1000.

Senator Maltese.

SENATOR MALTESE: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 667.

ACTING PRESIDENT KUHL: Without

objection, hearing no objection, Senator Maltese will be recorded in the negative on Calendar Number 667.

Senator DiCarlo, why do you rise?

SENATOR DiCARLO: Mr. President, I'd like unanimous consent to be recorded in the negative on Calendar 667.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator DiCarlo will be recorded in the negative on Calendar Number 667.

Senator Holland, we have a couple of housekeeping things that we could take up at this time.

SENATOR HOLLAND: Please do the housekeeping.

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

In the meantime, Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, Senator Markowitz has been asking and our

counsel has really not been helpful, so we thought maybe you could ask. We just want to know what the current schedule is right now because Senator Markowitz would like to know. I don't know if anyone else does, but we'd just like to alleviate some of these concerns because we haven't been getting answers, and this is not the Majority's fault. This is an in-house thing. Usually we don't air our dirty laundry. In fact, now that the Republicans do that so much, we wouldn't think of doing it, but we just need to know what the current schedule is.

ACTING PRESIDENT KUHL: Senator Paterson, I guess the Chair would have to know which counsel you're getting absolutely no cooperation or answers from before I can respond adequately, but in the meantime, we are on motions and resolutions.

The Chair recognizes Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

On behalf of Senator Leibell, I

wish to call up his bill, Print Number 6134, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 490, by Senator Leibell, Senate Print 6134, an act to amend the Public Authorities Law.

ACTING PRESIDENT KUHL: Senator Tully.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: Senator Tully.

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

ACTING PRESIDENT KUHL: The

amendments are received and adopted.

Senator Tully.

SENATOR TULLY: Mr. President, on behalf of Senator DeFrancisco, on page 34, I offer the following amendments to Calendar Number 1165, Assembly Print Number 7412 and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 1165 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, I wish to call up my bill, Print Number 4014-B, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 673, by Senator DiCarlo, Senate Print 4014-B, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Senator

DiCarlo.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: Senator Saland.

SENATOR SALAND: Mr. President, I'd like to request unanimous consent to be recorded in the negative on Calendar 667, and if I may also on Calendar 13... or do I do that as a separate motion?

ACTING PRESIDENT KUHL: You can ask. 13... what was that?

SENATOR SALAND: 1313.

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

Number 667 and 1313.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to the supplemental active list and do the last bill, Calendar 1479, Senator Velella's bill, please.

ACTING PRESIDENT KUHL: We'll return to the supplemental active list - supplemental active list, which are bills on the regular calendar, Calendar Number 62, and we'll go to Calendar Number 1479.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1479, by Senator Velella, Senate Print 7729, an act to amend the Public Health Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Velella, an explanation has been asked for by Senator Paterson.

SENATOR VELELLA: Mr. President, this bill is a bill which has been worked on for a long period of time. We've passed a version

of it two or three times now in this house. It's been called the baby AIDS bill, and it is a bill that we have before us now which has been negotiated by the Assembly and the Senate and the Governor's office and has three-way agreement on it. It just passed the Assembly a few moments ago by a vote of 123 to 20.

What the bill does is it allows the Commissioner of Health to establish a comprehensive program for newborn testing of HIV and HIV antibodies. As you know, the state of New York now tests babies for the presence of the antibodies but never reveals to the mother or to the doctor the results of that test. The test is kept for statistical purposes.

This bill n now directs the health commissioner to act on the results of those tests that are being given and to let the mother know, to let the treating physicians know so that we can maximize the protection for that child who may have tested positive for the antibody and will not be getting the full blown disease unless the mother reintroduces that

virus to her and also if the child is infected by the HIV virus, will allow the doctor to know that the specialized treatments that are necessary for that child will be provided immediately to prevent the very damaging pneumonias that can develop and the normal childhood diseases that can be fatal to an HIV child, will be able to be protected for that child.

We give them special attention. They will be identified by the doctors. The parents will know about the status of the child, and it will be a very positive step toward getting a handle on this disease and preventing children from being infected by their parents.

It's not very often that we can pass legislation in this house that we know absolutely will save lives. Once this bill is in place and once the health commissioner promulgates these rules, babies' lives will be saved. This is not a remote possibility. It's a reality.

I could not stand before you and

ask you to vote for this bill without paying a tremendous amount of tribute to Assemblywoman Mayersohn who has been -- who is here in the chamber with us who has been a never-ending force in the fight for these young children.

From day one, she has made this her dedication. Today is a day that we should all be honoring her in the tremendous battle that she has put forward to save the lives of these young people.

With that, I will yield to any questions and I move the bill.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill. I'm sure Senator Velella is aware of some of my concerns based on debates we've had in this chamber in February 1995, June 1995, March 1996 and today.

On those occasions, what I have tried to point out to the members is that proponents of this legislation who are quite well intended nonetheless seem to feel that the

objection comes from an issue of confidentiality.

The objection that I'm advocating here today comes from an issue of consent, that if we had the informed consent and we had the voluntary treatment of mothers who are having their newborns tested, what we would have is a greater cooperation between the -- between the parents and the actual infant who we are hoping to help through our health care system. We are going to need this parent in order to provide whatever assistance we can to the newborn, and creating a scenario of mandatory testing is not going to give us this opportunity.

Now, due to a lawsuit that was brought before the Department of Health, there are new regulations that have been promulgated within the last month and in Albany Medical Center, statistics are already showing that 90 percent of women who are in this situation where they have newborns and the women are testing positive, the women are deciding to find out what the results of that test are, and that

really comes from a long education on this issue and a totally different point of view than might have existed some time ago.

And so because of that, to now take this entire issue as a Legislature and dump it completely on the Department of Health and the commissioner when the Governor has stated that he will direct the Commissioner of Health to establish mandatory testing, in my opinion, is the Legislature exercising a misfeasance of its duty to address this very important issue that affects people in a number of ways.

I actually prefer the legislation that Assemblyman Mayersohn -- Assemblymember Mayersohn and Senator Velella had offered last year because, even though I disagreed with it and I spent about an hour and a half disagreeing with it quite strenuously, the fact remains that at least we would have a clear and delineated pattern of what the testing would be.

Now we have really relinquished our authority as a Legislature because we couldn't find a common ground for which we could

all agree, and we have shifted to the Department of Health allowing them to promulgate all regulations on the area and really allowing for the Governor to direct the commissioner for what would inevitably be mandatory testing.

What we need to look at are some issues that would establish perhaps presumptive Medicaid relief for those individuals who are affected. The fact that a person tests positive to the HIV antibody does not guarantee that there will be any intervention on -- to the level of the health care that they need to receive. We have to make sure that the money that we're funding from this does not take away from other areas so that we're just rearranging deck chairs on the Titanic dealing with the very seriously ill and those who are in need of responsible and very thorough care, and what we also have to make sure is that the fact that we do recognize that there are individuals testing positive for the antibodies does not mean that all will go on to acquire the HIV virus and inevitably the full-blown AIDS disease and that

there are a number of ways to treat this and that we do not have a fool-proof treatment that exists at this particular time.

I think if we had, it would certainly urge us to take an action closer to what Assemblymember Mayersohn and Senator Velella have offered us today, but I think that in the end, the Legislature has not lived up to our responsibility and have really just taken this whole issue because we couldn't settle it among ourselves and allowed the Department of Health in a compromise that I think will not inure to our benefit because there are a number of very intricate issues that must be resolved and to leave that totally in the hands of the Department of Health when it has that kind of scrutiny and micro-management in it on this particular subject, in my opinion, is really beyond the scope of what should be our authority today.

What we need to do is to address this issue, and what we really need to do is to find some workable, sensible and achievable ways

to provide assistance for newborns.

Again, where we have really believed in -- where we have really believed in providing these women with what is really the requisite information that they need to establish a voluntary system, that has worked, and we certainly think that it will continue to work and the statistics will continue to rise if we just give it a chance because in the end, just knowing that someone has tested positive for the HIV virus at birth is not going to guarantee any cure. It's not going to guarantee even the type of -- the type of care that's needed because we're going to need the parent involved, and if the parent is in the state of denial that we've seen so many mothers of newborns that are in at this particular time, then in those situations we're not going to get the cooperation that we desire.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Mr. President, I think Senator Paterson as always was extremely

eloquent and perceptive. I disagree with him in one respect. I think this is an issue for the health professionals and not an issue for the Legislature, and I've thought so all along.

You know, I criticized the Legislature and this body because at times we want to act like police commissioners. We act like engineers. We want to be judges. Then we want to be doctors, public health experts. This is a public health issue and it ought to be treated and considered by the professionals.

My problem here is that this isn't being decided by the professionals. This isn't being decided by the Health Department. This is being decided by Dr. Pataki because he has said, I will direct you to require that you inform the mother in the event that the infant tests positive.

I think if it had been left to Commissioner DeBuono, she would not have done this, because I remember on her confirmation, Senator Velella, you asked her specifically was she in favor of your bill, and you were quite

exercised when she wouldn't answer. She -- you know, she wasn't -- I think it was pretty clear to me that she was not in favor of it, because the fact is that most health professions are not in favor of the mandatory telling of the mother.

Now, we all have the same intent and purpose, and Senator Paterson was absolutely correct when he said that those of us who oppose this bill, it's not on the basis of confidentiality. It's on the basis of what is in the best interests of that infant. We share the same goals, and the Velella-Mayersohn approach is perfectly logical for most people, but those people, you don't have to force them to be told because they want to be told, but you're dealing with a very small percentage that's a very fragile, a very destabilized population, and the issue is how do you get them into the system?

I think I told you all last time how in Michigan I was in a panel with the chief medical officer of the Michigan Department of Health -- as you know, Michigan has a Republican

governor, and so on -- and when I told him about the big furor in the state of New York about the mandatory information to the mother, he couldn't believe it. I said, "Well, didn't you have the same thing in Michigan?" He said, "You know, we had one or two legislators, and we explained to them this wasn't in the interest of the child. It wasn't in the interest of the mother" because those people who don't want to know, you've got to bring in the system. Just telling them, hitting them between the eyes with a two by four and saying, You know, you're positive. You have HIV. You're HIV-positive, that person is more likely than not to run out of the system with the baby, and you'll defeat the very purpose that you have, and that's why most of the prestigious medical societies, doctors who work with this population said, Don't do this. You've got to bring the people in the system, and what this bill does is to force them out of the system.

We've debated it a great length before, and so on, but I think we ought to be

clear that this is really no different than the Mayersohn-Velella bill that we had before, and while I certainly want to acknowledge Assembly Mayersohn's persistence in this issue, I think it is misplaced, well intentioned as it is as, of course, Senator Velella's. If you want to help the infant -- and I think you do -- why don't we listen to the professionals, to the people who deal with this population who have said to us, Don't do this?

Mr. President, this is no better -- no different than what we had before. It's people making political decisions, political decisions and not the medical decisions it ought to be -- that ought to be made.

I'm going to vote against the bill.

ACTING PRESIDENT KUHL: Senator Holland, we have received the Assembly bill. We're ready to substitute that, if you'd like to do that at this time.

SENATOR HOLLAND: Yes, Mr. President. Please -

ACTING PRESIDENT KUHL: I'd ask the Secretary to read the substitution.

THE SECRETARY: Senator Velella moves to discharge from the Committee on Rules Assembly Bill Number 4413-C and substitute it for the identical Third Reading Calendar 1479.

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.)

Will the negatives read the -- or raise their hands, please.

Senator Abate to explain her vote.

SENATOR ABATE: Yes. I have been very clear in this chamber about this bill. I share the concerns of everyone in this chamber, that we want to save babies' lives. When a woman tests positive for HIV, we want to do everything we can to get that woman and her baby

into treatment, but this bill, the legislation before us is not a treatment bill. It's a mandatory testing bill and as my colleagues have said, if I thought mandatory testing would get babies and their mothers into treatment more effectively, I would vote for it.

So I still believe that mandatory counseling and doing everything we can to inform mothers that it's in their interest and their baby's interests to go get themselves tested and to get into treatment is by far the most effective and only effective way. The doctors support that.

So I believe this bill doesn't tell me what's going to be the next step. I believe also if we really wanted to have health professionals make this decision, we would take it out of politics and put some of the leading experts in the country in a panel to advise this chamber and then we make a decision based on that advisement.

So what we're doing is abdicating our responsibility. I'm not assured today that

we're any closer to producing good, public health policy.

For these reasons, I oppose the bill.

ACTING PRESIDENT KUHL: Senator Abate will be recorded in the negative. Read the negatives. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1479 are Senators Abate, Connor, Goodman, Leichter, Montgomery, Paterson. Ayes 53, nays 6.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland, we have a couple of matters of housekeeping we could take up at this moment.

SENATOR HOLLAND: Do the housekeeping.

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

The Chair recognizes Senator Wright.

SENATOR WRIGHT: Thank you, Mr.

President.

On behalf of Senator Levy, I wish to call up bill, Print Number 7363, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 849, by Senator Levy, Senate Print 7363, an act to amend the Public Authorities Law.

ACTING PRESIDENT KUHL: Senator Wright.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: Mr. President, I

now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Wright.

SENATOR WRIGHT: Mr. President, on behalf of Senator Levy, I wish to call up bill, Print Number 7215, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 840, by Senator Levy, Senate Print 7215, an act to amend the Public Authorities Law.

ACTING PRESIDENT KUHL: Senator Wright.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is -

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

ACTING PRESIDENT KUHL: The amendments are received and adopted.

SENATOR WRIGHT: Mr. President.

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: I would also request unanimous consent to be recorded in the negative on Calendar Number 1313 and 667.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Wright will be recorded in the negative on Calendar Number 667 and 1313.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I would like unanimous consent to be recorded in the affirmative on Calendar 1000.

ACTING PRESIDENT KUHL: Without

objection, hearing no objection, Senator Oppenheimer will be recorded in the affirmative on Calendar Number 1000.

Is there any other Senator wishing to record a vote?

Senator Rath.

SENATOR RATH: I request unanimous consent to be recorded in the negative on Calendar Number 667.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Rath will be recorded in the negative on Calendar Number 667.

Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: Mr. President, I request unanimous consent to be recorded in the negative on Calendar 1313.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Stachowski will be recorded in the negative on Calendar Number 1313.

Senator Paterson, why do you

rise?

SENATOR PATERSON: Mr. President, it does not appear that Senator Markowitz will get back into the chamber to vote on Calendar Number 1479. He just asked that I recognize that had he been in the chamber, he would have voted in the negative. He actually said that, Mr. President. I'm telling the truth, as I do at least half the time in this chamber.

ACTING PRESIDENT KUHL: The record will reflect, Senator Paterson, that you recognized that Senator Markowitz with his snapping fingers is not in the chamber. He's certainly not in his seat, and we appreciate your recognizing his absence.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, can I be recorded in the negative on Calendar Number 1313?

ACTING PRESIDENT KUHL: Without objection, Senator Dollinger will be recorded in negative on Calendar Number 1313.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: Mr. President, we expect to call a Rules Committee meeting very, very shortly. In the meantime, can we stand at ease until that committee is called?

ACTING PRESIDENT KUHL: For the benefit of the members on the Rules Committee and all of the members in the house, it is expected that there will be an additional Rules Committee meeting called shortly.

Before we stand at ease, the Chair recognizes Senator Tully.

SENATOR TULLY: Yes, Mr. President. On behalf of Senator Farley, please remove the sponsor's star from Calendar Number 1192.

ACTING PRESIDENT KUHL: Calendar Number 1192 will have the star removed at the request of the sponsor, and the Senate will stand at ease.

(Whereupon, the Senate stood at ease.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332 of the Capitol, and the Senate will stand at ease pending the receipt of the Rules Committee.

ACTING PRESIDENT MAZIARZ: There's an immediate meeting of the Rules Committee in Room 332 of the Capitol. The Senate will stand at ease pending the report of the Rules Committee.

(Whereupon, the Senate stood at ease from 7:15 p.m. until 7:40 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT VELELLA: Senator Skelos.

SENATOR SKELOS: If we could return to reports of standing committees, I believe there's a report of the Rules Committee

at the desk. I'd ask that it be read.

ACTING PRESIDENT KUHL: The Secretary will read the report of the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, offers up the following bills directly for third reading.

2302, by Senator Stavisky, an act to amend the Penal Law;

3867-C, by Senator Hoblock, an act authorizing the town of Colonie;

6393-A, by Senator Hannon, an act to amend the Social Services Law;

6672-A, by Senator Hoffmann, an act to authorize payment of transportation aid;

7503, by Senator Larkin, an act to amend the Highway Law;

7558-A, by Senator Tully, an act to authorize the payment of transportation;

7584-A, by Senator Wright, an act to amend the Alcoholic Beverage Control Law;

7588, by Senator Spano, an act to amend the Administrative Code of the city of New

York;

7602, by Senator Hannon, an act to amend the Education Law;

7603-A, by Senator Rath, an act to authorize the trustees of the State University of New York;

7647-A, by Senator Saland, an act to amend the Mental Hygiene Law;

7660-A, by Senator Leibell, an act to amend Chapter 915 of the Laws of 1982;

7665, by Senator Wright, an act to legalize, ratify and confirm;

7666, by Senator Wright, an act to reopen the special retirement plan;

7672, by Senator Saland, an act in relation to authorizing the city of Poughkeepsie;

7676, by Senator Trunzo, an act in relation to terms and conditions;

7716, Senator Johnson, an act to amend Chapter 161 of the Laws of 1995;

7717, by Senator Velella, an act to amend the Penal Law;

7736, by Senator Alesi, an act to amend the Insurance Law;

7740, by the Committee on Rules, an act to amend Chapter 483 of the Laws of 1978;

7765, by Senator Volker, an act to authorize employees;

7771, by Senator Sears, an act in legalize, validate and ratify;

7772, by the Committee on Rules, an act to amend Chapter 30 of the Laws of 1996;

7783, by the Committee on Rules, an act to amend the Racing, Pari-mutuel wagering and Breeding Law;

7791, by the Committee on Rules, an act to amend Chapter 831 of the Laws of 1981;

7801, by the Committee on Rules, an act to amend the Labor Law;

7802, by the Committee on Rules, an act to amend the Administrative Code of the city of New York;

7803, by the Committee on Rules, an act to amend the Administrative Code of the city of New York;

7826, by Senator Seward and others, an act to amend the Public Service Law;

And 7827, by Senator Seward, an act to amend the Public Service Law.

All bills directly for third reading.

SENATOR SKELOS: Mr. President, I move to accept the report of the Rules Committee.

ACTING PRESIDENT VELELLA: All those in favor of accepting the Rules report signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The ayes have it.

Senator Skelos, we have some housekeeping.

SENATOR SKELOS: Yes, there is. Mr. President, on behalf of Senator Johnson, I wish to call up his bill, Print Number 5344-A, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT VELELLA: The Secretary will read.

THE SECRETARY: By Senator Johnson, Senate Print 5344-A, an act to amend the Social Services Law.

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

ACTING PRESIDENT VELELLA: Call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

SENATOR SKELOS: Mr. President, I believe the bill is restored to its place on the Third Reading Calendar.

ACTING PRESIDENT VELELLA: The bill is restored to its place on the Third Reading Calendar.

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

ACTING PRESIDENT VELELLA: The amendments are received.

SENATOR SKELOS: Thank you, Mr. President.

On behalf of Senator Hoblock, I wish to call up his Bill Number 7631, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT VELELLA: The Secretary will read.

THE SECRETARY: By Senator Hoblock, Senate Print 7331, an act to amend the Criminal Procedure Law.

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

ACTING PRESIDENT VELELLA: Call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

SENATOR SKELOS: Mr. President, I believe the bill is restored to its place on the Third Reading Calendar.

ACTING PRESIDENT VELELLA: The bill is restored to its place on the Third

Reading Calendar. You're right again, Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President.

Now I offer the following amendments which I'm sure you're going to receive.

ACTING PRESIDENT VELELLA: The amendments are received and adopted.

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

Is there any other housekeeping at the desk?

ACTING PRESIDENT VELELLA: There are no other housekeeping items at the desk.

SENATOR SKELOS: Mr. President, I think what we could do right now, the two of us here and -

ACTING PRESIDENT VELELLA: The three of us.

SENATOR SKELOS: -- and with Senator Paterson.

ACTING PRESIDENT VELELLA: With

unanimous consent.

SENATOR SKELOS: But there being no further business, I move we adjourn until Friday, June 14th, at 10:00 a.m. sharp.

ACTING PRESIDENT VELELLA: The Senate stands in recess 'til Friday -- adjourns 'til Friday, June 14th, 10:00 a.m.

(Whereupon, at 7:45 p.m., the Senate adjourned.)