ALBANY, NEW YORK

July 13, 1996

1:43 a.m.

REGULAR SESSION

SENATOR JAMES W. WRIGHT, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

SENATOR BRUNO: Mr. President, it's now Saturday. Could you call us to order and proceed with the day.

ACTING PRESIDENT WRIGHT: The Senate will come to order. Please rise for the Pledge of Allegiance. Ask the gallery to rise.

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

In the absence of clergy, may we bow our heads in a moment of silence.

(A moment of silence was observed.)

Secretary will read the Journal.

THE SECRETARY: In Senate, Friday, July 12th. The Senate met pursuant to adjournment. The Journal of Thursday, July 11th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT WRIGHT: Hearing no objections, 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 BRUNO: Mr. President.

ACTING PRESIDENT WRIGHT: Senator Bruno.

SENATOR BRUNO: It's my understanding that we voted on Calendar 1451 yesterday within this last hour, and Senator Markowitz was not here. Had he been here, he would have been voting to abstain on that vote; so I would like the record to show that on behalf of Senator Markowitz.

ACTING PRESIDENT WRIGHT: The record will so reflect.

SENATOR BRUNO: And, Mr. President, there being no further business to come before the Senate presently, I would move that we stand at ease until 9:30 a.m.

ACTING PRESIDENT WRIGHT: Senate shall stand at ease until 9:30 a.m.

SENATOR CONNOR: Party vote in the negative.

SENATOR BRUNO: Party vote in the affirmative.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 36, nays 20, party vote.

ACTING PRESIDENT WRIGHT: The Senate stands at ease until 9:30 a.m.

Senator Paterson.

SENATOR PATERSON: Mr. President -- Mr. President.

ACTING PRESIDENT WRIGHT: Senator Paterson.

SENATOR PATERSON: There will be a Minority Conference at 9:00 a.m., in the Minority Conference Room.

ACTING PRESIDENT WRIGHT: There will be a Minority Conference in the Minority

Conference Room at 9:00 a.m.

(Whereupon at 1:15 a.m., the Senate stood at ease.)

(The Senate reconvened at 9:36 a.m.)

ACTING PRESIDENT SPANO: The Senate will come to order.

Senator Bruno.

SENATOR BRUNO: Since we have been standing at ease, I'd like to request that the Majority members join me in Room 332 for a Majority Conference, and for us to reconvene session at about 10:15.

ACTING PRESIDENT SPANO: Senator Paterson.

SENATOR PATERSON: Mr. President, we had a sterling Minority Conference at 9:30 and we're going to have another one, and that will be immediately in the Minority Conference Room. Tickets are available.

ACTING PRESIDENT SPANO: Minority and Majority Conferences in the respective conference rooms. Senate will reconvene at

10:15.

(The Senate stood at ease from 9:38 a.m. until 10:34 a.m.)

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

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

ACTING PRESIDENT KUHL: Senate will come to order.

SENATOR BRUNO: Mr. President, is there anything at the desk that we should be taking care of at this time?

ACTING PRESIDENT KUHL: Got a couple of substitutions, Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Rules Assembly Bill Number 11326 and substitute it for the identical Third Reading Calendar 1774.

Senator Goodman moves to discharge from the Committee on Transportation Assembly Bill Number 3027-C and substitute it for the identical Third Reading Calendar 1146.

ACTING PRESIDENT KUHL: Substitutions are ordered.

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President, can we, on today's calendar, take up Calendar 572, Bill 6052-B.

ACTING PRESIDENT KUHL: On Calendar Number 70, regular calendar for the day, the Secretary will read Calendar Number 572, by Senator DeFrancisco, Senate Print 6052-B.

THE SECRETARY: Calendar Number 572, by Senator DeFrancisco, Senate Print 6052-B, an act to amend the Real Property Tax

Law.

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

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1607.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1607, by Senator Velella.

THE SECRETARY: Calendar Number 1607, by Senator Velella, Senate Print 4714-A, an act to amend the Executive Law, in relation

to obtaining nationwide criminal history records.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, did you wish to be recognized?

SENATOR DOLLINGER: Is this before us?

ACTING PRESIDENT KUHL: Yes.

SENATOR DOLLINGER: Could I just have a quick explanation, if I can.

ACTING PRESIDENT KUHL: Senator Velella, an explanation of Calendar Number 1607 has been asked for by Senator Dollinger.

SENATOR DOLLINGER: Mr. President.

SENATOR VELELLA: No. This will allow the city of New York to gain access to federal and other states' criminal history records when they process employees' applications. Right now they're not authorized to do anything except check the BCI reports of New York State. This will allow them to check

neighboring states and to check the federal records, particularly in the area of people who are employed for services that they provide to children, so it will give them access to that criminal history.

SENATOR DOLLINGER: Mr. President, just one question to cut to the chase. Why doesn't it apply to the entire state?

SENATOR VELELLA: Why does it?

SENATOR DOLLINGER: Why doesn't the bill apply to the entire state?

SENATOR VELELLA: I believe that the state now has that permission, but I know the City does not. I know the City has requested this, but my understanding is state agencies -- and, unfortunately, I don't have the file here -- state agencies can do a check with the F.B.I. and do do a check with other states. The city of New York did not have that permis sion to do that for their employees.

SENATOR DOLLINGER: Again through you, Mr. President, just one other quick

question. Is this -- does this apply to private employers that want to get this data?

SENATOR VELELLA: No, no. This governs the city of New York employees.

SENATOR DOLLINGER: All right. Thank you, Mr. President.

Just on the bill briefly. I think this is a good idea, and I would like to see it expanded to include private employers.

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 in 60 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number

1774.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1774.

THE SECRETARY: Calendar Number 1774, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 11326, an act authorizing the creation of a state debt.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

Senator Marcellino, an explanation of Calendar Number 1774 has been asked for.

SENATOR MARCELLINO: This particular bill is an act authorizing the creation of a state debt in the amount of $1,750,000,000 in relation to creating a Clean Air/Clean Water Bond Act for 1996.

This is to provide money for the preservation, enhancement, restoration, improvement of the state's environment and to provide for state assistance payments for such purpose and providing for the submission to the

people of a proposition or question therefor to be voted upon at the general election in November of 1996.

Basically this puts the bond act before the people.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Good morning, Mr. President.

ACTING PRESIDENT KUHL: Good morning.

SENATOR PATERSON: Senator Marcellino, would you yield for a question?

ACTING PRESIDENT KUHL: Senator Marcellino, do you yield?

SENATOR MARCELLINO: It will be my pleasure to, sir.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, might I have a slightly more -- I'm sorry, Senator, what I'm really looking for is a little more of a breakdown on where some of the monies are

allocated?

SENATOR MARCELLINO: The -- this particular bill, Senator, is designed to place this before the people. This does not have the full spread of the money to be paid out. That bill is before the Finance Committee now and is on the agenda at the present time. It should be in here to take that up at a later point. I could give you a brief general synopsis in a fairly rough form of where and just what some of the projects are.

We have a category for safe drinking water, for example, which includes about $355 million to do projects relative to water quality and safe drinking water.

We have some clean water projects designated to the Hudson River, for example, $25 million associated with that, Hudson estuary protection projects. Long Island Sound clean-up is worth about $200 million applied to that. An awful lot of work to be done on the Sound, as you may know, as well as the Hudson River.

Lake Champlain improvements are

about $15 million for Lake Champlain. For Onondaga Lake clean-up about $75 million. The New York harbor estuary improvements projects come up with about $25 million. The Great Lakes protection project is approximately $25 million, Finger Lakes clean-up another $25 million.

Now, in some other water categories, we could have the state facilities environmental compliance, $25 million; the Peconic estuary and South Sound estuary $30 million, waste water treatment improvement and municipal flood control projects in smaller communities. We've debated the infamous beaver growth in this chamber many, many times and there was some language in the Governor's proposed budget to relieve the problem of beavers from damming up waterways that flood farm land. Rather than go through the trapping and the killing of these animals, which the beaver, by the way, as many of you know or should know, is the state animal -- don't ask me why -- this particular amount of money, about $50 million, will allow for alternative means to

help people to avoid flooding created by beavers creating dams which back up water in particular areas, so we'll have alternate means of avoiding the flood and relieving the flooding problem using duct work and maintenance action, so that we can protect roadways and farm land from flooding as a result of beaver damming. There is also some money in here which could be applied to the trapping and relocation of these animals. Some suggested locations that we've had in recent minutes was Prospect Park and Central Park where there are lakes which could hold the beavers, and we feel that would be good. However, we don't feel the beavers would be safe enough in these particular localities, but we're looking into that.

I'm wondering who's paying attention out there. Senator Seabrook, you should back me up on that one.

We have some dam safety projects, the dam that protects water, not the other kind of damn. These projects are about $15 million because in some areas of our state, some of our

dams are in need of repair and work and there is monies to maintain these necessary facilities.

We have some small business environmental compliance assistance projects to the tune of about $30 million dollars. This would allow those small businesses that comply or come under the compliance with, I believe, the environmental protection or the environmental -- the Clean Air Act and whatever, they can apply and receive assistance in getting that help to refit their facilities to meet emissions control standards. So this would help small businesses in a large manner all over the state.

We have some open space programs worth about $250 million in this particular proposal; land acquisition approximately $150 million; state parks another $50 million, municipal parks another $50 million, designed to upgrade the state parks and enhance them and in some cases create them where necessary where we have the areas.

With respect to solid waste

initiatives, we allow $175 million in this proposal. Fresh Kills we've talked about that. The Governor, the Mayor of the City, all the people on Staten Island, I'm sure, would be very pleased, and anyone who lives down wind of Fresh Kills would be very pleased to see this particular facility closed and eliminated once and for all. It also might help some of the stuff that floats across to other states which gets away.

There is real Adirondack landfill protection money, about 15 million -- $50 million, excuse me, to that particular area. There is some recycling capital programs, approximately $50 million, to help and assist in developing recycling. Recycling, as you know, for those of us who are into the system and into the process, is the means, many of us believe, to help eliminate a lot of solid waste that is currently going into the waste stream. If we can recycle and reuse, we take some pressure off some natural resources. The reusing of this material, alternate uses for recycled materials

such as plastics which can be used for bulkhead ing, for bench creation, facilities that will not diminish. We don't have to use wood. It means we don't have to chop down trees and we're not looking to take away our forest products and stuff like that. So this can be extremely useful. There's a lot of work being done on that.

Environmental restoration relative to "brownfields", we've known for a long time there's approximately $200 million in "brownfields" protection. This is, I think, a vital project. The money will be related and the projects will be related using Superfund standards so we're going to hold them to decent standards and currently accepted standards, not less standards. I know there was some fear in the environmental community that the standards would be lessened and watered down. We're using, and we're going to hold people to Superfund standards to make sure that this is not the case. But the "brownfields" program can be very useful, my colleagues, because this will

take pressure off our "greenfields", the so-called pristine sites which are out there and, if we can revitalize and regenerate in an old manufacturing plant that has been lying fallow for years and been an eyesore in the community, that garbage that was left because nobody wants to deal with it which is on the corner and has a graffiti site, nothing but rubble and an eyesore in the neighborhood, and nobody wants to take it on because they're afraid of what might be below the surface and what the environmental impact to their economic well-being would be if they took over the site, if we can get them to do that in an environment ally safe way, develop a contract with these people, protect them from liability so that they don't take on more, unless they lie to us or they try to misrepresent the clean-up but get that site cleaned up and back on the tax rolls in the use that it was meant to be used or the way it was meant to be used, we've done an environmentally solid and sound thing, not to mention an economically sound thing for the

community because that -- that site likely had a tax certiorari, had its taxes reduced. If they hadn't been paying any taxes now once cleaned up and put back on the tax rolls it becomes a positive for the community rather than an eye sore and a negative. Too many of these sites in the community and a community goes down the tube because nobody wants to drive through a neighborhood or open up a store in a neighborhood or open up a shop or buy a home in a neighborhood where your downtown has eyesores and empty buildings and empty industrial sites.

So the "brownfields" proposal we think is important to propose. It is something that the Governor is very interested in. It is something that I've had legislation on. I feel very interested in this, and I think it's a very important project all over the state. We, in the northeast, have sites that are just, you know, ideal for this kind of project.

Air quality projects, $230 million for clean fuel, moving into the range of electric cars, alternate fuels, and the like.

Small business environmental compliance projects around $30 million, school and coal conversion projects about $125 million to help schools, and I'm sure many of them in the city of New York are still burning coal. The high school I used to teach in is still burning coal the way it did when it was built some 70 years ago. This will help them. This money can be applied to these places to turn to safer, cleaner alternate fuels and lessen the impact on the resources of an already strapped city and already strapped municipalities and school districts throughout the state of New York. This is a positive on that.

Senator, I've given you an extensive rundown, but it's not as complete as I'd like. The bill that will come out of Finance, if it hasn't shortly, will have more information on that and more details but I hope I've provided you with some information.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT KUHL: Senator

Mendez, why do you rise?

SENATOR MENDEZ: Senator, Mr. President, I wonder if Senator Marcellino would yield for a question?

ACTING PRESIDENT KUHL: Senator Mendez, I did have a list running of other members who had indicated earlier they wanted to face the issue, if you don't mind take those in order.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I'll yield to Senator Mendez.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: If the learned gentleman would yield to a question.

ACTING PRESIDENT KUHL: Senator Marcellino, would you yield to an question from Senator Waldon?

SENATOR MARCELLINO: Be my pleasure to, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Senator, in your preparation to submit this for consideration, was there any dialogue with people in Queens County as to the places that would be designated to benefit from this proposal?

SENATOR MARCELLINO: I am sure the people who prepared the bill -- this came out of the Governor's office, as you well know, in conjunction with the Senate Majority Leader's office, and in conjunction with the staff of the Environmental Conservation Committee.

We reached out -- I know the Governor reached out to many groups. I am sure the mayor of the city of New York was one of those individuals reached out to and who had input into the money that was needed and the kind of projects that would be beneficial to the areas throughout the state.

I am not familiar with one or an individual maybe, the borough president of Queens, I don't know a specific person from Queens was talked to.

SENATOR WALDON: Would the

gentleman yield again?

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

SENATOR MARCELLINO: Surely.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator Marcellino.

Am I to assume from the statement then that the areas of the Rockaways, Cambria Heights, Rosedale, Queens Village, Laurelton, Springfield Gardens, Rochedale Village, St. Albans, parts of Jamaica, South Jamaica, and a touch of Green Oaks are not intended to be excluded from this proposal?

SENATOR MARCELLINO: No, sir, you should not draw that conclusion at all. You mentioned some of the areas that I grew up in and had a lot of fun playing ball in. St. Albans and Flushing are my old stamping grounds and I grew up in the Rockaways, so I certainly would not allow those sites and those communities not to have some input. The schools,

for example, could be impacted with respect to conversion from coal-burning furnaces to oil, some of the older facilities in those communities.

The south estuaries, the south shore and north shore estuary work, the Sound work along the waterways and the beaches will apply and can apply and can be connected, especially the Rockaways, to some of the water act here. The "brownfields" approach certainly impacts that community. There are many "brown field" sites that would qualify in my estimation for monies under the "brownfield" proposals here in that community.

I'm very familiar with Spring field Gardens High School and the surrounding communities. They could benefit greatly from the sites and from the money here. The proposals that were raised and put in this particular bond act were done in conjunction with the Conference of Mayors and Municipal Supervisors so, no, by no means should you feel that these communities were excluded in any way, shape or form.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator.

SENATOR MARCELLINO: You're welcome.

ACTING PRESIDENT KUHL: Senator Mendez, did you wish to speak?

SENATOR MENDEZ: No.

ACTING PRESIDENT KUHL: Senator Mendez waives. Senator Dollinger had indicated a willingness to want to discuss the bill.

SENATOR DOLLINGER: Mr. President, I will waive my request.

ACTING PRESIDENT KUHL: Is there any any other Senator wishing to speak on the bill? The bill is still high at this point, so we'll have to lay the bill aside awaiting a message from the second floor.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I couldn't have put it better, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I think on the

vote on the bill. I just didn't hear what you said.

ACTING PRESIDENT KUHL: I said the bill is high. We're awaiting a message from the second floor. We'll lay the bill aside awaiting that message. There is a report, Senator DeFrancisco, of the Finance Committee, if you'd like.

SENATOR PATERSON: Mr. President, I was going to address that before it was left and spoken to, which I thought was being psychic. I thought the bill was substituted earlier today.

ACTING PRESIDENT KUHL: We were -- we're debating the Assembly bill. The Assembly bill is high. We're awaiting the message here.

SENATOR PATERSON: Mr. President, a point of order. I may be missing something. We have a message of necessity on this bill. It can't be high.

ACTING PRESIDENT KUHL: We do not -- did not -- underlined -- not have a message

of necessity. We're awaiting a message of necessity. The bill is laid aside awaiting the message.

SENATOR PATERSON: Mr. President, a point of order. This is the Assembly bill, am I not correct, and the Assembly bill had a message of necessity so, therefore, in my -- I mean you can rule on this, but it's my opinion it doesn't need a message and it's, therefore, not high.

ACTING PRESIDENT KUHL: Senator Paterson, I think you're very fortunate, unlike the Assembly, who have had about five or six hours sleep last night, my point being that the message we had dealing with this was yesterday's message. Today's message has not arrived, so we can not take up the bill today.

SENATOR PATERSON: Mr. President, maybe it's me who's high and not the bill, but -

ACTING PRESIDENT KUHL: I don't know what you did when you left here last night, Senator.

SENATOR PATERSON: But I don't think that we need a message because we already have a message. That's all I'm saying, on the - on the Assembly bill, which is the one that we're actually debating that we already have a message on and that's just the point of order I'm trying to make.

ACTING PRESIDENT KUHL: Senator Paterson, I'd be happy to sit down and explain this to you, but it is the understanding and the ruling of the Chair that we do need a message of necessity to take this bill up, so we do not have one at the desk and we cannot take a vote on the bill, so the bill will be laid aside awaiting the message from the second floor.

SENATOR PATERSON: Thank you, Mr. President.

I will -- I'd love to sit down and talk to you, and we'll have something like a soft drink to go along.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr.

President, could we return to reports of standing committees. My understanding is there is a Finance Committee report at the desk.

ACTING PRESIDENT KUHL: There is. We'll return to reports of standing committees and ask the Secretary to read.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Board of Trustees of the City University of New York, Nilda Soto Ruiz, of the Bronx.

ACTING PRESIDENT KUHL: Any Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Nilda Ruiz, of the Bronx, to become a member of the Board of Trustees of the City University of New York. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Board of Trustees of the State University of New York, Nicole Yae Kyoung Kim, of New York City.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Nicole Kim, of New York City, to become a member of the Board of Trustees of the State University of New York. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Members of the Board of Trustees of the New York State Higher Education Services Corporation: John R. Durso, Jr., of Massapequa Park, and David Porter, of Saratoga Springs.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the nomination? Hearing none, the question is on the nominations of John Durso, Jr., of Massapequa Park, and David Porter, of Saratoga Springs, to become members of the Board of Trustees of New York State Higher Education Services Corporation. All those in favor of the nominations signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominees are confirmed. Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Board of Trustees of the State University of New York, College of

Environmental Science and Forestry, Curtis H. Bauer, of Jamestown.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Curtis H. Bauer, of Jamestown, New York, to become a member of the Board of Trustees of the State University of New York College of Environmental Science and Forestry. All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill:

Senate Print 7948, by Senator Marcellino, an act to amend the Environmental Conservation Law and others.

ACTING PRESIDENT KUHL: Without

objection, the bill goes directly to third reading.

Senator DeFrancisco, we have a substitution on that bill we'd like to take at this time?

SENATOR DeFRANCISCO: Would you please make the substitution.

ACTING PRESIDENT KUHL: Secretary will read the substitution.

THE SECRETARY: Senator Marcellino moves to discharge from the Committee on Finance Assembly Bill Number 11332 and substitute it for the identical Third Reading Calendar 1779.

ACTING PRESIDENT KUHL: Substitution is ordered.

SENATOR DeFRANCISCO: Mr. President.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President, could we take up calendar -- Bill Number 7948, please.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 1748.

SENATOR DeFRANCISCO: Mr. President, 7948.

ACTING PRESIDENT KUHL: Calendar Number 1748 -- Senate Print 7948, and it's Calendar Number 1779.

THE SECRETARY: Calendar Number 1779, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 11332, an act to amend the Environmental Conservation Law and others.

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: Secretary will read the last section. (Pause)

The bill is high. The bill will be laid aside.

SENATOR GOLD: Is there a message from the Governor on this, for this Assembly bill?

Mr. President. Mr. President.

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

SENATOR GOLD: Say good morning, Mr. President.

ACTING PRESIDENT KUHL: Good morning to you too.

SENATOR GOLD: Now, Mr. President, while we're at it, this bill passed the Assembly, I assume if it's high, with a message. Does that message come across with the bill?

ACTING PRESIDENT KUHL: Senator Gold, we're in the same situation we were with the bill we just had before the house that we had to lay aside. We don't of a message on it.

SENATOR GOLD: I want to understand, Mr. President, if I could, I just want to understand the rule. Are you ruling, sir, that we may not consider messages of necessity from the Governor unless they are dated on the date that we are considering bills; is that the rule now for all time?

ACTING PRESIDENT KUHL: That's correct. That has been the practice of the house, as I'm told in many years past, and

you've had many more years experience than I do, Senator.

SENATOR GOLD: That's why -

ACTING PRESIDENT KUHL: I remind you sometimes when you're old, you are -- you forget more often than not.

SENATOR GOLD: That's why I asked.

ACTING PRESIDENT KUHL: Senator DeFrancisco, we now have a message of necessity at the desk on 1774 which was laid aside.

SENATOR DeFRANCISCO: Yes. Can we return to 1774 and ask that the message be accepted.

ACTING PRESIDENT KUHL: Ask the Secretary to read the title.

THE SECRETARY: Calendar Number 1774, substituted earlier today, by the Assembly Committee on Rules, Assembly Print Number 11326, an act authorizing the creation of a state debt.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: You say

there is a message at the desk.

ACTING PRESIDENT KUHL: There is.

SENATOR DeFRANCISCO: Move to accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message on Calendar Number 1774. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

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

SENATOR PATERSON: Slow roll call, Mr. President.

ACTING PRESIDENT KUHL: Slow roll call has been requested on Senate Calendar Number 1774. Secretary will ring the bells and call the roll slowly.

THE SECRETARY: Senator Abate.

(There was no response.)

Senator Alesi.

(There was no response.)

Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

(Affirmative indication.)

THE SECRETARY: Aye.

Senator Connor.

(Negative indication.)

THE SECRETARY: No.

Senator Cook.

(There was no response.)

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

(There was no response.)

Senator Espada.

(There was no response.)

Senator Farley.

(There was no response.)

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 audible response.)
THE SECRETARY: 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.
(There was no response.)
Senator Larkin.
(There was no response.)
Senator Larkin.
(There was no response.)
Senator LaValle.
SENATOR LAVALLE: Yes.
THE SECRETARY: Senator Leibell.
(There was no response.)
Senator Leichter.
(There was no response.)
Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: 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: Aye.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

(There was no response.)

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

(There was no response.)

Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

(There was no response.)

Senator Padavan.

(There was no response.)

Senator Paterson.

SENATOR PATERSON: No.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Saland.
(There was no response.)
Senator Santiago.
(There was no response.)
Senator Seabrook.
SENATOR SEABROOK: No.
THE SECRETARY: Senator Sears excused.
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.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky excused.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: (Affirmative indication.)

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: (Affirmative indication.)

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: (Negative indication.)

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT KUHL: Secretary will call the absentees.

THE SECRETARY: Senator Abate.
(There was no response.)
Senator Alesi.
SENATOR ALESI: Yes.
THE SECRETARY: Senator Cook.
SENATOR COOK: No.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: No.
THE SECRETARY: Senator Espada.
(There was no response.)
Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Hoffmann.
SENATOR HOFFMANN: If I could explain my vote, please.
ACTING PRESIDENT KUHL: Senator Hoffmann, to explain her vote.
SENATOR HOFFMANN: Thank you, Mr. President.

There's a temptation to simply vote yes on this for expediency sake and join the spirit of the hour where there's agreement on so many things after months and months of discord and significant ideological difference, but the people in the central New York area who I represent have indicated to me over and over again that they are worried about the way the state handles its affairs, that they feel troubled by the propensity of the state to spend more than it has and not meet its obligations or to not meet its obligations on time.

Well-intentioned as this measure is from an environmentalist perspective and beneficial as it might be to parts of the state that would enjoy the rewards that come from special projects, projects which would accent tourism which we greatly need, projects which would help stimulate local industries related to tourism and local economic development projects which we might tangentially say does fit nicely with an environmental bond act, still do not justify borrowing more than a billion dollars

that the state simply does not have right now.

Our debt load is all too often ignored when we are addressing our financial responsibilities. We do not have the right to pass debt on to future legislatures or to future generations, and I fear that's what we would be doing.

Now, it could be, would be fairly simple for me and I'm sure many of my other colleagues to say I have some philosophical differences but I will let the people of my district decide; but that's not why we're elected. We're supposed to provide leadership on these types of issues, and I don't believe that it would show leadership that is expected of us to simply pass the buck to the voters on this.

My position is clear, and I believe I understand the will of the people in the 48th Senate District. Therefore, I can not support this measure.

I vote in the negative.

ACTING PRESIDENT KUHL: Senator

Hoffmann will be recorded in the negative.
Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Lachman.
(There was no response.)
Senator Lack.
(There was no response.)
Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: Mr. President, yes.
ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the affirmative.
THE SECRETARY: Senator Montgomery.
(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator

Oppenheimer.

SENATOR OPPENHEIMER: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

(There was no response.)

SENATOR GOLD: Detailed statement.

Mr. President. Mr. President. Mr. President. Is there anybody up there can hear me? Mr. President. I'll give you three shots.

ACTING PRESIDENT KUHL: Senator Abate, did you want to speak? The roll call is still open. How do you wish to be recorded?

SENATOR ABATE: Yes.

ACTING PRESIDENT KUHL: You wish to be recorded in the affirmative. I notice you, Senator Lack, will be recorded in the affirmative.

SENATOR LACK: Yes.

Now, Senator Gold, why do you

rise?

SENATOR GOLD: I simply wanted a detailed statement, please.

ACTING PRESIDENT KUHL: The roll call -- announce the results.

THE SECRETARY: Ayes 38, nays 16.

ACTING PRESIDENT KUHL: The bill is passed. Read the detailed statement.

THE SECRETARY: Those recorded in the affirmative on Calendar Number 1774 are: Senators Abate, Alesi, Bruno, DeFrancisco, DiCarlo, Farley, Goodman, Hannon, Hoblock, Holland, Johnson, Kuhl, Lack, Larkin, LaValle, Leibell, Leichter, Levy, Libous, Maltese, Marcellino, Marchi, Maziarz, Nozzolio, Oppenheimer, Padavan, Present, Rath, Saland, Seward, Skelos, Spano, Stafford, Trunzo, Tully, Velella, Volker and Wright.

Those recorded in the negative Senators Babbush, Connor, Cook, Dollinger, Gold, Hoffmann, Kruger, Markowitz, Mendez, Nanula, Onorato, Paterson, Seabrook, Smith, Stachowski

and Waldon.

Senators excused, Senators Sears and Stavisky.

Absent: Espada, Gonzalez, Lachman, Montgomery and Santiago.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR CONNOR: Mr. President. Would the record please note that Senator Lachman is excused for religious reasons, that he left at the start of the sabbath yesterday and, of course, could not be present because of his religious observance; did not submit to me a written request to be excused but I want the record to note that he has been excused since last night before sundown.

ACTING PRESIDENT KUHL: The record will reflect your remarks, Senator Connor, that Senator Lachman was excused. Thank you, Senator Connor.

Senator Bruno, we had previously taken up Calendar 1779. We laid the bill aside

since the message had not arrived. The message has arrived now, if you'd like to take that bill up.

SENATOR BRUNO: Could we return to that bill, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1779 which was substituted previously.

THE SECRETARY: Calendar Number 1779, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 11332, an act to amend the Environmental Conservation Law and others.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity at the desk on Calendar Number 1779. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Any Senator wishing to speak on the bill? Hearing none -- hearing none, the

Secretary will read the last section.

THE SECRETARY: Section 34. This act shall take effect after a chapter of the laws of 1996.

SENATOR CONNOR: Same vote, same vote as on the last one.

ACTING PRESIDENT KUHL: We can do that. Secretary will record the -- if that's all right with the Majority Leader.

Senator Skelos, is that all right with you with exception?

SENATOR SKELOS: No objection.

ACTING PRESIDENT KUHL: The Secretary will record the same vote as was on Calendar Number 1774.

Announce the results.

Senator Marcellino.

SENATOR MARCELLINO: Explain my vote.

ACTING PRESIDENT KUHL: Senator Marcellino, to explain his vote on Calendar Number 1779.

SENATOR MARCELLINO: Yeah, Mr.

President. This -- this is an important bill because in times of -

ACTING PRESIDENT KUHL: Senator Marcellino, excuse me just a minute. Let's get a little order in the house. Have a little order in the house, please. Members please take their seats, staff their seats. If you have to have a conversation, please take it out of the chamber.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: I'd like to join you in your effort to get a little order in the chamber so if there are meetings going on, please take them outside of the chamber. We'd like to proceed so that we can listen to the eloquence of Senator Gold and the wisdom of Senator Marcellino.

SENATOR MARCELLINO: I appreciate that, sir.

Mr. President, may I start? Thank you.

ACTING PRESIDENT KUHL: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Mr. President, certainly no one, myself included, the members who voted for this particular legislation, wants to increase debt or place any additional burdens on our already hard-pressed taxpayers, but this legislation puts forth the opportunity to do many jobs and many projects which are in need, deep need, to protect our environment, to protect our air, to protect the water, protect our daily lives, protect our population.

It's most important that we do this particular bill because the projects here could not be afforded in many cases by the local municipalities on whom the responsibility would fall.

They could not handle the burden individually. This will assist them in doing some very needed landfill closures, incinerator closures, clean water closures, and so forth. It's important that this money be put forward,

that this money be obtained so that these particular projects can go forward and so that our environment can be protected and cleaned up.

So I urge and I thank those who voted in the positive and I would hope those who voted in the negative would reconsider and, at the appropriate time, urge their constituents to vote for this particular legislation. It is worthwhile.

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

Senator Gold, to explain his vote.

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

Mr. President, I -- I feel that Senator Marcellino's remarks may be very accurate from his point of view and when you say our population and our water, Senator, if it was coming out of your mouth that's accurate and I'm worried about my population and my water, and people in my district, and this bill, while you

say it does things that have to be done, are needed, there are a lot of things that have to be done that are needed and if the decision making is going to be political, then we're not taking care of our people, may be taking care of your people.

It's interesting to me how many people from around this state are ready to fund things for your people in the amount of $1.7 billion. I'm concerned about some real things. I'm concerned about lead, lead poisoning. I'm concerned very much about hazardous waste closures, and I'm concerned about Superfund money running out and areas that don't qualify for Superfund which this bill may not take care of. I'm concerned about the state's commitment to put up land and pay for it for the New York City watershed.

So, Senator, I don't think that you said anything that I disagree with if it was coming out of your mouth because from your point of view, I guess you're taking care of some things, but when we say "our" in this chamber,

it's a question of whether the arms going out embrace all or a selected few. I vote in the negative.

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

THE SECRETARY: Ayes 38, nays 16.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to the order of motions and

resolutions and adopt the Resolution Calendar, please.

ACTING PRESIDENT KUHL: We'll return to the order of motions and resolutions. Every member has a Resolution Calendar on their desk. The motion is to adopt the Resolution Calendar. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Holland.

SENATOR HOLLAND: Senator Maltese would like to open up his resolution regarding Medal of Honor winners, 4131, for any person in the house who would like to go on it.

ACTING PRESIDENT KUHL: Senator Holland, as in the past when there are openings up of resolutions which are very meritorious resolutions, we'll put everybody on the resolution with the exception of those people

who did not want to be on the resolution. Should we follow that same procedure with regard to this one?

SENATOR HOLLAND: Seems the right thing to do.

ACTING PRESIDENT KUHL: No objection from Senator Paterson and members of the Minority, Senator Holland, we'll put all the members of the chamber on Senator Maltese's resolution honoring the Medal of Honor winners, multi-state Medal of Honor winners, except for those people who do not wish to be on it if they would indicate that desire to the desk.

Senator Holland.

SENATOR HOLLAND: Any other housekeeping, Mr. President?

ACTING PRESIDENT KUHL: There is nothing else at the desk at this time, Senator Holland.

SENATOR HOLLAND: Could we stand at ease then awaiting the report of the Rules Committee.

ACTING PRESIDENT KUHL: Senate

will stand at ease awaiting the report of the Rules Committee.

(Whereupon at 11:42 a.m., the Senate stood at ease.)

ACTING PRESIDENT KUHL: Senate will come to order. Chair recognizes 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: Return to the order of reports of standing committees.

Secretary will read the report of the Rules Committee.

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

Senate Print 4880, by Senator Hoblock, an act to amend the Education Law, in relation to instruction on the subject of human rights;

6955B, by Senator Holland, an act to establish a quality incentive payment program;

7493A, by Senator Spano, an act to amend the Labor Law, in relation to prohibiting the use of state funds;

7951, by Senator Bruno, an act to amend the Workers' Compensation Law and others, in relation to extending the effectiveness of certain provisions;

7954, by Senator Hannon, an act in relation to enacting the New York Health Care Reform Act of 1996;

7955, by the Senate Committee on Rules, an act to amend a Chapter of Laws of 1996 amending the Workers' Compensation Law;

7956, by the Senate Committee on Rules, an act to amend the Public Health Law, the Mental Hygiene Law, and the Social Services Law;

7957, by the Senate Committee on Rules, an act to amend the Insurance Law, in relation to collateral; and

Assembly Print 11341, by the Assembly Committee on Rules, an act to amend the Public Health Law, in relation to patient services payments.

All bills ordered directly for third reading.

SENATOR SKELOS: Mr. President, move to accept the report of the Rules Committee.

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

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The Rules Report is accepted.

SENATOR SKELOS: Mr. President, if we could take up Senate Supplemental No. 1 noncontroversial.

ACTING PRESIDENT KUHL: Members should have Supplemental Calendar No. 1 on their desk, together with the bills that are on that

calendar.

Secretary will read the noncontroversial reading of Supplemental Calendar No. 1.

THE SECRETARY: Senator Hoblock moves to discharge from the Committee on Education Assembly Bill Number 6510 and substitute it for the identical Third Reading Calendar 1780.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1780, by Assemblyman Crowley, Assembly Print 6510, an act to amend the Education 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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Holland moves to discharge from the Committee on Rules Assembly Bill Number 9798C and substitute it for the identical Third Reading Calendar 1781.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1781, by Member of the Assembly Harenberg, Assembly Print 9798C, an act to establish a quality incentive payment program.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1781. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Spano moves to discharge from the Committee on Rules Assembly Bill Number 8058A and substitute it for the identical Third Reading Calendar 1782.

ACTING PRESIDENT KUHL: Substitution ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1782, by the Assembly Committee on Rules, Assembly Print 8058A, an act to amend the Labor Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR LEICHTER: Wrong bill.

ACTING PRESIDENT KUHL: Is the lay aside withdrawn, Senator Leichter?

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 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Rules Assembly Bill Number 11331 and substitute it for the identical Third Reading Calendar 1783.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1783, by the Assembly Committee on Rules, Assembly Bill Number 11331, an act to amend the

Workers' Compensation Law and others.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is, Senator Skelos.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1783. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Hannon moves to discharge from the Committee on Rules Assembly Bill 11330 and substitute it for the identical Third Reading Calendar 1784.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1784, by the Assembly Committee on Rules, Assembly Bill Number 11330.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1784. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Rules Assembly Bill Number 11338 and substitute it for the identical Third Reading Calendar 1785.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1785, by the Assembly Committee on Rules, Assembly Print 11338, an act to amend the Chapter of the Laws of 1996.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1785. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Rules Assembly Bill Number 11329 and substitute it for identical Third Reading Calendar 1786.

ACTING PRESIDENT KUHL: Substitution is ordered. The bill is high. The bill will be laid aside.

THE SECRETARY: Calendar Number 1787, by the Senate Committee on Rules, Senate Print 7957, an act to amend the Insurance Law, in relation to collateral.

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

ACTING PRESIDENT KUHL: There is, Senator Skelos.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on

Calendar Number 1787. 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.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1788, by the Assembly Committee on Rules, Assembly Print 11341, an act to amend the Public Health Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: The bill is high. The bill will be laid aside.

Senator Skelos, that completes the reading of the noncontroversial calendar.

SENATOR SKELOS: Mr. President, at this time, if we could take up Calendar Number 1781.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1781, by Senator Holland.

THE SECRETARY: Calendar Number 1781, by Member of the Assembly Harenberg, Assembly Print A.9798C substituted earlier today, an act to establish a quality incentive payment program.

ACTING PRESIDENT KUHL: Senator Holland, an explanation of Calendar Number 1781, Senate Print 6955B, which was substituted earlier today, has been asked for by Senator Leichter.

SENATOR HOLLAND: This is a bill to back up approximately $2 million in the budget to create a quality incentive payment program for adult homes in the state of New York. If the adult homes run efficiently, meet all the requirements, the clients are taken care of well, then this $2 million will be distributed to those homes.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Holland would yield.

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator Holland, do you yield?

Senator yields.

SENATOR LEICHTER: I'm sorry, you refer to an appropriation of $2 million. That's not in this bill.

SENATOR HOLLAND: No, sir.

SENATOR LEICHTER: The 2 million has been appropriated.

SENATOR HOLLAND: Right.

SENATOR LEICHTER: This provides as to the manner in which the money is to be -

SENATOR HOLLAND: Correct.

SENATOR LEICHTER: -- is to be used. If you'll continue to yield, Senator.

SENATOR HOLLAND: Yes.

SENATOR LEICHTER: Does this bill also provide that for-profit corporations that have publicly-traded shares may own these adult homes?

SENATOR HOLLAND: I am told it does not, Senator. No.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 11. 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.

Senator Skelos.

SENATOR SKELOS: Would you please take up Calendar Number 1784, by Senator Hannon.

ACTING PRESIDENT KUHL: Secretary will read the Calendar 1784, by Senator Hannon.

ACTING PRESIDENT KUHL: Calendar Number 1784, by the Assembly Committee on Rules, Assembly Print 11330, substituted earlier today, an act in relation to enacting the New York Health Care Reform Act of 1996.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, there will be an immediate conference of the Minority in Room 314, the Minority Conference Room.

ACTING PRESIDENT KUHL: There will be an immediate meeting -

Senator Skelos.

SENATOR SKELOS: I believe we're on debate so if we can continue the debate.

SENATOR PATERSON: Mr. President, explanation.

ACTING PRESIDENT KUHL: Senator Hannon, an explanation of Calendar Number 1784 has been requested by Senator Paterson.

SENATOR HANNON: Mr. President, this is the Health Care Reform Act of 1996. This is a measure that will take, in the main, the health care system of this state on to the brink of the 21st Century because it lasts until December 31st, 1999.

It is what I believe to be

implementation of a very balanced, moderate approach to make sure that all of our constituents will be able to ensure quality and accessible health care.

As part and parcel of this, we have accompanying legislation, part of which has already passed this house in regard to the bill of rights and managed care, another bill that is further down the calendar in regard to Medicaid managed care, and this, of course, is the centerpiece which has taken a great amount of work by a great amount of talented people to bring us to a stage where a half century old system of having everything in the health care system set by the state will come to an end.

Effective January 1, 1997, third-party private payors will move to negotiated rates for hospital care. We will continue the current rate system for the Medicaid fee for service while the rest of Medicaid that's under managed care will move accordingly.

We do something in terms of going

to deregulation that really no other state has done, because we accompany that deregulation with a substantial commitment to what has been called the public good of this state, the commitment towards indigent care through a bad debt and charity care pool, the commitment towards a high quality graduate medical education. We do that through a separate GME pool. We do it through commitments for child health, expanding that up to the age of 18. We do it through the creation of provider service networks, all in order to offer consumers and purchasers new options for accessibility for health care.

We create a large number and continue a large number of initiatives for private business insurance for regional -- on a regional basis, for public hospitals, catastrophic health care expense program, ambulatory services. We continue a borrowing program for hospitals in high volume indigent care service areas. We establish a program for expansion of cancer detection and treatment

services in underserved areas. We take a task force on quality guidelines and expand that so that we can have measurements, measurements of HMOs, of hospitals and other provider services, to do it in conjunction with the experts in the field wherever they may be in terms of clinicians or hospitals or HMOs.

Making this many changes all at once would in some people's eyes seem to be too much, but this is something that has to be done. We're the last of two states in the nation to have total rate setting, and we must move on in order to make sure that the needs of the next century are addressed by this state. This is an implementation of thousands of hours by hundreds of people begun by a task force by this Governor who had the sense and I think common sense recognition that it had to be addressed, picked up by a number of people on his temporary task force. Enormous numbers of members of the Executive Branch, of the Assembly and of this house, have spent a lot of time trying to make sure that what will come about is

something that we can all be proud of, and I would move the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

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

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Hannon, certainly no offense, we're conferencing the bill. We have only seen the bill in the last two hours, and I have only seen the bill in the last five minutes, so if you would yield to a question, there are just a couple of areas I want to see where we've come out on them in negotiations.

SENATOR HANNON: Yes, I said I would yield.

SENATOR PATERSON: Thank you.

Graduate medical education, Senator, maybe I missed that in your remarks just then. How are we on graduate medical education?

SENATOR HANNON: We have done it a number of ways. We create a pool which shall be in the approximate order of $1.385 billion to finance graduate medical education in the state, both direct and indirect cost. We set aside 10 percent of that to hospitals and consortia that would achieve some graduate medical education reform goals.

We fund the pool through contributions by private third-party payors in relation to the individuals covered for hospital care. We do it in a carefully ordered way so as to steer clear of any mileposts that the federal ERISA or provider tax system would erect and to steer clear of the mileposts that any type of other states' taxes in regard to insurance companies would erect.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: And, Senator,

if you will continue to yield.

There will be no encumbrance to the geographic locations that have high rates of graduate medical education occurring inside them?

SENATOR HANNON: I presume by the means of encumbrance you mean that there should not be a shift in the costs born and raised in any given area. What we have tried to do is to preserve as best possible -- and probably we have done that. I believe we have done that with every assurance that the monies raised in one area are kept in that area, that there are no cost shifts, that there is no regional redistribution, and that the goods in one area stay there.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Hannon. Your interpretation of my answer is correct and your answer is quite helpful. If you would yield for another question.

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Senator, in the area of uncompensated care, care for the indigent where the hospitals will be showing a willingness to provide that care, what assistance will they get from our budget on that?

SENATOR HANNON: Well, in order to really provide a reasonable transition, we as a body in the bill that we passed last night felt that the cuts that had been proposed in the budget were far too deep and we reinstated many of them. We feel that makes the rest of the hospital system very viable.

In this bill, we create an indigent care pool. We finance that in regard to a mechanism, in regard to procedures that are done with alternates to direct payments into pools, and we think that we have provided an adequate distribution of those funds to the various different types of hospitals throughout

this state, once again being quite mindful as to not upset the regional distributions that are there.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Hannon. If you will continue to yield, just an observation first.

From what we have been able to look at, that seems quite right. The restorations are almost complete. That's really very encouraging in that particular area since there are so many individuals that don't have any real protection in terms of health care in the state.

The Child Health Plus area which you referred to earlier in your opening remarks, can you tell me a little bit more about that?

SENATOR HANNON: We expand the amount of coverage in a very substantial way and expand the amount of money available for that in a very substantial way. We take the current age eligibility, from birth to age 14, and bring it

to from birth to age 19 as well as adding hospital inpatient care to the current primary and preventive care.

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

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

SENATOR PATERSON: What about some of the services, such as eye care, dental care? I don't see them as part of the restorations, and they weren't really part of the original proposal. Is there any plan to provide those types of services to children?

SENATOR HANNON: This house had included that in the NYPHRM bill that we passed. Upon more detailed and focused analysis of the costs, that would have added more than we could afford in regard to the public good financing; and while we look upon that as highly desirable, the information that came to us subsequent to our passage of our NYPHRM bill points out that as we do this Health Care Reform Act, that's something, while desirable, is not

something we can afford.

SENATOR PATERSON: Senator, you're saying that was part of the original proposal from this house. But with respect to the financing, if I get this correct, when it came down to the final negotiations, we didn't have the resources to provide it?

SENATOR HANNON: That's correct. The provisions for dental and vision were estimated, and when we got down to the focus and had the better numbers available and the better experience rating to be in the order of $20 million, and that was not something that fit into the plan that we could come up with.

We have, I will tell you, made substantial commitment already, almost to the tune of an increased $100 million to this plan, and the point was -- the judgment was made that that was what we could afford at the current time.

SENATOR PATERSON: Thank you, Senator. I actually did give you credit for it. The fact that we can't provide the full

services in such a valuable area I think is unfortunate.

If the Senator will continue to yield. With respect to the financing of SLIPA hospitals and the reimbursements, can you tell me how that is going to be set up?

SENATOR HANNON: There are two parts to the SLIPA hospitals. One is in regard to the public hospitals, and there is a separate set-aside that I think essentially hospitals such as Nassau and Erie, Westchester and HHC in New York City will continue in the first year to get their full shot. The rest of the SLIPA hospitals it turns out, interestingly, as we put a real incentive into the computation of bad debt and charity care, real incentive to only pay for actual bad debt and charity care, the SLIPA hospitals, in general, did better with the caveat that all of these numbers are not something that are truly subject to mathematical 100 percent precision because needs change, populations change and federal definitions change even more.

SENATOR PATERSON: Thank you, Senator. If Senator will yield to another question?

SENATOR HANNON: Yes.

SENATOR PATERSON: With all of this, in terms of the restructuring of the hospital economic system, would we be able to prevent in the future at least -- the future meaning the next fiscal year -- the downsizing of hospitals, the laying off of workers and specifically to that end, do we have any provision in legislation for the retraining of workers or certainly reevaluating the skills of workers, putting them in other areas we may have closed off.

SENATOR HANNON: To get to your last part of the question first -

SENATOR PATERSON: Right.

SENATOR HANNON: Yes, we do. We have made some substantial commitments to worker retraining. Interestingly, part of that is pegged to the state's attainment of a managed care waiver from the federal government,

something that is well overdue in regard to its action by Washington in a very surprising way, and we need that in order to have things to retrain people for. Doing any type of retraining without that is silly because the whole direction of our health care system is towards this managed care, so we need that in place.

I'm sorry, the first part of your question?

SENATOR PATERSON: Downsizing.

SENATOR HANNON: Oh, downsizing. When it comes to downsizing, many people especially in the media would like to characterize it as a black or white situation. You're either going to have downsizing or not; you can keep hospitals open or not. In reality, this bill comes about because there is great changes already in health care in the United States, and the degree to which we use hospitals in this state is far out of proportion to any other states, be they comparable states in terms of our population and geographic and urban

situations or whether they be totally different, so that what we need to do is to focus our financial resources into different arenas, into more outpatient clinics, comprehensive health care centers, primary care; and hospitals themselves, as a practical matter, have begun that.

So will there be downsizing? You can say, yes, there will be downsizing in hospitals, but it's interesting when you look at the numbers what happened just within the last 12 months in this state. The hospitals had some downsizing but the rest of the health care industry had an increase. So that we do have more demand for health care. It's just a question of where it's placed. Some people will say, well, look. If you pass this, you will have hospitals closing. I would only point out two different things in that regard. One is while the current system -- while the current NYPHRM system had been in existence, we've had 40 hospitals close. My point is, whether or not you have this, you will have hospitals close.

Now, is this going to cause it? I don't believe whatsoever it's going to cause it. I will tell you since we passed our proposal in regard to what we call the NYPHRM - the Senate proposal -- there have been four major changes in this state. Buffalo, three hospitals have gotten together as networks. We have Beth Israel and Long Island Jewish have announced a merger. We have Mount Sinai and New York University Hospital have announced a merger, and there has been -- the first thing you do when you talk to somebody in the field is you ask what's changed today.

So we have had vast changes. So I think what we're going to do is enable the natural progression and progress that health care is taking to go forward. We're not going to have artificial impediments. We're not going to have artificial incentives to go sideways or to go backwards.

SENATOR PATERSON: Thank you very much, Senator.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I think Senator Hannon is correct that the structuring of health care may be changing and so the statistics with respect to hospitals may be somewhat inaccurate, because some of the health care that they provide may be antiquated by new and different procedures. Certainly the lessening of the use of hospitals and probably the greater use of other types of health care facilities in particular areas is probably the evolution of where the industry is going.

Please recognize that I represent a district, Harlem and Washington Heights and East Harlem, that has lost eight major hospitals in the last score of years, hospitals such as Flower Hospital, Fifth Avenue Hospital, Arthur Logan, Knickerbocker Hospital, Joint Center for Diseases, Mother Cabrini, and Francis Delafield Hospital, have all disappeared in terms of the service that they provide, and we are subject to different types of rumors about merging of

facilities between St. Luke's and Roosevelt Hospital, the possible and then canceled merger between St. Luke's Hospital and Columbia Presbyterian, the possible closure of Harlem Hospital, and a bond act that we had to secure in 1988 to save North General Hospital which is the largest employer of people in the Harlem community; and so in an area where health care is of such great need and of such great value to the constituents there, there is just a concern, not necessarily that the hospitals remain open or remain whole or even remain in the fashion that they were before but, as Senator Hannon says, that there be the type of health care provided that exists even if they come from community health centers and the like.

On the legislation itself, it appears that a great deal of what did not exist in the Governor's original bill on December 15 now exists because of hard negotiation and firm points of view by those who really understand the necessity of health care. It may not be an excuse for the elongated process or the delay in

the passage of this budget, but it certainly justifies the feeling of those who couldn't go forward until there was a piece of legislation in this area that we could finally live with.

We are certainly feeling as if we have to congratulate all those who have hung in there to regain so many services that mean so much to so many who were deprived in the industry and deprived in the ability to receive decent and affordable health care, and it is the reason that only until now we really could feel that -- an agreement that may not represent or fulfill all the needs but will certainly be a lot better than was originally promised six months ago.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to a couple questions?

ACTING PRESIDENT KUHL: Senator Hannon, do you yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: First of all, Senator, let me congratulate you. You have worked awful hard on this project for the better part of I would say six months, but it's probably double that and beyond. Since the time you have been chairman of the Senate Health Committee, I know that this has been an issue near and dear to your heart. I congratulate you in getting it to this point.

We may disagree about aspects of where we have finally come to and where we're going, but certainly you and your staff deserve a great deal of congratulations for a piece of work that is monumental in its scope and, as you properly point out, consumed hundreds if not thousands of hours. So let me start with that background.

Through you, Mr. President, one question that I want to ask. You mentioned something about artificial incentives in the system. Aren't we really putting an artificial

disincentive in the system if we're going do finance this through a tax on the hospitals?

And my follow-up question to that, Senator, is: Is the consequence of this, if the assessment against the hospitals that's used to finance this tool, if it's successful, it will drive down hospitals' utilization, very costly hospital utilization, but it will also result in a smaller assessment being paid into the pool each year; and then my question is if we have less going into the pool but rising need, how do we cover the gap?

SENATOR HANNON: Your point is well taken in the sense that that would be the common sense approach to looking at this mechanism. In this case, however, the answer is to take you away from that intuitive approach and to point out that what we're doing by raising the money for the public goods is only to have a nominal levy on the hospitals and put that nominal levy at a very high percentage, thereby encouraging people to pay directly into pools, which we really feel is the actual

financing mechanism, skipping entirely the health care providers that otherwise would be subject to it.

SENATOR DOLLINGER: When you say people pay directly to the pools, you are talking about the insurance carriers, the Blues, employer groups, making direct payments into the pool and, therefore, not doing it through the other method which would be to simply follow the current pattern of having physicians refer to hospitals and then have the bill that the hospital charges to the insurer reflect the 8.6; and maybe just clarify for me what that final percentage was that was worked out?

SENATOR HANNON: In regard to the bad debt and charity care, it's approximately 8.5. That hasn't been -- the point is that it would be at the payor's election to go directly into the pools, thereby skipping all of the requirements that the providers, which is an expanded base from the current, would have to pay. I would point out that any regard to an allowance or a levy that's in the law is simply

a continuation in that regard of what's there now. It's a continuation on a different base because the current base is a fixed rate. The new base would be a negotiated rate. But we're not enacting anything new in that regard.

SENATOR DOLLINGER: Again, through you, Mr. President, if the chairman of the Health Committee will yield.

I just want to make sure I understand. If there's fewer referrals to the hospitals, then there will be a smaller assessment paid into the pools from the hospitals. That, as I understand it, is the incentive that drives the reduction in hospital utilization which you and I have discussed before has really been the problem in this state, is the utilization number has been too high. So what we're trying to do is reduce utilization by a common method that government has used in the past, which is to tax the activity and, therefore, discourage it. We do that through the assessment, but if we work - if it succeeds and utilization declines, then

there would be less cash put into the pool. Is it my understanding that then as part of this process, the system having worked, we will then go to payors and say it's worked but we still have a growing need. We need you to make voluntary payments into the pool to make sure that we have enough cash to cover the growing need? And if so, how do we do that in a negotiated rate setting?

SENATOR HANNON: I don't believe that will happen. Nobody here, however, has a total crystal ball but I will share with you why I don't think that will happen. We have taken the current allowances on inpatient care, and that's where they are, only expanded to not only inpatient care but also to comprehensive diagnostic and treatment centers as well as ambulatory surgical services and free-standing clinical labs, broadening the base substantially. So that as a natural progression towards the more primary care, nonhospital care, takes place that we cover those changes in order to continue driving money for the goods that we

feel ought to be covered.

SENATOR DOLLINGER: Again, through you, Mr. President, if the chairman will continue to yield.

I understand that broadening. I support that broadening, otherwise we would be really punishing inpatient/outpatient care in the hospital and we would see enormous growth in those ambulatory surgical centers, the diagnostic and treatment centers.

My follow-up question is, what happens if given the free market's ability to find the little holes -- the loopholes that may be left in this statute -- what happens if all of a sudden doctors' offices and other types of facilities suddenly acquire some kind of surgical ability, some kind of surgical capability, and we spawn an industry that is now outside the taxed scope? My question is, don't we still run into the risk? Don't we still run the problem that we will have declining payments into the pool in the face of growing need?

SENATOR HANNON: As I said, our

crystal ball is murky, but already, within hours of the main bill, we have another one on the calendar, 1788, that is technical corrections. I don't know how to forecast what the Health Care Reform Act of 1999 will be. We just know there are enormous changes that take place. When we get to the managed care bill, Medicaid managed care bill, we simply couldn't extend what this Legislature had done just five years ago because of enormous changes in the way the delivery systems were.

So we may have to make adjustments, but to the extent that I believe this is reasonable and balanced and tries to be equitable in all types of the providers so we get good services for our patients, I think it's a reasonable approach. We'll just have to see what happens in the future.

SENATOR DOLLINGER: Okay. I can buy that.

Mr. President, if I can just follow up with a couple more questions.

Mr. Chairman, you know that I've

raised the issue of the pool and how the pooling arrangement works, and my concern has been that the issue of whether we have a statewide pool - that all the providers would pay into a statewide pool that would then distribute the bad debt and charity care assets on the basis of a statewide distribution. I know that in the bill this house passed, in our version, an earlier version of this bill, we had regional pooling devices that would allow communities, give an incentive to communities, to solve their own problem vis-a-vis both graduate medical education and bad debt and charity care.

I want to make sure I understand this. Could you tell me how that system works in this final bill? Is it a statewide pool or is it a regional pool?

ACTING PRESIDENT KUHL: Senator Dollinger, could I interrupt just a minute. It's getting extremely noisy in here, and regardless of whether anybody in here wants to listen to your debate, the stenographer has an obligation and a responsibility to record it,

and she's indicated to the desk that she can not hear the debate. The noise is too loud. So could we please keep it down. If you have conversations, take them out of the chamber. Let's let the debate continue.

Thank you for the interruption. Please continue, Senator Dollinger.

SENATOR DOLLINGER: I assume the chairman of the Health Committee understands the question. It's an issue we've discussed a number of times.

SENATOR HANNON: What we have done -- I don't think we call it -- I do not believe we still call it regional pools, but what we have done is to make sure that the money for bad debt and charity care that is raised upstate stays upstate, same percentages. Money that's raised in New York City stays in New York City, and money raised in Long Island stays in Long Island, and we have less in the current cost shifts between those three regions, so we have narrowed that.

SENATOR DOLLINGER: Through you

again, Mr. President.

There was a provision in the earlier bill that we did that would have specifically impacted the communities that I represent, that is, would have allowed local communities to bring forth plans to deal with both the GME and the bad debt and charity care pool. Is that provision still in the final bill, Mr. President?

SENATOR HANNON: It is, and refined and honed, but it is still substantially there. It's called the Regional Demonstrations for Financing Public Goods, and we allow the hospitals and payors to collaborate on regional models for public goods financing. It's subject to state approval and then the design, and it would be specifically for Monroe County, which visits to the county understand the long history, individual health care initiatives there, collaborative efforts throughout the county, and we feel that they will probably be coming forward with their own proposals and that would be something the Legislature, the

Executive, would be receptive to.

SENATOR DOLLINGER: Two final questions, Mr. President, again, through you.

One is the issue of the uncompensated care. I know there is about $738 to 750 million that will be taken out of the projected assessment-created pool that will be used to pay for uncompensated care. My understanding is that there have been estimates of the total uncompensated need in this state which run to the vicinity of about $1.2 billion, leaving somewhere between $450 million and $500 million as a current gap between what would be reimbursed to the hospitals and what the current need is; and my further understanding is that under the current system, depending on how much uncompensated care a hospital takes, they get a proportional payment, proportional dollars from the bad debt and charity care pool.

My question is, how does it work in a negotiated rate system if -- since you're in essence cutting the fat out of the other rates that the hospitals have had, how do you

pay for that additional $500 million in uncompensated need, assuming it's there?

SENATOR HANNON: One doesn't know if it's there. You look at the different computations in the current system and you see enormous variations even in the same institution year to year. You do know that the current system has incentives for the financial arm of a hospital to put all sorts of costs into the outpatient clinics in creating greater bad debt. We do not know -- in fact, I have seen other estimates that's in the Governor's Temporary Task Force on the Reform Act that the total amount of uninsured is about $4 billion.

The difficulty here is getting good accurate measurements, good accurate measurements which are part of the smaller task force provisions that are at the end of this bill which I hope would be forthcoming. One of the other things is that whenever you set up to pay for certain uncompensated care, you actually create incentives for people to get into that; you create incentives sometimes for employers

not to provide insurance coverage, thereby making that need even greater.

So the cost shifting that goes on is a phenomenon that we still have to contend with. The best thing I can think of is what we tried to do with this, frankly, compared to any other state, enormous amount of support in regard to uncompensated care, an enormous amount of support in regard to graduate medical education, and then looking at the rest of the financing stream to institutions is we provide a solid bedrock of support to these institutions so that, as we grapple with the rest of the questions of the uninsured that needs to be addressed and quality care that needs to be addressed, that we have a good basis for going forward.

SENATOR DOLLINGER: Okay. I'm willing to accept that.

One final question, Mr. President.

Senator, you know in my discussions about this bill in the whole health

care reform debate, one of the bottom line questions for me is, do we end up with a healthier New York? We end up with a less expensive health care system. But do we end up with a healthier New York population?

And it seems to me that all that we do should be tested against that measure, that ultimate measure. I believe, as I think you do, that this bill will drive our cost out of the system. The question is does it also drive out quality care?

And I guess my question to you, and you have been closer to this than I have - although certainly you have been good to me in giving me information, your staff has been, in helping me understand this. But someone said to you, as I say to you now, will New Yorkers be healthier after this bill passes and becomes law?

SENATOR HANNON: Yes.

SENATOR DOLLINGER: What do you believe?

SENATOR HANNON: I fully believe

that with the initiatives in the legislation here which have been a collaborative effort through all parts of this government that we will have a better health care system through this for the hospitals, through the Medicaid managed care proposal that we'll have in a few minutes, hopefully, through the general managed care provisions we have already done, and through the substantial work we did in the budget. I totally believe that the needs of this state in terms of health care are increasing, if only because the baby boomers are getting over 50.

SENATOR DOLLINGER: Absolutely.

SENATOR HANNON: And when that happens, the needs of -- incidences of need for medical services increases, so that whatever we, quote, "save," in health care I believe has to be put back into health care itself because we're going to have ever-expanding needs as the baby boomers age out.

I would say one thing I can be certain of, though, is for the hundreds of

people who have worked on this bill, when we pass it, their health will be much healthier.

(Laughter.)

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This is an enormously complicated piece of legislation. I guess I now understand why President Clinton - when he tried to do it at the federal level, it was a thousand pages. It's up to 140. I know this is a very complicated issue, and Senator Hannon I think is absolutely correct. This comes down to a calculation of the future that may be very difficult for us all to predict, and that is, what happens when you put in a system that has incentives, that has disincentives, that alters the fee-for-service system, which I think we all recognize we need to abandon -- but what happens when you change those incentives and create the possibility of reducing utilization, of saving us money without

sacrificing quality, and while the overall impact of this is largely unknown? I think it's difficult to predict how it's going to finally all shake out. I wish in that respect we had more time, that we could establish a chain of six months. I guess we're going to have six months in coming, but a time in which we can evaluate from the providers' point of view, go back out to our constituencies and say, "Here's what we think the right thing to do is. Here's what we're prepared to embark on. What are the kinds of changes that may be necessary?"

There is always a watershed moment in one of these progressions. This may be a watershed moment, but I think it's a system that we're still going to have to keep our finger on the pulse and as that pulse quickens or slows, we're going to have to tinker with this system again.

I am going to end up voting for this bill. I think there's some good things in it. I think the expansion of the Child Health Plus, some initiatives that give us real

opportunity. But recognize, everyone, that the issues that surround health care, although this may propel them a great deal forward, I'm not quite sure we're still at our goal of making a healthier New York, and I certainly commit myself as long as I'm on the Health Committee to continue to try to progress us down that path. But I, for one, will keep a very firm finger on the pulse to see how the heart is beating in New York in the future.

ACTING PRESIDENT KUHL: Senator Leichter, did you wish to speak on the bill?

SENATOR LEICHTER: I yield to Senator Abate.

ACTING PRESIDENT KUHL: Before Senator Abate, Senator Saland, you indicated a desire to speak on the bill.

Senator Saland.

SENATOR SALAND: Mr. President, would Senator Hannon yield, please?

SENATOR HANNON: Yes.

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

The Senator yields.

SENATOR SALAND: Senator Hannon, I'm looking at page 69 of your bill, the section that deals with professional education pool funding, and I apologize if you may have been asked this question. I came into the chamber near the end of your debate with Senator Paterson and sat through your exchange with Senator Dollinger. In that bill, as I understand from the comments that you had made on the floor, I believe your intention is that the respective regions shall effectively see the dollars that are raised for purposes of professional education remain in that region?

SENATOR HANNON: Yes.

SENATOR SALAND: Or am I misconstruing your comments?

SENATOR HANNON: I believe this references an earlier letter you had sent me.

SENATOR SALAND: I'm sorry?

SENATOR HANNON: Are you making reference to the contents of a letter you sent me -

SENATOR SALAND: Right.

SENATOR HANNON: -- about the concerns about the shift. We have not had any shift by embracing a larger region. We are keeping the money that is raised within New York City in New York City. We're keeping money raised in Long Island within Long Island and then the rest of the state together, we're keeping that together.

SENATOR SALAND: I noted just that there was a reference to definition of regions, and in trying to locate the appropriate subsection of the bill, I'm not quite sure that those definitions are there in this particular section. It's probably in existing law and hasn't been amended, so I take great comfort in your comments and thank you for your response.

SENATOR HANNON: Thank you.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Senator Hannon yield to a question?

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: On a prior debate, I had raised some issues around the numbers of uninsured particularly in New York City that come into the New York City hospitals, and that you agreed with me that those numbers are ever increasing; and right now, throughout the state, there are approximately 2.9 million people uninsured. Give or take, I think that's the correct number.

Was there any consideration given to developing a trigger mechanism? If the uninsured population in any one region increases beyond a certain percentage, there would be an availability or discussion or formula so that that region could get additional assistance?

SENATOR HANNON: Well, I think that would be looking at the problem from the wrong end. I think you have to say why do people become uninsured? And the uninsurance takes place mainly because the coverage ceases to be provided by their employer, so that as we

see substantial increases to an employer, especially with those of 50 or less employees, they tend to not offer it because they can't afford it. Their choice is trying to run a business with no benefits or run no business at all. So that what you have to do here is have a reasonable cost to the system. You have to take away the double digit increases that have been taking place to the private employers, and I think that has been the main thrust, and we will be lessening this guaranteed flow from those people into the system.

We are going to allow a number of other mechanisms that would encourage these employers to provide coverage through -- one through the pilot programs in regard to health insurance; second, through the ability of the provider service networks so that the providers themselves can band together and figure out how to make efficient delivery and make direct agreements with employers, cutting out the HMOs. Believe me, we don't like that whatsoever but there, right there, you can lower the costs

to a substantial number; and then the final part of dealing with this is, right now the current system in regard to indigent care, in regard to money and payments from the bad debt and charity care really have been around too long. People know how to utilize them. They don't truly measure the amount of the uncompensated care, so that we have put changes in to have that so that the actual burden faced by a hospital will tend to be reimbursed to that hospital.

SENATOR ABATE: But how do we address the issue where an individual is uninsured, unemployed, and not Medicaid eligible? How do we address that population, if, in fact, that increases over time?

SENATOR HANNON: I mean, uninsured, unemployed, not covered by - Medicaid eligible, that's truly a population no one has ever described to me before, and I'm not sure it exists.

SENATOR ABATE: We do know it exists just with our dealings with ADAP, that there are people that were -

SENATOR HANNON: If you are talking about special groups -

SENATOR ABATE: Yes.

SENATOR HANNON: -- in a number of different areas where we are able to identify people with special needs, we've tried to do that. With regard to ADAP, we have put in a special program that will supplement the additional $9 million that is now coming to this state from the federal government with an additional $12 million. Through your efforts and Senator Goodman's efforts, those are in this.

If you go and look in another bill, which is not before us, but will soon be, the Medicaid managed care bill, we have special needs plans in regard to those who are dealing with mental health problems or dealing with AIDS problems, so to an extent you can do that. Frankly, I don't think you can just pluck something out there in vague general terms and say, "What have you done?"

Wherever there is something that

is identifiable and there is a rational step to get to it, I think we have addressed it.

SENATOR ABATE: Just briefly on the bill. I believe that this is a better bill than the original ones that we have looked at. There are a lot of very good people that worked on this bill.

Senator Hannon, I want to compliment you that the ADAP funding -- finally, New York State is recognizing that they need to be involved in this very important program. Up until this budget, New York State did not recognize that the AIDS Drug Assistance Program was a state responsibility. This will go a long way in helping many people who are suffering with AIDS, allow them to remain independent, and get vital drugs that will keep their - hopefully elongate and produce quality in their lives. I'm very happy there is money restored to graduate medical education, Child Health Plus was expanded, and there's continued funding for SLIPA and financially distressed hospitals.

But as Senator Dollinger has

said, I'm still concerned about the New York City hospitals. They have enormous needs, and I hope that NYPHRM will allow them to address these needs, and along with many of my colleagues we're going to be closely monitoring the impacts and effects of NYPHRM.

I will be, though, supporting this bill.

ACTING PRESIDENT KUHL: Senator Leichter, did you wish to speak?

SENATOR LEICHTER: I will explain my vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Leichter, to explain his vote.

SENATOR LEICHTER: Mr. President, Senators Paterson and Dollinger and Abate have

made really the points that I wanted to make, but I think it's important to emphasize that, here again, we had to respond to what was really a "scorched earth" policy on the part of the second floor in regard to hospitals and health care and a lot of other issues where this Legislature has had to make radical changes in the Governor's program as was, of course, done in the budget.

I would say out of the convoluted, sausage-making process which we call a budget-making process that this bill came out probably better than most others and shows what can be done by the Legislature working in a somewhat nonpartisan political manner, and I want to certainly acknowledge the work that was done by Senator Hannon as other members have and also by my Assemblyman, Assembly member Richard Gottfried, the chair of the Assembly Health Committee.

I think what we have here is a bill we can live with, a bill that recognizes not only that the health industry is terribly

important for the welfare of New Yorkers but it's also incredibly important for the economy of the state of New York, and the Governor's original proposal which would have caused numerous hospitals particularly in urban areas to close would have been disastrous not only for the health care people but also for the economy. I think we have improved it. Obviously there's a lot of questions that we still have. There are a lot of concerns that we have. We'll have to see how this system works, but as we go into it, I think we can be satisfied that we did the best possible under the circumstances.

I vote in the affirmative.

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

Senator Cook to explain his vote.

SENATOR COOK: Mr. President, I would like to add my admiration to Senator Hannon for being able to get his arms around an immensely complicated subject and to put together a bill which I think is remarkable in

what it accomplishes.

I try and liken it to trying to build a tower with dominoes while riding a bobsled downhill at 100 miles an hour. I just don't know quite how you do it.

But my real purpose in rising is to thank him again for sensitivity to the rural health concerns. There are several provisions in here which -- and I want to emphasize this - which look toward the future. They are not an effort to preserve the status quo or keep us where we have been but to help us move forward, and I think that's the thrust of this bill. I think if we look at it in that context, we really understand the genius, if you will, of the way that it's been constructed.

And I, again, want to thank Senator Hannon for all of his work and all of his receptivity for the rural providers.

I vote in the affirmative.

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

Senator Volker to explain his

vote.

SENATOR VOLKER: Yes, Mr. President. I just want to, first of all, say that I don't believe people realize the enormity of what is occurring here today with this bill. I don't think that when this session started or even a few months ago there were any of the senior members of this house, and I hesitate to put myself in that category, knowing the history of issues of this state who could or would have believed that a compromise would have been reached on something that is so complicated as NYPHRM.

Because I have a major public hospital, the Roswell Park Cancer Institute and Children's Hospital, in the Buffalo area, I had to try to learn more about health care and hospitals and all the rest of the stuff than I ever really wanted to know, and Senator Hannon and his staff was immensely helpful, and I just got to say very honestly in response to Senator Leichter -- and I understand that the process is sort of a sausage when you talk about a budget,

but it's something called democracy. It's a terrible system, democracy. It's lasted here for over 200 years. It's absolutely amazing that it's lasted. But I think with all that, I guess it's not been as bad a system as we think.

But I think New York, thanks to Senator Hannon, the Governor, and the Assembly -- and it's no secret internally that, sure, there was immense internal politics, but that the people that worked on this bill probably worked in a more bipartisan manner than in almost any other time in the history of healthcare in this state.

I want to immensely compliment Senator Hannon for the job that is done. As I said, I don't think -- very few people believed this could be done other than December, because the assumption around here was that this was going to be extended, and the Governor to his credit, by the way, said he wasn't going to do that.

But it is an amazing feat. I

want to especially compliment you for a piece that's in this bill on page 68 that relates to grants for children and cancer hospitals, and there's another piece that's part of this that, as I understand it, will have an immensely favorable effect on Roswell Park Cancer Institute in Buffalo, as well as Sloan Kettering, by the way, in New York City and also Children's Hospital in Buffalo, and several other specialty hospitals, and I want to thank him especially for that.

I think it's an admirable job.

ACTING PRESIDENT KUHL: Secretary will announce the results.

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator DeFrancisco.

SENATOR DeFRANCISCO: In an effort to help to define the length of the future debate today, I wanted everyone to know that the lemon ice is turning into lemonade presently, so I just wanted to put that on the

record.

ACTING PRESIDENT KUHL: Thank you very much, Senator DeFrancisco.

Senator Alesi.

SENATOR ALESI: Mr. President, will you place Calendar 1788 before the house, please.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1788.

THE SECRETARY: Calendar Number 1788, by the Assembly Committee on Rules, Assembly Bill Number 11341, an act to amend the Public Health Law.

ACTING PRESIDENT KUHL: Senator Alesi.

SENATOR ALESI: Mr. President, is there a message of necessity?

ACTING PRESIDENT KUHL: There is.

SENATOR ALESI: I move we accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1788 which is at the desk. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date as a Chapter of the Laws of 1996.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Santiago, why do you rise?

SENATOR SANTIAGO: Mr. President, I would like to state for the record that had I been in the chamber on June 12, I would have voted in the negative on Senate Bill 7532.

I would also like to state that had I been in the chamber on the 13th, I would

have voted negative on Senate Bill 4413.

Finally, had I been in the chamber on July 11, I would have voted in the negative on Senate Bill 5235.

I would also like to be recorded in the affirmative on Senate Bill 7947 and 7948 which just passed this morning.

Thank you.

ACTING PRESIDENT KUHL: Senator Santiago, without objection and hearing no objection, you will be recorded in the affirmative on Calendar Number 7948.

The record will reflect that had you been in the chamber when a slow roll call was taken on Senate Print 4947 that you would have voted -- in the negative?

SENATOR SANTIAGO: Yes.

ACTING PRESIDENT KUHL: And the record will reflect that had you been in the chamber on June 12 and June 13 and July 11 that you would you have respectively voted in the negative on Senate Print Numbers 7532, 4413 and -- I think it was 5235?

SENATOR SANTIAGO: Yes, sir.

ACTING PRESIDENT KUHL: Record will so reflect.

SENATOR SANTIAGO: Affirmative on 7947.

ACTING PRESIDENT KUHL: Senator Santiago, for the record, you will be recorded in the negative on those, that's correct.

7947, you want to be in the affirmative?

SENATOR SANTIAGO: Yes, sir.

ACTING PRESIDENT KUHL: Okay. For the record, the record will reflect that had you been here when the slow roll call was taken on 7947 that you would have voted in the affirmative.

SENATOR SANTIAGO: Thank you.

ACTING PRESIDENT KUHL: Senator Alesi.

SENATOR ALESI: Mr. President, will you place Calendar 1786 before the house, please.

ACTING PRESIDENT KUHL: Secretary

will read the title to Calendar Number 1786 which was substituted earlier today.

THE SECRETARY: Calendar Number 1786, by the Assembly Committee on Rules, Assembly Bill Number 11329, an act to amend the Public Health Law and others.

ACTING PRESIDENT KUHL: Senator Alesi.

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

ACTING PRESIDENT KUHL: There is.

SENATOR ALESI: I move we accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity at the desk on Calendar Number 1786. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

Any Senator wishing to speak on the bill?

SENATOR PATERSON: Explanation.

SENATOR HANNON: This is the Medicaid managed care bill. This is the bill that will enable us to make changes in the existing mandatory Medicaid managed care once we get the waiver from Washington. This updates the types of service delivery components that have become necessary since we enacted mandated managed care for Medicaid recipients in 1991.

It addresses questions of marketing. It addresses questions of enrollment, disenrollment, questions of auto assignment, questions of quality assurance, grievance, utilization reviews, special needs plans.

Taking all of those, which are highly important but detailed and somewhat esoteric concepts, what this does is to really allow us to let the recipients of Medicaid get their health care through an orderly, rational process and not to use an emergency room as their primary care provider. This is going to result in better care for that recipient. It's going to result in a better use of the system,

and it's going to help the entire state besides.

I would move the bill, Mr. President.

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 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Alesi.

SENATOR ALESI: Mr. President, may we go to the original Calendar, Number 22, please.

ACTING PRESIDENT KUHL: On the original calendar, Calendar No. 70, Secretary will read the title of Calendar Number 22.

THE SECRETARY: Calendar Number 22, by Member of the Assembly Eve, Assembly Print 5648C, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect in 30 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Alesi.

SENATOR ALESI: Mr. President, may we proceed with Calendar 1146, please.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1146, again on the regular calendar, Calendar No. 70, which was substituted earlier today.

THE SECRETARY: Calendar Number 1146, substituted earlier today, by Member of the Assembly Lafayette, Assembly Print 3027C, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: Senator Alesi.

SENATOR ALESI: Mr. President, is there a message?

ACTING PRESIDENT KUHL: There is.

SENATOR ALESI: I move we accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1146. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. On supplemental Calendar No. 1, will you place Calendar Number 1787 before the house.

ACTING PRESIDENT KUHL: Supplemental No. 1, Secretary will read the title to Calendar Number 1787.

THE SECRETARY: Calendar Number 1787, by the Senate Committee on Rules, Senate Print 7957, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Message was previously accepted.

Any Senator wishing to speak on the bill?

Hearing none, Secretary will read the last section.

THE SECRETARY: Section 28. 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 FARLEY: Mr. President, could I be recognized, please?

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: I would like to be recorded in the negative on Calendar Number 22.

ACTING PRESIDENT KUHL: Without objection. Senator Cook, do you object to Senator Farley's being recorded in the negative on Calendar Number 22?

SENATOR COOK: I endorse it.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Farley will be recorded in the negative on Calendar Number 22.

Senator Cook, why do you rise?

SENATOR COOK: Same question.

ACTING PRESIDENT KUHL: Without objection, Senator Cook will be recorded in the negative on Calendar Number 22.

(The Senate stood at ease.)

...At 1:23 p.m....

ACTING PRESIDENT KUHL: Senate will come to order, please. Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we ask for an immediate meeting of the Finance Committee in Room 332.

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

(The Senate stood at ease from 1:23 p.m. to 1:31 p.m.)

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

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1783.

ACTING PRESIDENT KUHL: On your

Supplemental Calendar Number 1, Secretary will read the title of Calendar Number 1783, Senate Print Number 7951, substituted earlier today.

THE SECRETARY: Calendar Number 1783, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 11331, an act to amend the Workers' Compensation Law.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT KUHL: Senator Bruno, an explanation has been asked for by Senator Onorato, the Acting Minority Leader.

SENATOR BRUNO: Yes, Mr. President, and Senator. What we have before us is a very comprehensive Workers' Compensation reform package for the people of this state.

We, in New York State, have for years, suffered by being the second highest ratepayer in all of the United States for Workers' Compensation benefits. Senator -- I'm not sure he's listening -- Mr. President, I don't know if Senator Onorato has any interest in what I'm saying, but I know that he doesn't want to miss our opening comments because he

will want to engage in some of the discussion relating to this.

But we have been paying in this, Senator, about $5 billion in premiums in this state and we have been paying something in the neighborhood of 51 to 55 percent higher than the national average, second highest in the country.

While we have been doing that, we have, number one, been paying workers 47 cents on the dollar while the national average is 62 cents on the dollar. Now, think of that: Second highest premium in the country, and we paid workers less than the national average. That has been a disgrace.

Also, we have been driving jobs out of this state. Our Workers' Comp' costs helped us in the past become 50th in this country in job creation -- 50th -- and that's something that Governor Pataki, Republican administration, with our partnering, have moved from 50th in job creation to 5th in one and a half years.

We want to be number one. When you hear about high taxes that relates to high spending in this state, over-regulation, we're doing something about that, today, in this session, and last year. This is what the people of this state have been waiting for.

So this package rescinds Dole v. Dow which we in New York State have been the only state to have in this form. Forty-nine other states have had a workers' program without it. New York State will now join them, and we have put in place of the Dole, we have put a list of grave injuries, a very specific list that defines grave injuries, and that will help limit the exposure and consequently the cost to employers and it will allow employers to invest more in their businesses and, when they invest in their businesses, they'll be investing in workers' safety, and that's a big part of this package.

Employers will get credits for their investments in a safer work place. There will be managed care expanded through this

bill. All of us know that the premiums and the extravagance of those premiums relates to fraud within the system, people who are on two pay rolls, three payrolls.

This will eliminate people on unemployment also collecting their benefits in a double way, and it goes on. So we will be minimally reducing Workers' Comp' costs in this state in double digits over the next several years, and we expect over the next several years that New York State premiums for Workers' Comp' will be at least a third less than they are today.

We will be competitive with New Jersey, so we won't have to suffer the embarrassment of a team like the Giants being attracted to upstate New York in their training having to get their Workers' Comp' benefit out of New Jersey, and that is a disgrace. They were able to do that. Many other businesses can't do that. They are trapped. They are here.

So what have those businesses

done? They have limited their employment. They have not expanded. They have avoided the costs for workers' premiums by not hiring when they could, expanding in other states, and that has not been productive. We are correcting that today.

Governor Pataki took a leadership position on this issue. He made it part of all the good things that should happen this year in this state, and we in the Legislature are now partnering with the Governor in moving this program forward and having it become law.

The people out there, the workers out there, that will benefit directly as a result of what we are doing here in this chamber, we then can be proud to be partners with the Governor in doing what we're doing. This, along with the largest tax cuts in the country, in this Republican administration, with the leadership of Governor George Pataki, 2.5 billion in tax cuts in two years, is helping turn the economy of this state around from the failures that we have suffered in the past to

the optimism and the growth that we are experiencing now and will continue to experience in the future.

So I want to thank my colleagues for their support. I know there are differences of opinion. I know there are things that people would have liked to have had in this bill that's not there, and I know that there are things in this bill that some people would rather not see there. But this bill was negotiated with the Assembly, with the Governor, in good faith and it represents a compromise; but the one thing that we did not compromise was that the premiums will be cut.

Now, next year and the year after, workers will be safer as a result of what we do in this state and jobs will be stabilized or increased as a result of what we are doing here today.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President,

if the distinguished Majority Leader would yield for a couple questions.

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

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR BRUNO: Mr. President, if Senator Paterson would just indulge me for one minute. We have a logistical problem here, Mr. President. Senator DeFrancisco has a personal problem that he has to tend to. So I would like to -- it relates to other than -- and Senator DeFrancisco as he casts his vote may want to indulge us, but that will be up to him. But I would like to read the last section -

ACTING PRESIDENT KUHL: Secretary will read.

SENATOR BRUNO: -- on this bill, allow him to vote and then we will resume the discussion.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

THE SECRETARY: Section 90. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator DeFrancisco, happy anniversary. How do you vote?

SENATOR DeFRANCISCO: I guess it's out of the bag, huh? I vote yes. Thank you.

ACTING PRESIDENT KUHL: Senator DeFrancisco will be recorded in the affirmative. We're back on debate, Senator Paterson. Senator Bruno yields.

SENATOR BRUNO: Mr. President, let me assure you this would have been a problem had not the good Senator been celebrating his 28th wedding anniversary where there are great festivities, and for those of us who can make it we'll be there, so thank you for the open invitation, Senator. His wife can accommodate

another several hundred, so if we can get there, we will.

Thank you, Mr. President.

Senator Paterson, thank you for your indulgence. You have a question, and I know it's easy.

SENATOR PATERSON: Yes, it's an easy question.

SENATOR BRUNO: Right.

SENATOR PATERSON: Hard to ask it though of the Majority Leader.

The list of injuries that would qualify someone for Dole v. Dow coverage with which they could bring a suit and implead the manufacturer and try to establish that the employer violated regulations, we have severely cut the type of injuries that would make a person eligible.

As a matter of fact, some are estimating that three-quarters to 90 percent of the types are -- of injuries that would normally have met the threshold test for Dole v. Dow suit will not be covered as a result of this

legislation and some of those injuries would be the loss of a toe, the loss of a finger other than the -- other than the index finger, certainly 95 percent blindness or 95 percent deafness, the lung disease asbestosis, asbestos disease, cancer, and really a number of other chronic illnesses, including chronic and severe back pain.

Why would we want to take that option away from workers who sustain some pretty serious illnesses probably as a result of the malfeasance of duty of the employer, and I know this is negotiated, and I know that the Assembly was part of it, but I wasn't. I must have been busy. Somebody forgot to send me my invitation to the negotiation because this is exactly what I would have raised as an issue with respect to workers and coverage because it's really going to wipe out the ability of an injured party to sue where the employer is probably jointly responsible or in some ways specifically responsible for the injury.

SENATOR BRUNO: Thank you,

Senator. That is a good question.

The Dole piece in this state - and again recognize that we're the only state in the United States that has that in place - creates by the rating board about a 6.3 percent increase in the premiums and, if we were to repeal Dole in its entirety, you would reduce the premium by about 6.3 percent, so it's of great consequence.

What we are doing -- and the good Senator is right, by repealing Dole which is totally open-ended, we have substituted a list of what are considered grave injuries. He described some of them, blindness, loss of an ear, added to the list. There's a finite list.

Bottom line, Senator, the injured worker, as a result of our actions, will not receive one penny less as a result of our actions, not one penny will they lose in any benefit as relates to their ability to sue as a third party. Why? Because Dole allows the manufacturer who gets sued -- a worker gets hurts on a machine. That worker, through

Workers' Comp' and through the law, sues the manufacturer if the machine malfunctions and collects $100,000. The worker has that money in compensation for the injury, plus the monthly payment through Workers' Comp. The worker has the money in the bank. Dole, in this state only now, allows that manufacturer to sue the employer to get back the hundred thousand that they had to pay the injured worker.

This is really an attorney's problem. It is the business related to the manufacturer problem. This in no way affects the injured worker, and we have to be very clear on that. So, Senator, I appreciate the question and I hope my answer clarifies because I know you're concerned about protecting the rights of the injured, and so are we, and that's why we've been very careful in the way this bill has been structured.

SENATOR PATERSON: Thank you, Mr. President.

If the leader would yield for another question?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: The livelihoods of the workers and also the reputations of the manufacturer, something I've never really heard mentioned here, are many times at stake because there's almost a presumption without a Dole v. Dow suit that the manufacturer may have been at fault and many times the manufacturer did exactly what they were told to do and they're just as happy to clear their name because they gave the employer some safety codes, and they were violated.

Since 1982, Governor Pataki's research indicates that only one-third of one percent of the Workers' Compensation cases are actually qualifying under Dole v. Dow. So when one considers the fact that $300 million are being paid, that it's that kind of industry with respect to insurance, it's not the Dole v. Dow recoveries, that are really hurting the

premiums, in my opinion, as much as the payments to the insurance companies and no real understanding of how much of a profit they may be making.

And so, when we look at this particular issue -- and I left off of the list of injuries that don't qualify now, body burns from the head down that are not qualified under Dole v. Dow -- what we're really looking at, Mr. Leader, is the issue of workers still receiving their benefits under Workers' Compensation but not being able to receive damages, and these types of injuries are the type that courts usually will find that there's a greater harm than just the fact that the person can't work, that there are damages that are covering their pain and suffering and the other problems they might have.

So my question is, why are we focusing so much on Dole v. Dow and not enough on what may be the profit for the insurance companies as the catalyst for why those who are trying to reduce, in a sense, what would be

reducing payments with the premiums under the perception that it's Dole v. Dow when it may very much arise from a different source?

SENATOR BRUNO: Well, Senator, again New York State is the only state in the United States that has Dole v. Dow in the form that we have it. We're the only state in the United States, and it has been determined that that is one of the reasons why we have the second highest premium in all of the United States. So I will again state that in the illustration that you give, if a person is burned, that person can still sue the employer, the manufacturer and recover whatever recovery has been determined appropriate by the courts. The prohibition would be then that that manufacturer would not presently be able to sue, as they can, the employer. The manufacturer could not sue, but the injured worker gets compensated, and what you're describing is a matter of the courts. It's a matter of attorneys litigating and courts deciding what's appropriate.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If the Senator would continue to yield.

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: If the manufacturer is not liable, then there wouldn't be a recovery from the manufacturer. I just wanted to point that out and then go on really to a different area if the leader is willing, and that is why has our legislation not provided any -- any benefits to injured workers such as an increase in benefits or really an expansion on the concepts of what some workers' safety diseases, such as carpal tunnel syndrome, are which would have been helpful to define that and put that into the legislation and why is there really no increase in the benefits periods for

workers if, as we've been hearing, workers have been waiting for this legislation?

SENATOR BRUNO: Well, this represents a negotiated piece, Senator, and we negotiated this bill, and I will remind you, Senator, that the Senate, with the Governor, passed a workers' reform package that included substantial increases for workers in this state. We passed that bill in the Senate, and had that bill passed the Assembly in the form that we voted for it in this house, the injured workers in this state would have received a substantial increase in their benefits.

As a matter of negotiation, some things were dropped in trying to do something meaningful in making us more competitive in this country, and in defense of taking those out, what we did do was we gave credits to employers who encouraged increased workers' safety. We increased all the requirements for workers' safety, so you might say that if the work place is safer, people would be less likely to get hurt and they would be less likely to need any

compensation, and I know that we would agree that, if we had the ideal world, we would have no injuries, consequently no need for Workers' Comp' in the state; but that's not the world we live in, so we're dealing in reality.

SENATOR PATERSON: Thank you, Mr. President and thank you, Mr. Leader.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I guess that in any succession or in any statistical comparison, somebody has to be first, and I'm very glad that New York State is first. I'm very glad that we have understood the plight of workers in a way that no other state has to this point, and I hope that we will never diminish our commitment to workers, and I hope we will never run away from our responsibilities to individuals who are injured, particularly from the malfeasance of duty of other parties when the other parties are their employers.

I think that we can not let

employers get away with this. It doesn't happen that often, as the Governor's research reveals, but when it does we should not be allowing anyone to escape their responsibility by trying to make a situation that's covered in Dole v. Dow cases appear to be so grandiose that it's actually changing the numerical value of many of the statistics and so, when we look at the - the whole workers' compensation issue, and we question as to whether or not benefits have arisen, my understanding is that the negotiation that would have allowed benefits to rise would have included many of the AMA guidelines which would have put a cap on permanent partial disability, which would have been disastrous to workers and also would have drawn no distinction between -- for recovery based on the kind of work that an individual does which are the types of negotiating -- which would have been the type of a negotiation that would have been unacceptable, and so the only compromise that could have been reached was not to have any benefits.

I think that's really quite unfortunate, because with all of this concentration on workers, we're forgetting that these are the taxpayers who provide the broad revenue base that the state derives its assets from in the first place. Even if we were going to make a comparison, these aren't individuals who have been in any way benefiting from the - from the public trough. If there are cases of fraud and there are cases of -- of double and triple counting, we need to ferret them out and if they're individuals who are breaking the law, we need to prosecute them.

We're talking about a relatively few number of the Workers' Compensation cases that need assistance, and most of this legislation is really concentrated on rate reductions which I think is unacceptable, and I respect the agreement that was reached by other legislators here. I understand that a compromise is a natural form of closure to negotiation and that everyone doesn't get what they want in com promise, but also the fact that we're debating

these bills gives individuals who don't believe in the inevitable compromise the opportunity to alert the public and alert their colleagues to issues that probably need to be addressed in the future, and I think that when we take a -- a next look at the whole Workers' Compensation system, we're going to have to look at this because what we've done in this legislation is give no new benefits to workers but rate reductions to employers and are probably letting 90 percent of the employers who are already guilty of not following safety code violations a way out, while some serious injuries have been suffered by their employees who were working there in good faith.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President. I believe there's an amendment at the desk.

ACTING PRESIDENT KUHL: Senator Leichter, there is an amendment at the desk. Are

you asking that the amendment reading be waived and you have an opportunity to explain it?

SENATOR LEICHTER: Yes, right. Thank you, Mr. President.

ACTING PRESIDENT KUHL: The reading of it is waived and you are afforded that opportunity.

SENATOR LEICHTER: Mr. President, Senator Bruno, and the Majority and the Governor have presented us with a bill that gives good benefits to the insurance companies, good value to the employers and nothing -- nothing -- of meaning to the employees.

The fact is that there's going to be in total, considering this bill and other action we've taken in previous years, a 49 percent decrease in premiums and not one penny of that goes to the employees.

I can not accept that. Senator Bruno referred to the fact that it was unfortunate that the workers did not get some increase in benefits. Well, Senator, it is unfortunate, and something that we ought to do,

something that we ought to take some action on, and that's precisely what this amendment that I offer on behalf of the Democratic Conference will do and, Senator, what we've done is that we've taken the figures that were in the Senate Majority bill and I think it's a matter of your standing as a matter of principle behind those figures saying you have a concern for the employees.

Let me just point out there's been no increase in the benefits that workers get under Workers' Compensation since 1990. What this bill will do, it will provide that by October 1, 1997, workers would get a maximum of 520, in 1998 it would go up to 540 and then would level off or plateau out at 560.

Let me point out that New York - New York State's benefits are below those of many states. If we're going to have a system that's going to work, there's got to be fairness for workers, and the bill before us does not have fairness for workers. It is manifestly unfair.

Mr. President, I move the amendment.

ACTING PRESIDENT KUHL: Any other speaker on the amendment? Hearing none - Senator Onorato, on the amendment.

Senator Onorato, on the amendment.

SENATOR ONORATO: Mr. President, I join my colleague, Senator Leichter, in supporting this amendment because this current bill really doesn't do any justice at all to the working class of people who are injured on the job.

As the Senator aptly pointed out there's been no increases since 1990, and workers who are injured many, many years ago are still receiving the same benefits that they received in 1975 or 1976. We've been presenting bills here day in and day out, increasing cost of living to pensioners who are receiving substantial amounts of money for their pensions on a cost of living increase. We have yet to address the injured workers to increase their

cost of living increases, and they need it more than anyone else because they have added costs because of the injuries that they sustained on the job, and not to include any increases at all at the request of the employers, who are willing to reap the benefits of all of this here, and we don't deny or begrudge anybody from saving some money, but we have also always believed in the American dream where everybody makes a few dollars, let's all share in the profits.

This way we're not sharing in the profits. We're making the rich a little bit richer and the poor a lot poorer. I really urge my colleagues to support this amendment.

ACTING PRESIDENT KUHL: Senator Connor, on the amendments.

SENATOR CONNOR: Thank you, Mr. President.

I would urge everyone to support this amendment. This so-called Workers' Comp' reform effort this year is truly amazing.

The Governor put forth his proposal, and it contained changes designed to

save money, but it provided enhanced benefits for workers. The Senate Majority adopted and passed the Governor's proposal as the Republican reform proposal. It did away with Dole v. Dow. It did other things, but it contained increased benefits for injured workers. The Assembly put out their proposal. It did different things than the Republican proposal. It made other changes, but it had increased benefits for workers.

We on this side of the aisle in this house put out a version of reform that we thought would save money. It made some modifications, but it had increased benefits for workers.

Then we saw a several-week highly secretive process ostensibly about the budget that was a hundred and some days overdue, but we began to read Workers' Comp' was the real issue. Workers' Comp' was the real issue, and a couple days ago emerges what we have now just seen in the last hour or two in print, the so-called compromise that resolved all of our

problems, that made modifications in Workers' Comp' and will save employers ostensibly 49 or 50 percent of their cost of Workers' Comp', and this -- this at this eleventh hour after secretive negotiations, is missing the one feature that everyone in the light of day in public for the last month after month after month always said we wanted to change it, but we have increased benefits for workers.

The secretive late-at-night spring-on-us-at-the-last-minute compromise, does one thing that no other proposal in the light of day did, that no other proposal presented to editorial boards did, that no other proponent was willing to stand before their constituents and discuss before a day or two ago. It denies any increase in benefits for workers.

I urge that we adopt this amendment and we correct that oversight that resulted from this secretive process, three men and the budget, and the faith and safety of all of our workers in their hands in secret.

ACTING PRESIDENT KUHL: The

question is on the amendment. All those in favor of the amendment signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

ACTING PRESIDENT KUHL: Secretary will call the roll.

SENATOR BRUNO: Party vote in the negative.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the party line votes, announce the results.

THE SECRETARY: Ayes 22, nays 36, party line vote.

ACTING PRESIDENT KUHL: The amendment is lost.

Senator Dollinger, on the main bill.

SENATOR DOLLINGER: On the main bill. Will Senator Bruno yield just to one question?

ACTING PRESIDENT KUHL: Senator Bruno, do you yield to one question?

SENATOR BRUNO: Yes, Mr.

President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Suppose a worker, Senator, goes into a situation in which he reasonably believes he's being exposed to danger at the work place, he thinks it's dangerous, and his employer nonetheless orders him to do it. If he refuses to do it, can he be fired? Is there anything in this law that affects that?

SENATOR BRUNO: We're not dealing in a workers' reform package with the relation ship between the employer and the employee as relates to the perception of what's dangerous and what isn't. No, we're not attempting to deal with that issue in the law.

SENATOR DOLLINGER: Under this -

SENATOR BRUNO: And by the way, Senator, the law already prohibits an employer from ordering an employee to do something that is apparently or considered extremely dangerous. You're an attorney -- you are an

attorney?

SENATOR DOLLINGER: I am.

SENATOR BRUNO: And you know that, I would have thought.

SENATOR DOLLINGER: Well, I guess, again through you, Mr. President, that raises a question.

ACTING PRESIDENT KUHL: Are you asking Senator Bruno now to answer a second question.

SENATOR DOLLINGER: I am -- well, he said something that raised a second question in my mind. I hoped he would yield.

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

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator, the law that you refer to, is that the law of the state of New York?

SENATOR BRUNO: Senator Gold, is that the law of the state of New York? If you were defending someone, would you say it's the law of the state of New York, Senator?

SENATOR GOLD: Are you asking me for my legal opinion?

SENATOR BRUNO: Yes. I'm asking you, yes, yes.

SENATOR GOLD: When I see the pay offer, I'll tell you.

SENATOR BRUNO: Mr. President, I am told by my learned counsels, who are on retainer, that it is the present law of New York State, and that it's case law and that an employer cannot retaliate against an employee by case law, and again you're an attorney and I'm sure that you've studied that in law school.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This bill, I guess, like many others who've said it's a

compromise, it's a compromise that I'm going to support and vote in favor of, but, Senator Bruno, I just posed that example because, Senator Bruno, it just seems to me that that's the one instance that this bill does not address and that is forcing a worker to choose between his job and his enjoyment of life because, when Dole against Dow disappears there, we're going to be in a situation where an injured worker who is hurt on the job, if that is because the employer exposes him to an unreasonable risk, we may be cutting off the right of that employee to seek damages which go beyond the mere replacement of his medical benefits and his lost wages, that enjoyment of life, those things that we do every day with our children, with our families, as we pick up our children, as we hug our loved ones, all those things that are part of our enjoyment of life, may not be compensated when Dole against Dow goes by the boards, and it seems to me that some day we may revisit this issue and reopen this door because we'll recognize that, when employees are exposed by

their employers to reckless conduct, to a risk of severe injury, the old system of Workers' Compensation will not provide them with adequate redress.

That issue, we leave to another day. I think we're retreating from that kind of approach in this bill. I understand it's a compromise. I understand there are other good things that it does with the elimination of fraud, stronger fraud provisions and other benefits that will help everyone in this state perhaps restore greater credibility in this system, but I'm afraid that we will come back to this issue of loss of enjoyment of life on your job and putting our employees in a situation where they have to choose between keeping their job and losing their enjoyment of life.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR CONNOR: Not yet.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Yes, to close

for the Minority on the bill.

ACTING PRESIDENT KUHL: Senator Connor, to close.

SENATOR CONNOR: Mr. President, we -- we've seen these last weeks, as I said before, the budget of the state of New York, at great expense to our school districts, at great risk to the credit rating of the state of New York, held up because the Governor in this state decided to wage what he described as a war of principle.

As a matter of principle, he wanted to do away with Dole v. Dow. He wanted to reduce costs of Workers' Comp' and indeed on a bipartisan basis every conference in this Capitol was looking for ways to reduce costs of Workers' Compensation for employers.

We urged the people look at the more than 50 percent of the premium that is never paid out in benefits to workers, the 50 percent that seems to disappear, yet no one - no one involved in this secret negotiating process ever really bit the bullet to take on

the insurer, the insurance companies, and say, Well, after all, it's all about insurance. It's premiums that they charge.

What happens to the money? Indeed we had seen some dramatic decreases in the cost of Workers' Comp' just through actions taken by the Insurance Superintendent.

This bill doesn't do that. It leaves untouched the insurance companies. It assumes somehow or other that eliminating certain risks will result in a lowered cost of premiums.

Mr. President, I'm still in New York City waiting for lower hotel room rates after we repealed the hotel occupancy tax that was supposed to be passed on to tourists and increase business. I don't believe that the marketplace automatically reacts to actions we take. I think, if the insurers can still bring in the same premium, all we're doing here is increasing their profits above 50 percent.

We, in fact, are denying the workers benefit increases. We're changing Dole

v. Dow in a way that makes no sense. If it were a battle of principle, if it were a battle of principle, then why do we allow a Dole lawsuit if you're burned above the neck and you're a worker and you're not if you're burned below the neck? Certainly a worker can be injured by very severe burns below the neck. They can disfigure. They can affect muscle function. They can, in fact, render someone a cripple from burns, but that's different than if it ruins your profile, if it burns you above the neck.

That makes no sense. There's no rationale for that. It's almost as if someone flipped a coin and split the baby. Where is that battle for principle that cost the taxpayer this delay, cost the school districts the interest rates, that threatens our credit rating, that made budgeting in New York more of a joke than it was before the days of the Pataki administration, the Governor who ran on the issue of on-time budgets, of openness in the process.

The provision limiting Dole to

save what, 3.1 percent of the costs, 3.1 percent of the premium costs, as opposed to 50 percent that just disappears, 50 percent profit by the insurance industry. But this will save the expense of workers who suffer from unsafe -- who suffer serious injury because of lack of safety in the work place, such as asbestosis, such as severe burns below the neck, such as any variety of other severe injuries.

You know, this makes no sense. You know, if you lose one finger, you can't sue but if you lose two -- I can think of some important fingers, just one of them that could have curbed someone's ability to function or communicate if that were the finger that were lost.

SENATOR VELELLA: Would you like to demonstrate?

SENATOR CONNOR: No. I was thinking of when we vote, when we vote in the chamber.

SENATOR GOLD: Or like food in an Italian restaurant.

SENATOR CONNOR: I wasn't thinking in Rockefelleresque terms, I would say to my colleagues over there. I was thinking of the way we vote sometimes.

All right. Things like cancer, chronic disease, I mean 95 percent blindness you can't sue, but a hundred percent blindness you can. I mean, you know, injuries that affect workers for really the rest of their -- their life and their ability to work, their ability to enjoy life aren't covered and, you know, we're back to the basic philosophical question of Dole.

This compromise is nothing about principle. This budget was held up and then resolved with a -- a determination that has nothing to do with principles. This is a defeat for sound principles, whether you hold the principles the Governor espoused, that Dole v. Dow wasn't appropriate in a system of limited compensation such as Workers' Compensation or you held the principles that others, including myself, believe that you had to discourage the

kind of willful negligent hazarding of worker safety that some employers, regrettably and not most, but some employers were guilty of. That's what the Dole cases were about, two conflicting principles.

And what did we end up with? What was it really about? Three percent of the money at the risk of workers. Three percent of the money in worker comp' premiums doesn't compare in dollar amounts to the amount of money lost by our localities and school districts by the delay in this budget.

Mr. President, it's time we stand up for values and principles and we vote consistently with them and not accept last minute hashed out in secret deals, whether it's on the budget, Workers' Comp' or anything else.

I would urge a no vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 90. This act shall take effect immediately.

SENATOR CONNOR: Party vote in

the negative with exceptions.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the Democrat party line vote in the negative with exceptions.

SENATOR HOFFMANN: Explain my vote, Mr. President.

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

SENATOR HOFFMANN: Thank you, Mr. President.

I have listened over the last number of years to the employers in my district complaining bitterly about the cost of doing business in New York State and, sadly, I've watched several of them pick up stakes and leave the state. As much as I would like to follow the position espoused by the AFL-CIO and protect the unique privilege that they enjoy in New York State through Dole vs. Dow not enjoyed in any other state, I recognize that for employers the

cost of Workers' Compensation as much as any other single cost frequently is the significant attributable factor to the loss of jobs. If we can't have the jobs, compensation is really a no-issue at all to us, so I am going to cast my vote in support of this measure.

I believe that it could have been handled in a very different manner. I, like Senator Connor, am offended that it came up in the middle of the night by people who have met in secret. Although there were, I think, valiant attempts by a task force in this house and a special committee or subcommittee in the other house to hold hearings and to engender some discussion, the final message once again was crafted by a couple of people who did not even elicit the input of the rest of us, as Senator Paterson had said earlier today on another matter.

So it is with a great deal of trust and some mixed feelings that I vote in favor of this and earnestly hope that it will fulfill the expectations so loudly boasted by

those who are claiming responsibility for it.

ACTING PRESIDENT KUHL: Senator Hoffmann will be recorded in the affirmative for it.

Senator Lack to explain his vote.

SENATOR LACK: Thank you, Mr. President.

To my knowledge, Senator Connor, I think the deal was struck at 4:00 o'clock in the afternoon, not in the middle of the night, but be that as it may, that's part of still probably the least understood decision by the Court of Appeals in the last 25 years and, if you listen to the floor debate, if you read the transcript of today's floor debate, it continues as the least understood decision.

There is nothing that is happening here today that at all changes who or how an employee can sue as a result of a Workers' Comp'-related injury. But be that as it may, probably the most important thing and why the Governor should be congratulated is that

by removing some of the severe onus with respect to Dole v. Dow, we can finally in this state for the first time since 1972 start looking at Workers' Compensation issues purely as matters between employees and employers and insurers, the Workers' Compensation system and everybody else who is involved in that mix, without having to worry about an outside stimulus such as Dole v. Dow.

Senator Connor and members of the Senate Minority, obviously one reason, if not the main reason there's not a benefit increase with respect to this package is that the negotiations with respect to a large portion of what we're talking about today in Workers' Comp' had nothing whatsoever to do with labor or employee representatives. It had to do with attorneys who were conducting litigation with respect to that, and they're not interested in benefit increases.

For the record, the Assembly bill, when first passed, did not have a benefit increase. The first passage of the benefit

increase was the Senate bill. The Assembly then added it, and I'll just leave, Mr. President, with one final word.

Now that we can finally look at Workers' Compensation, remember please that 42 states in this country index benefits. It's not a matter of concern for the state Legislature. We, of course, are one of the eight states that do not index benefits. Senator Bruno in his comments, the Governor in his comments have indicated that they're open to further negotiations with respect to reforming the Workers' Compensation system.

Now that we have moved Dole aside, for the most part we can finally look at issues between employers, employees and those matters that are related thereto. Obviously the largest outstanding issue from the business point of view is the AMA guidelines. It represents 12 percent of existing premium. Wouldn't it be nice to start negotiating and discussing that with respect to indexing benefits so that we could be out of that

business as well and then this Legislature can finally confine itself to looking at problems of how government can always improve the Workers' Compensation system, not at collateral unnecessary issues.

I vote aye, Mr. President.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

As I've indicated over the past several years, as I've spoken to one or more groups within my district, there is nothing that has acted as more of a lightning rod on the issue than has the issue of Workmen's Comp'.

On one occasion I've had members of the business community say, I'm certainly not pleased about the way New York taxes; I'm not happy about the way New York State relates, but if you could somehow give me one reform, if you could somehow give me one thing that would improve the position of me as an employer in New

York State, it would be Workers' Comp', Workers' Comp', and that's small businesses and large businesses, and one of the things I've heard here today as I've sat and listened to the debate, and I've heard the entire debate, leave me with the sense that what we're about to do is to set off alarm bells of great, great horrific things to occur in the state of New York.

But let's look at this somewhat objectively and somewhat realistically. There are 50 states in the Union; 49 of them do not have Dole v. Dow. I'm not aware of these horror stories in 49 other states with people lying in the aisles and the places in which they work, of people who have somehow or other been shackled to machinery that is causing them atrocious and horrifying injuries. I'm not aware of people who are being preyed upon because they don't have Dole v. Dow, this third-party suit mechanism, in their state. It's truly nothing but a canard. We are the only one, by way of court decision, that has this and again, let's look at the reality of it.

The reality of it is that this house proposed benefit increases that govern the proposed benefit increases. The Assembly in lock step with the trial bar -- had nothing to do with unions; this was the trial bar -- this was a lift for the trial bar, provided gratuitously -- oh, no, not gratuitously. I should not say -- it would definitely be a mis nomer, on the part of the Assembly Majority. They wouldn't break away. Who was going to pay? Who was going to pay for the increase? Who was going to pay for the increase once they refused to go with Dole v. Dow, once they refuse to do what 38 other states do in this Union, and again without horrific work experiences. 38 other states have the AMA standards.

So what I've heard certainly says, well, depending upon what constituency you're endeavoring to market in that, the reality is that this reform -- and it really should have been more extensive -- is what business wants, it's what will help to create additional dollars in the business community,

not to fatten the pockets of business, to stimulate business, to make business more competitive, to reduce New York's rates and to try and make New York what we've claimed that we are and really haven't been for quite some time, the Empire State, a place where businesses of all kinds, all types, can thrive, people will work and there will be certainly a far more favorable predisposition to do business in New York, to stay or to move in.

Thank you, Mr. President. I vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Saland in the affirmative.

Senator Gold, to explain his vote.

SENATOR GOLD: Thank you very much. Mr. President.

Senator Saland said one thing which I absolutely do agree with and that is when he used the expression "alarm bell", and I want to congratulate Senator Bruno, and I want to congratulate the Governor for understanding

the media and understanding the public.

Dole v. Dow is the alarm bell out there and everybody is zeroing in on it, except it really is minimal in terms of what this bill is about and what you're all trying to do.

There was a proposal that was drafted by Senator Connor and by the Minority which would have been helpful in this area, and I believe the figure is something like 2.2 percent as to what the premium cut would have been. Under this proposal it's 3 percent, so you go convince the public if they want to listen that the budget had to be late for eight-tenths of one percent of this premium.

The truth of the matter is, the truth of the matter is that the big money that could have been saved isn't being saved because you won't go after the companies. That's all, but you win the rhetoric war. Why do you win the rhetoric war? Because by throwing out that alarm bell of Dole v. Dow, Dole v. Dow, that's what you get everybody to focus in on. You get everybody hot and bothered over it, and you let

remain the insurance company profits, what have you. And why, in fact. Will you win this in the press? Because the bottom line is that the newspapers have an interest in this particular piece of legislation, and they can benefit by it, so they'll write their editorial. They'll write their editorials and they will tell the public that this is good, but they don't put the little hook in there that they would expect us to do when there's a conflict of interest but they have a conflict of interest so that is the bottom line.

You have managed very successfully to frame this argument around Dole v. Dow, Dole v. Dow, when the fact is that it is not the major cause of premium escalation in this field, and it is not the area where you could save benefits the most, and what is worse is while you focus everybody on Dole v. Dow, you cut out the part of the bill that would have given workers something by increased benefits.

I vote no.

ACTING PRESIDENT KUHL: Senator

Gold will be recorded in the negative. Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President, to explain my vote.

I rise to congratulate the Governor, congratulate Senator Bruno for negotiating what seems to be a great compromise on the issue of Workmen's Compensation providing a system which would allow this state to become competitive, to come back to being competitive with other states, to have a possibility of, and a chance to revise a system which by all estimates is a failed system.

Now, we've heard certain comments here that this debate was held in the middle of the night and that somehow these agreements were done in secret, that they were done in the middle of the night, that no one knew about it. It was my understanding that Senator Spano and the Labor Committee went all over this state and held approximately 13 hearings on just this issue, Workmen's Compensation, and how to revise it. Were they all held in the middle of the

night? Were they all held in closets where no one knew about it? I don't understand that.

This chamber provided increased benefits to workers. It was the other chamber that took them out, not this chamber, the other chamber, in the negotiations. Dole v. Dow doesn't protect workers; it protects lawyers. We all know that. To say that it inhibits a worker's right to sue is wrong, and every lawyer in the room knows it.

It doesn't infringe upon their right to sue at all. This bill doesn't do anything like that either. Once again, as in the bond act before, you talk the talk but you don't walk the walk. It's important. This legislation is good legislation and sound legislation.

To my knowledge, it's now 2:30 in the afternoon. If it wasn't cloudy outside, I'm sure the sun would be out and maybe some of my colleagues would see a little clearer.

I vote aye.

ACTING PRESIDENT KUHL: Senator

Marcellino will be recorded in the affirmative.

Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: Explain my vote. I -- I'm just fascinated, everybody who is for the worker, the Assembly is against the worker, they're for the trial lawyers. Two thirds of the three people involved in the negotiations were for increased benefits, but we got a bill with no increased benefits.

Thank God, Senator Marcellino, that we're not doing the bill that was discussed throughout the state of New York at all those wonderful hearings at which, we might add that in case you forgot and I mentioned it before, that wonderful employer, that lady that took the covers off the machine where the woman lost her two hands, came in and spoke as strongly as you just did in favor of gettin' rid of Dole v. Dow and I don't have a problem with that.

The fact is that I'm not a big trial lawyer supporter. That's not why I'm standing, but the fact is that that lady lost

her hands. This employer was going to get that machine out of there, and nobody would have known about that lady if this woman that owned that company that took the guards off didn't testify at Senator Spano's hearing, and incidentally, as I said before, the effect of it was when they put on what would be like a temporary thumb on the end of her arm, the insurance company said she could go back to work at light duty. Great system, no loss there. This woman is wonderful. If she didn't eventually happen to win the lawsuit, she would have been a great -- I don't know what she'd do with her arm, with a thing on it, but she'd be doing light duty some place but in the insurance company, I'm sure not for that woman that took the guards off the machine and said we should eliminate this.

I've worked with Senator Lack and Senator Spano trying to find something to replace Dole v. Dow because I'm not interested in lawsuits. I'm just interested in protecting workers. If I'm wrong then, if this proves to be

it, then I'm wrong in voting no today. I don't know that this is a system that's going to work mainly because of the system that says, if you burn your cheek, you can have a lawsuit but if you burn a lot more important parts of your body you get nothing. I find that truly amazing, truly amazing.

Well, no, not exactly, important parts. Anyway, it's just fascinating to me that everybody was so supportive of the workers in all the cheerleading parts of this battle. We put the bills out, say we're for increased benefits. We had the hearings that say we want increased benefits, all through the negotiations which, incidentally, weren't exactly open even though whatever time of the day they took place and I know you didn't know any more what was goin' on in the Workmen's Comp' bill in those negotiations than I did. You can say you did now, but that would be -- it would really be, as Senator Saland said, a canard and I happened to read the meaning of "canard" watching "The Natural" a few years ago because it was filmed

in Buffalo, and it was one of the great lines in the movie.

However, I hope that we're wrong, I hope you're right that this bill is going to change the system and the workers aren't going to be hurt by it, but I find it difficult when we make a big change like is in this bill and it's in the whole system, which would do nothing for the working man.

I have nothing against the employers. I just happen to think that the premiums they pay are unbelievable. I can't understand how they grew to what they grew for the little benefit increase that the people got and if this does it, I'm wrong, and I congratulate you and salute you. However, I can't vote for a bill that does nothing for the working guy and only helps out to my initial glance the employers that deserve it and the insurance companies that nobody seems to want to look at.

I vote no.

ACTING PRESIDENT KUHL: Senator

Stachowski will be recorded in the negative.

Senator DiCarlo to explain his vote.

SENATOR DiCARLO: Thank you, Mr. President. I will be brief.

Just let me preface my remarks with my father is an attorney, my oldest brother is an attorney, my next oldest brother is an attorney. I am not, but let me say something. This has not -- this has not turned out to be a labor/worker issue. This has become a battle between lawyers and their profits. It's unfor tunate that that's what's held this up, and the reason that I know that, or I believe I know that to be true, is a personal experience that I've had, and that was some of letters that have been circulated and sent to a lot of trial lawyers in this state attacking me and, in this letter, they talk about Workers' Comp' reform and they say please contribute money to my opponent because Senator DiCarlo is a number one opponent to the trial lawyers in the state of New York, and they do not mention the poor

injured worker. They did not mention the fact that workers should be compensated in a better way, but they talk about their own profits, so send us money to defeat Senator DiCarlo, an enemy to the trial lawyers in this state.

This is nonsense. The attacks talking about us doing bad things to injured workers are nonsense. The fact of the matter is Dole v. Dow is nothing but a trial lawyer issue -- money in their pockets, and that's why this has been held up and that's why the workers didn't get increases. That's why the workers didn't get what they deserved, and shame on the other house for making that happen.

I vote yes.

SENATOR LEICHTER: Mr. President.

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

Senator Leichter, to explain his vote.

SENATOR LEICHTER: Yeah, Mr. President.

After hearing still a commercial that it's all trial lawyers and how much the Majority loves the working people, let's get back to reality. If you want to do something for the working people, there's nothing to prevent you from having supported the amendment that I introduced saying we will not support a bill that doesn't have increased benefits.

It's not a matter of the trial lawyers. It's a matter of whether you're beholden to the insurance companies or the employers or whether you want to help the workers. It's as simple as that. Nobody is binding your hands. Suddenly this Majority is so powerless. Oh, if only we had the power, if only we could do this.

Well, you had that power and you can do it, and I think we ought to get away from this fantasy. Earlier I heard the Majority Leader go on how this economic program of Governor Pataki and the tax cuts, the Workers' Compensation, is generating all this wonderful economic activity. Nonsense! Baloney!

Balderdash!

The fact is that the economy in New York State was creating more jobs in the last year of Governor Cuomo. You've given tax cuts that basically benefit the rich and you're now passing a Workers' Compensation bill that benefits employers, that benefits mainly insurance companies, and that sticks it to the working people of this state.

Mr. President, I vote in the negative.

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

Senator Bruno to close and explaining his vote.

SENATOR BRUNO: Mr. President, to explain my vote.

We've been listening to a lot of discussion, a lot of debate, a lot of well-intentioned statements; but I want to conclude by saying that yes, the Governor did make this a priority for all the reasons that we've talked about that are positive. The

bottom line was to improve the climate for workers, worker safety and workers' benefits and Workers' Compensation, and to create jobs. That's the bottom line.

Mr. President, I want to remind everyone in this chamber that we passed a Workers' Compensation reform bill previous to this one with the Governor's support. The Governor's program bill, that had injured worker increases in it from 400 to $560 dollars over three years. That was negotiated out in the other house and in the other house they passed a Workers' Comp' reform package that had no benefit increases in it for workers, none other than those that might be realized through any savings that were not apparently there.

So let's tell it like it is. We in this house passed a bill that increased benefits for workers substantially. The bill that passed the other house had no increases in it. This was a compromise, but it's not over. Injured workers will benefit substantially from what has taken place here today, so I'm happy to

vote aye.

ACTING PRESIDENT KUHL: Senator Bruno, in the affirmative.

Announce the negatives and the results.

THE SECRETARY: Ayes 39, nays 19, party vote with exceptions.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Can we at this time ask for an immediate meeting of the Rules Committee in Room 332.

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

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, earlier there was a bill that was

approved by a party vote with exceptions. I didn't quite understand that. It was on Calendar Number 1779. I'd ask that my vote be changed from the negative to the affirmative on that and ask unanimous consent to have my vote changed on that calendar number.

ACTING PRESIDENT KUHL: Senator Paterson, do you have any objection to Senator Dollinger changing his vote from negative to affirmative on the Calendar Number 1779?

SENATOR PATERSON: Not at all, Senator.

ACTING PRESIDENT KUHL: Senator Bruno, did you have any objection?

SENATOR DOLLINGER: Thank you, Mr. President. I wasn't aware of that.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time ask for an immediate meeting of the Rules Committee in Room 332.

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

Committee in Room 332. An immediate meeting of the Rules Committee in Room 332.

Senator Paterson, do you have any objection to Senator Dollinger changing his vote from the negative to the affirmative on Calendar Number 1779?

Hearing no other objections, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I believe just for clarity, I believe that was a repeat of a prior vote that I had voted in the negative on, and I wasn't aware of that.

ACTING PRESIDENT KUHL: You're absolutely correct, Senator Dollinger. The prior vote was a slow roll call. Okay.

SENATOR DOLLINGER: Correct.

ACTING PRESIDENT KUHL: And then the Majority Leader -- I believe there was a slow roll call. The Majority Leader then -- the Minority Leader and the Majority Leader agreed to the same vote on the subsequent bill on which you were recorded in the negative. You will be

recorded in the affirmative with the consent of the Minority Leader and the Majority Leader.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1785.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1785. It's on Supplemental Calendar No. 1.

THE SECRETARY: Calendar Number 1785, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 11338, an act to amend a chapter of the laws of 1996.

SENATOR HOFFMANN: Explanation.

ACTING PRESIDENT KUHL: The message was previously adopted.

Senator Bruno, an explanation of Calendar Number 1785 has been requested by Senator Hoffmann.

SENATOR BRUNO: Mr. President,

what this legislation does, it frees up about $98 million out of the reserves as a result of the legislation that we just passed. Because we are limiting the exposure and limiting the consequent expense, we are freeing up by agreement in both houses and with the Governor, actuarially, $98 million that will be used on behalf of all of the people of this state.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Hoffmann had the floor, Senator Leichter.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President. I have some great misgivings about this measure and really don't feel that it is appropriate to support this because this does something that we have been criticized so many times before for doing.

It permits some other entity or organization in this state to act as our revenue agent. As a means of raising $98 million for the General Fund, we would be putting in effect a special surcharge on the Workers' Comp'

insurance carriers.

Mr. President, I will suspend debate while we have a distinguished visitor on the floor, if that's the will of the chair, while we take time to welcome the Governor.

ACTING PRESIDENT KUHL: Well, we allow former colleagues as we have in the past, Senator Hoffmann, to have the opportunity of the floor, but we don't usually suspend debate, so the floor is still yours, Senator Hoffmann.

SENATOR HOFFMANN: Happy to welcome our distinguished former colleague back to the Senate chamber.

Much as we would all like to have $98 million mysteriously appear for the General Fund to do many greatly needed services around this state, I think there is a significant question. Based upon the debate that we have already had and some of the sketchy information available from actuaries or anybody else who is involved in this, this is purely speculative. We really can't be sure that the insurance carriers will realize a savings in that amount

-- can we? -- nor is it appropriate for us to create a new form of taxation on them simply as a budget balancing gimmick. But that is all too often the case especially in the closing days of session.

I did not want to let this measure go by unnoted because it sticks out like a sore thumb. While we may have done something noble and, in fact, a real compromise in creating a workers' comp solution, while the NYPHRM measure is the result of considerable work and is probably one that we will receive great recognition for, this unfortunately sets the clock back and harkens to an era where this Legislature has been criticized roundly for fiscal gimmickry, back-door borrowing and forcing businesses in this state to act as revenue agents for the State of New York.

It is the type of nuisance taxation that drives employers out of the State of New York; therefore, I will be registering a no vote on 1785, Mr. President.

Thank you.

ACTING PRESIDENT KUHL: Any other Senators wishing to speak on Calendar Number 1785?

Senator Leichter.

SENATOR LEICHTER: Mr. President, this is -- this is really pure Albany chutzpah. Here we just said we've got to reduce the burden on the employers and we need -- we're not in a position to help the workers. Then we say look at the wonderful thing we've done in freeing up money, so we raid that $98 million that could have gone to give more benefits to workers, $98 million, which I understand is just about equal with what the projected savings are in making the changes in Dole versus Dow.

I realize it's a little hard to discuss this. We have our distinguished former colleague here, the Governor, and all I can say when he was here as a state Senator, he used to vote against these gimmicks. He spoke against them. He thought they were wrong. I guess things change when you get to the second floor, but if there's ever an example of playing

sleight of hand, this is really it. This is worse than the three-card monte people that you find on Fifth Avenue.

We have just done, by the previous bill, all these wonderful things, so Senator Bruno tells us, and then with the next bill we grab this money, one shot, put it into general revenue, and I hear Senator Bruno say what a wonderful thing we're doing for the taxpayers. We have just stolen this money. It's terrible.

SENATOR DOLLINGER: Can we have some order, Mr. President?

ACTING PRESIDENT KUHL: Senator Dollinger, do you want to speak on this bill?

SENATOR DOLLINGER: Can we have some order?

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 3. This act shall take effect on the same date as a

chapter of the laws of 1996.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Party vote in the negative.

SENATOR DOLLINGER: Mr. President, just to explain my vote.

ACTING PRESIDENT KUHL: Senator Paterson, did you wish to record -- Senator Paterson, did you wish to record a party line vote in the negative?

SENATOR PATERSON: Yes, Mr. President, a party line vote in the negative.

SENATOR DOLLINGER: To explain my vote.

ACTING PRESIDENT KUHL: Secretary will record the Democrat party line vote in the negative.

Chair recognizes Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, I welcome our distinguished guest, as

well. I think he and I were the only guys, with Senator Jones, who voted against a whole series of budgets that were laden with one-shots just like this one.

I would extend him the invitation since he's in the chamber to come back one more time, take that seat across from me and boldly do what he did when he was here: Vote against all these one-shots just like this raiding these funds created by other people's money to use for the state of New York.

I'd invite the Governor -- he's got his chance -- veto this bill. Do what you would have done sitting in that chair in this chamber. I extend him that option. I extend him that choice now. I know he would be joining with the Minority on this vote in this case.

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

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I am also recorded in the negative. I don't

even know who I'm talking to now, Mr. President, but as long as you are hearing me I want to be recorded in the negative. This $98 million return to the General Fund which expires in March of 1997 is really one last drink before we leave this process, and so how we could offer a piece of legislation and then in a sense diminish it by this amendment is just beyond me, because we're stating policy on one hand and then taking the teeth out of it in another.

There is a total of $120 million that would be returned from the Dole v. Dow changes, which I opposed in the first place. Ninety-eight million of it will go to the General Fund, not proportionally but based on the reserves the employers get from Dole v. Dow. So the employers aren't even going to benefit in this first year. It's one last raid.

It's one last perpetuation of something that we got up here today and said that we opposed, and I'm opposed to it.

I vote no, Mr. President.

ACTING PRESIDENT KUHL: Announce

the results.

THE SECRETARY: Ayes 26, nays 22, party vote.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, may we return to reports of standing committees. I believe you have one from the Finance Committee at the desk.

ACTING PRESIDENT KUHL: We do, Senator Present.

We will return to the order of standing committees, and ask that the Secretary read the report of the Senate Finance Committee.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills:

Senate Print 6832B, by Senator Rath, an act to amend the Tax Law;

7953, by the Senate Committee on Rules, an act to amend the Environmental Conservation Law;

Assembly Print 11335, by the Assembly Committee on Rules, an act to amend the Education Law;

Assembly 11336A, by the Assembly Committee on Rules, an act to amend the Transportation Law; and

Assembly Print 11340, by the Assembly Committee on Rules, an act to amend the Public Authorities Law.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Senator Present.

(There was no response.)

Without objection, the report of the Senate Finance Committee bills are reported directly to third reading.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up Supplemental Calendar No. 2 noncontroversial.

ACTING PRESIDENT KUHL: Secretary will read the noncontroversial reading of

Supplemental Calendar No. 2, which is on all of the members' desks as are all of the bills that are included on the calendar.

Secretary will read.

THE SECRETARY: Calendar Number 1789, by Senator Rath, Senate Print 6832B, an act to amend the Tax Law.

ACTING PRESIDENT KUHL: Senator Present.

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

ACTING PRESIDENT KUHL: There is.

SENATOR PRESENT: I move we accept it.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity at the desk on Calendar Number 1789. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

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.)

Announce the results when tabulated.

THE SECRETARY: Ayes 57, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Finance Assembly Bill Number 11337 and substitute it for the identical Third Reading Calendar 1790.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 1790, by the Assembly Committee on Rules, Assembly Print 11337, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT KUHL: Senator Present.

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

ACTING PRESIDENT KUHL: There is.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity at the desk on Calendar Number 1790. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the laws of 1996.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

Announce the results when tabulated.

THE SECRETARY: Ayes 57, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: Bill is passed.

Secretary will continue to read.

THE SECRETARY: Calendar Number 1791, by the Assembly Committee on Rules, Assembly Print 11335, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Senator Present.

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

ACTING PRESIDENT KUHL: There is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity at the desk on Calendar Number 1791. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

Secretary will read the last section.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Secretary will continue to read.

THE SECRETARY: Calendar Number 1792, by the Assembly Committee on Rules, Assembly Print 11336A, an act to amend the Transportation Law.

ACTING PRESIDENT KUHL: Senator Present.

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

ACTING PRESIDENT KUHL: There is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT KUHL: The

motion is to accept the message of necessity on Calendar Number 1792 which is at the desk. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 17. 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.

Secretary will continue to read.

THE SECRETARY: Calendar Number 1793, by the Assembly Committee on Rules, Assembly Print 11340, an act to amend the Public Authorities Law.

ACTING PRESIDENT KUHL: Senator

Present.

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

ACTING PRESIDENT KUHL: There is.

SENATOR PRESENT: I move that we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1793 which is at the desk. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Present.

SENATOR PRESENT: Mr. President, I believe you have a nomination at the desk. I move that we move the nomination of Michael Axelrod.

ACTING PRESIDENT KUHL: We do have a report of the Finance Committee at the desk.

We'll ask the Secretary to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Waterfront Commission of New York Harbor, Michael Axelrod, of Roslyn.

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

SENATOR TULLY: Thank you, Mr. President.

I am pleased to second the nomination of Michael Axelrod as a member of the Waterfront Commission of New York Harbor. He is

a constituent of mine with fine academic credentials. He's the former editor of the Law Review in his law school. He's an active trial attorney who has been involved both as a prosecutor and defense attorney, serving as a member of the Legal Aid Society as well as a former assistant district attorney.

He will be a fine addition to the Waterfront Commission. I'm pleased to second his nomination.

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

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Would you call up Calendar Number 1791.

ACTING PRESIDENT KUHL: Secretary

will read Calendar Number 1791, page 1, Supplemental Calendar 2.

THE SECRETARY: Calendar Number 1791, by the Assembly Committee on Rules, Assembly Print 11335.

ACTING PRESIDENT KUHL: The message was previously accepted.

Senator Connor.

SENATOR CONNOR: I'm sorry.

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

SENATOR MENDEZ: Mr. President, there's going to be a Democratic Minority conference in Room 3-1-4, 314, now.

ACTING PRESIDENT KUHL: Immediate meeting of the Minority Conference in the Minority Conference Room 314. That means now.

SENATOR JOHNSON: Mr. President.

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

SENATOR JOHNSON: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar Number 22.

ACTING PRESIDENT KUHL: Senator Johnson, we're on a bill on debate right this moment. If you'll hold on while we decide what we're going to do with that bill.

SENATOR JOHNSON: Okay. I'll wait, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno, did you wish us to lay Calendar Number 1791 aside for the time being?

Calendar Number 1791 will be laid aside temporarily.

Senator Johnson.

SENATOR JOHNSON: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar Number 22 which passed earlier today.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Johnson will be recorded in the negative on Calendar Number 22.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we recognize Senator Montgomery?

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar 1607.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 1607.

Return to the order of motions and resolutions. There is a privileged resolution at the desk, Senator Bruno, we could take up at this time if you so desire.

SENATOR BRUNO: Mr. President, can we read the title of the resolution by Senator Lachman and move its adoption.

ACTING PRESIDENT KUHL: I ask the Secretary to read the title of the privileged resolution by Senator Lachman.

THE SECRETARY: By Senator Lachman, Legislative Resolution commemorating the 35th wedding anniversary of Dr. Martin and Alma Genzler.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Bruno, we do have a report of the Rules Committee if you would like to take that up at this time.

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

Thank you.

ACTING PRESIDENT KUHL: Return to the order of reports of standing committees.

I'll ask the Secretary to read the report of the Rules Committee.

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

Senate Print 2445B, by Senator Volker, an act to amend the Civil Practice Law and Rules;

7738, by Senator Hoblock, an act to amend the Civil Service Law;

2439B, by Senator Stavisky, an act to amend the Social Services Law;

6335A, by Senator Seward, Volunteer Firemen's Benefit Law;

7864A, by Senator Trunzo, an act to amend the Chapter of the Laws of 1996;

7890A, by the Senate Committee on Rules, an act to amend the Real Property Tax Law;

7959, by Senator Libous, an act to amend the Tax Law;

7960, by Senator Lack, an act to amend the Civil Practice Law and Rules;

7961, by Senator Cook, an act to provide for the intercept of state aid;

7962, by the Senate Committee on Rules, an act to amend the Workers' Compensation Law and the Insurance Law;

7963, by the Senate Committee on Rules, an act to amend the Retirement and Social Security Law;

Assembly Print 11271, by the Assembly Committee on Rules, an act to allow members of New York State employee retirement system; and

Assembly Print 11308A, by the Assembly Committee on Rules, an act to amend the Civil Practice Law and Rules.

All bills ordered directly for third reading.

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

(Response of "Aye.")

Opposed, nay.

(There was no response.)

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

(Whereupon, at 3:15 p.m., the Senate recessed until 3:35 p.m.)

ACTING PRESIDENT KUHL: Senate will come to order. Ask the members to find

their places.

SENATOR BRUNO: Can we at this time take up Calendar Number -- we were voting on Calendar 1791. Can we resume discussion on 1791.

ACTING PRESIDENT KUHL: We need to put the bill before the house, Senator Bruno, first.

SENATOR SKELOS: Thank you.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar 1791.

THE SECRETARY: Calendar Number 1791, by the Assembly Committee on Rules, Assembly Print Number 11335, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Message was previously accepted.

SENATOR CONNOR: Last section.

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: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we now take up Supplemental Calendar No. 3, noncontroversial.

ACTING PRESIDENT KUHL: Supplemental Calendar No. 3 is on the members' desks together with the bills reported earlier from the Rules Committee which are contained therein.

Secretary will read the noncontroversial reading of Supplemental Calendar No. 3, commencing with Calendar Number 434, by Senator Volker.

THE SECRETARY: Senator Volker moves to discharge from the Committee on Rules Assembly Bill Number 4000B and substitute it for the identical Third Reading Calendar 434.

ACTING PRESIDENT KUHL:

Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 434, by Member of the Assembly Canestrari, Assembly Print 4000B, an act to amend the Civil Practice Law and Rules.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Hoblock moves to discharge from the Committee on Rules Assembly Bill Number 11031 and substitute it for the identical Third Reading Calendar 1544.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 1544, by the Assembly Committee on Rules, Assembly Print 11031, an act to amend the Civil Service 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 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Stavisky moves to discharge from the Committee on Social Services Assembly Bill Number 4011B and substitute it for the identical Third Reading Calendar 1794.

ACTING PRESIDENT KUHL: Substitution is ordered.

SENATOR LIBOUS: 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 9218A and substitute it for the identical Third Reading Calendar 1795.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 1795, by Member of the Assembly Magee, Assembly Print 9218A, an act to amend the Volunteer Firefighters' Benefit Law.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Trunzo moves to discharge from the Committee on Rules Assembly Bill Number 11159 and substitute it for the identical Third Reading Calendar 1796.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 1796, by the Assembly Committee on Rules, Assembly Print 11159, an act to amend a Chapter of the Laws of 1996.

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

THE SECRETARY: Section 5. This act shall take effect on the same day as a chapter of the laws of 1996.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Bruno

moves to discharge from the Committee on Rules Assembly Bill Number 11254A and substitute it for the identical Third Reading Calendar 1797.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1797, by the Assembly Committee on Rules, Assembly Bill Number 11254A, an act to amend Real Property Tax Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Senator Libous moves to discharge from the Committee on Rules Assembly Bill Number 11225 and substitute it for the identical Third Reading Calendar 1798.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT KUHL: Secretary

will read the title.

THE SECRETARY: Calendar Number 1798, by the Assembly Committee on Rules, Assembly Print 11225, an act to amend the Tax Law.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1799, by Senator Lack, Senate Print 7960, an act to amend the Civil Practice Law and Rules.

SENATOR BRUNO: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity at the desk on Calendar Number 1799. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Message is accepted.

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.)

Announce the results when tabulated.

THE SECRETARY: Ayes 57, nays 1, Senator DiCarlo recorded in the negative.

ACTING PRESIDENT KUHL: Bill is passed.

THE SECRETARY: Calendar Number 1800, by Senator Cook, Senate Print 7961, an act to provide for the intercept of state aid.

SENATOR WALDON: Lay it aside.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1800. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

Lay the bill aside.

THE SECRETARY: Calendar Number 1801, by the Senate Committee on Rules, Senate Print 7962, an act to amend the Workers' Compensation Law and the Insurance Law.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: The

motion is to accept the message of necessity on Calendar Number 1901. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Message is accepted.

Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect January 1.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1802, by the Senate Committee on Rules, Senate Print 7963, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1802. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 7. 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.

THE SECRETARY: Calendar Number 1803, by the Assembly Committee on Rules, Assembly Print 11271, an act to allow members of the New York State Employees Retirement System.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President. I'm sorry, Mr. President. Would you hold -

ACTING PRESIDENT KUHL: Senator Leichter, we're on a roll call. We're in the middle of a roll call.

SENATOR LEICHTER: First of all, I want that bill laid aside, 1803.

ACTING PRESIDENT KUHL: 1803.

SENATOR LEICHTER: I ask that it be laid aside.

ACTING PRESIDENT KUHL: Okay.

SENATOR LEICHTER: And then, Mr. President, Calendar 1802, would you please reconsider the vote by which that bill passed.

ACTING PRESIDENT KUHL: Do you have some desire with regard to Calendar Number 1802, Senator Leichter?

SENATOR LEICHTER: Would you lay that bill aside after we reconsider the vote. Have we reconsidered the vote?

ACTING PRESIDENT KUHL: The motion is to reconsider the vote by which Calendar Number 1802 passed the house.

The Secretary will call the roll on reconsideration.

THE SECRETARY: Calendar Number 1802, by the Senate Committee on Rules, Senate Print 7963, an act to amend the Retirement and Social Security law.

SENATOR LEICHTER: Lay the bill aside, please.

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

(The Secretary called the roll on

reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR LEICHTER: 1803 has been laid aside, Mr. President?

ACTING PRESIDENT KUHL: That's correct.

SENATOR LEICHTER: Thank you.

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

THE SECRETARY: Calendar Number 1804, by the Assembly Committee on Rules, Assembly Print 11308A, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity at the desk on Calendar Number 1804. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect in 30 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57, nays 1, Senator DiCarlo recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

(The Senate stood at ease from 3:45 p.m. to 4:00 p.m.)

ACTING PRESIDENT KUHL: A little order in the house, please. Coming close to the

end here. Let's make sure we can all hear it.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time ask that we have the last Rules Committee in Room 332.

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

Order in the house, please.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we now go to the controversial calendar and take up Calendar 1798.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1798, controversial reading of the bill.

THE SECRETARY: Calendar Number 1798, by the Assembly Committee on Rules, Assembly Print 11225, an act to amend the Tax

Law.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, might we hold that bill for a couple of minutes for -

(It was indicated Senator Oppenheimer was present.)

Yes, but Senator Leichter specifically asked that it be held, and he is not here.

ACTING PRESIDENT KUHL: Senator Paterson, do you want Senator Oppenheimer to share the cheese with you while she's talking?

SENATOR PATERSON: Well, if we can have an explanation, I'll think about that.

ACTING PRESIDENT KUHL: Senator Libous, an explanation of Calendar Number 1798 has been asked for by Senator Paterson.

SENATOR LIBOUS: Thank you, Mr. President.

Basically what this bill will do is it will provide a $75 tax credit per ton for

the beneficial use of newly generated waste tires, and also will generate $100 tax credit per ton for the beneficial use of stockpiled waste tires. There is a facility that now presently exists in my district that would probably be closed by the end of the year and that would have a negative effect on about 40 people who have jobs there, and this bill is definitely needed. It passed the Assembly earlier this morning to keep that facility running.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the sponsor would yield for a few questions?

ACTING PRESIDENT KUHL: Senator Libous, do you yield?

SENATOR LIBOUS: I would be happy to, Mr. President.

ACTING PRESIDENT KUHL: Senator is happy to yield.

SENATOR OPPENHEIMER: Actually, you and I were talking earlier about the

environmental impact, but I have a question concerning -- isn't this a fairly large utility company that runs this plant?

SENATOR LIBOUS: That's correct, Mr. President. The plant is run by NYSEG, New York State Electric and Gas.

SENATOR OPPENHEIMER: If you will continue to yield. What is the problem here? They have been doing this you say for years?

SENATOR LIBOUS: One of the problems is -

SENATOR OPPENHEIMER: Why is there a need to do this?

SENATOR LIBOUS: Certainly. There are two facilities in the state like this that do a good job at burning tires to generate this into energy, okay, and it's done environmentally sound because they have gotten excellent ratings from OSHA and DEC as far as the process that's taking place.

The problem is it is a very costly process and it's very hard to stay competitive. In order to keep this facility

open, they need this opportunity especially with the number of tires that are coming in and the disposal of these tires in turning it into energy.

SENATOR OPPENHEIMER: So then if I'm hearing correctly, you are saying that the plant is losing money and that is why we must - and that sending an increased number of tires would make them lose more money?

SENATOR LIBOUS: Mr. President, I'm having a difficult time hearing the Senator's questions because of the little bit of background noise.

ACTING PRESIDENT KUHL: Let's keep the noise down. Let's keep the noise down.

SENATOR LIBOUS: Senator, would you please ask that question again?

SENATOR OPPENHEIMER: Okay. Thanks, Senator Libous. I'm trying to understand. You are saying sending increased numbers of tires would make them lose more money.

SENATOR LIBOUS: No, no. I'm not

saying that.

SENATOR OPPENHEIMER: I'm not understanding the economics here.

SENATOR LIBOUS: I'm saying it's very expensive to take these tires -- which right now are being stockpiled and posing a problem to the environment -- and turning them into energy, so there is a tremendous cost that's involved in this.

It's environmentally sound. It's doing good things for the environment, but it's just too costly to keep this operation going. So there's a tax credit that's needed to keep this going so we don't have tires being burned in fields and stockpiled in streams and thrown on the roadside, and this is why we're doing this bill.

SENATOR OPPENHEIMER: Then the next question would be -

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

SENATOR LIBOUS: Absolutely.

SENATOR OPPENHEIMER: If you will

yield.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR OPPENHEIMER: The next question would be, aren't tax credits usually used for something new, not for something that is up and running? This is not a new facility. You mentioned it's been open for several years. This is not a new usage for the tax credits.

SENATOR LIBOUS: That's correct. We want to keep the facility open because the type of service that is being provided there is environmentally sound, and it's good for the environment.

SENATOR OPPENHEIMER: That is questionable.

I know that this bill went through Ways and Means in the other house. Why did it not go through Finance in this house, because it does have financial implications; and the second part of the question is, how much is it going to cost the state?

SENATOR LIBOUS: There is an

estimate of approximately two million dollars.

SENATOR OPPENHEIMER: Well, I think I would like to talk briefly, if I may, on the subject.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Actually not on the bill. I would like Senator Libous to yield now to a few environmental questions, if he would.

SENATOR LIBOUS: I'm sorry.

ACTING PRESIDENT KUHL: Senator is asking you to yield to a question, Senator Libous. Do you yield?

SENATOR LIBOUS: Absolutely. I have nowhere to go, Mr. President.

ACTING PRESIDENT KUHL: Senator Libous will yield.

SENATOR OPPENHEIMER: You have nowhere else to go; right?

SENATOR LIBOUS: Nowhere else to go.

SENATOR OPPENHEIMER: The

environmental questions that we were discussing earlier are still with me. I just got off on another track with the economic issue, because I was wondering why this was happening.

Do you know how many facilities currently are applying for this tax credit? Is it singularly this one plant, or is there more?

SENATOR LIBOUS: Mr. President, there are presently two facilities in the state, one here and one in the metropolis of Corning, I believe.

SENATOR OPPENHEIMER: Do you have any idea what air pollutants are released into the air with the burning of these tires?

SENATOR LIBOUS: Mr. President, this particular piece of legislation deals with the tax benefit for this facility as it pertains to the usage per ton. Any environmental questions -- the facility has been open for a number of years, as I said. I am told and I have no reason not to believe those agencies that are telling me that they are running a good facility. Both of these facilities are running

environmentally sound.

So to get into the specifics of carcinogens and all that kind of thing, this bill does not deal with that. If there were problems, I'm sure the DEC would have closed this facility down years ago. But, obviously, they have not.

What this is dealing with is financial impact.

SENATOR OPPENHEIMER: The question is really -- through you, Mr. President. Who certifies that this is environmentally sound? Because in most places in this country, it is seen as not sound to burn tires and, indeed, other usages -- new usages have been found that are felt to be very beneficial environmentally. For example, in California, in Texas, in Florida, they chip up the rubber tires and use them as part of road beds. That is considered environmentally sound. I would like to know who is suggesting that burning tires -

SENATOR LIBOUS: Mr. President,

this has been DEC approved. The DEC, Department of Environmental Conservation of New York State, are -- I believe they would have closed the facility if there has been a problem.

SENATOR OPPENHEIMER: Well, I am concerned. On the bill.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Thank you for answering my questions, Senator Libous.

I guess the bottom line is that, number one, I feel that the tax credits should be used to find new usages that are environmentally sound for new businesses, and there certainly is an answer because we know that tires have many usages and they can be recycled and they can be reused, and that is considered very environmentally sound.

And so to continue a usage that is questionable at best I think is not sound and the environmental community thinks is not sound, and so I will not be supporting this, and I urge those who feel as I do that this is not

appropriate usage of our state money.

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

Senator Cook.

SENATOR COOK: This facility that is being addressed in this bill, Senator, we had, as do many areas, immense problems with waste tires all over the place. Nobody knew what to do with them. County landfill was getting filled up with them. They were along the roadsides. This plant has cleaned up that problem.

We don't have all the stuff going into the landfill. The countryside has been cleaned up. It is a textbook operation, an excellent, excellent operation but it loses money.

Now, we have the alternative. We can close it down, put those tires back in the landfill, and pay for it there or we can have a credit which enables this facility to keep operating, and I think considering the record that we have for an environmentally clean

operation which has been monitored constantly by the Department of Environmental Conservation, this is an excellent program, and I think it is a good investment.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

Record the negatives. Announce the results.

Chair recognizes Senator Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: Thank you. I understand what you are saying, Senator Cook, and what you are saying, Senator Libous. I, of course, do not want the tires in the landfill. Who does? What I am saying is there is a vast industry that is growing in the recycling reuse field. This is a multi-billion dollar industry that we should be drawing to our state as much

as possible and, therefore, what should be created is a plant that will turn these tires into chips to be used for roadbeds and many other uses, and it should not be buried and it should not be burned.

And so I will be voting no.

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

Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1798 are Senators Connor, Gold, Goodman, Hoblock, Hoffmann, LaValle, Leibell, Leichter, Levy, Markowitz, Nanula, Onorato, Oppenheimer, Padavan, Paterson, Seabrook, Smith, Stachowski, Tully, Waldon, also Senator Montgomery. Ayes 37, nays 21.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

(There was a pause in the proceedings.)

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we at this time take up Calendar Number 1800.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1800, by Senator Cook.

THE SECRETARY: Calendar Number 1800, by Senator Cook, Senate Print 7961, an act to provide for the intercept of state aid.

ACTING PRESIDENT KUHL: The message was previously accepted.

Senator Leichter.

SENATOR LEICHTER: Yeah, I'm not going to spend much time asking questions of Senator Cook. I've just got a comment on the bill, although, Senator, if you want to make any explanatory comments on it, I will yield to you.

SENATOR COOK: Mr. President, let me just put this in context.

Under federal law, the city of New York was ordered to filter its water system, and the cost was going to be in the magnitude variously estimated at 4- to $8 billion which

was something, of course, the City was quite concerned about. They asked for a waiver from EPA, and as a condition of that waiver there were various provisions of land use control, land acquisition, et cetera.

Resulting from those efforts there was some litigation. The Governor has been attempting to mediate that lawsuit, in effect, and we are reaching the point now where a consent agreement appears to be in the offing. As a part of that consent agreement in which the City would make certain payments in mitigation of some of the damage that they are doing to the economy of the region, the City has agreed to this mechanism of intercept which is, in effect, a guarantee.

I won't go into the litany of our experience with the City because you have heard it on other occasions, but on previous agreements that they have made with us, they have not fulfilled their commitments. One administration makes commitments and the next administration simply does not fulfill them.

This is an effort by which it can be guaranteed to the people in the watershed that the agreement will be fulfilled. The City has, as I said, their agreement with this mechanism and it will enable, hopefully, all the parties in this lawsuit to now sign a consent agreement which will get EPA off the City's back and enable this whole issue to be brought to a conclusion.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, from my understanding of the whole issue of clean water for the city of New York and it's also for Westchester and, frankly, it's for your communities, too, I think you gave us somewhat incomplete and skewed information, Senator Cook.

As we know, EPA has stated that the city of New York needs to filter its water unless it does a better job of managing the watershed. The City came up with certain ideas

and proposals for that better management, and one of the aspects of it was, as you know, because EPA required that the City go ahead and acquire more land; secondly, that it does a better job in seeing that there aren't runoffs into the water system.

If the City had to filter its water and the water of Westchester and your community, it would be an enormous burden not just for the taxpayers of the city of New York but for the whole state. It's a problem that we need to solve as all residents of New York. It's not like a New York City problem and shame on you, New York City, and ha-ha, because it's going to affect every single resident of New York State.

In that connection, and I thought to his credit, the Governor stepped in, and I think the Governor's counsel from all reports, Michael Finnegan, really did a good job in bringing people together, and there seemed to be some agreement in principle which is still being worked out.

Now, that agreement has not been worked out, and I can not believe -- although I question your statement in principle -- that the city of New York is supporting this bill because it is a very one-sided bill, and until you have a final agreement to provide, as this bill does, that you can intercept City monies and utilize it and take it to fulfill what you consider certain obligations or requirements by the city of New York -- I think until you have the whole agreement, until the City says, "Yes, you can do that," -- I don't think it has done that -- I think this bill is, at most, premature and I think at this time -- frankly, I think it's somewhat harmful to the process of reaching an agreement.

SENATOR COOK: Mr. President, if I may, on the bill.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: Mr. President, one of the bleary-eyed people sitting to my right is my counsel who spent all night writing this bill

not because he was enjoying the process but because he had been requested by Michael Finnegan, by the representatives of the city of New York, by the other people who were in the process of negotiating this agreement that you are discussing, that we put this mechanism in place. As you will note, it only takes effect at the point when the City signs a consent agreement. So it is -- and it really only applies to the things that the City agrees in the consent agreement that it is going to do. So it is something that we're doing in order to facilitate the signing of this consent agreement.

Now, if we -- you know, if we want this litigation to go on another three and four years, the litigation can, I guess, go on three or four more years; but if people want to bring it to a conclusion, which is what all these discussions are attempting to do, then we've got to get the pieces in place so that can happen.

I have to tell you, Senator, this

is being done in an atmosphere of cooperation. It is not being done in a punitive manner, but it is being done in a way so one of the elements of a very complicated agreement can fall into place so that we can proceed and get the rest of it put together.

I have to tell you, Senator, without this bill, the probability of that agreement coming together is very minimal. Without this piece, it is improbable that all the parties will agree to the conditions of the consent agreement which is being drafted. That's why it's crucial.

Agreed, if we were going to be here a month from now, maybe we could do it a month from now. We're not going to be here. That's why this is important.

SENATOR LEICHTER: Senator, if you would be so good as to yield?

SENATOR COOK: Certainly.

SENATOR LEICHTER: Am I not correct, this is a one-house bill? The Assembly hasn't passed it. It's gone home. It's not

going to become law in any event.

SENATOR COOK: Senator, that's not -- that's not necessarily true.

SENATOR LEICHTER: Well, is it - Senator, with all due respect, if Senator Cook will yield, please, through you Mr. -

The Senate is here. The Assembly has gone home. The Assembly has not passed the bill. Is that correct?

SENATOR COOK: Mr. President. That is correct, Senator. However, I can also tell you -- I can't obviously tell you that Speaker Silver was addressed on this, simply because he was not available last night, but there have been discussions with the Assembly on this issue. It is the hope and expectation that at some point the Assembly will be in session and be able to put this together. I think they will do so at the urging of the city of New York because the city of New York wants to have this done, and I think that it -- as I indicated, they are anxious to get this consent agreement put together and this is simply just one piece

of that whole process.

SENATOR LEICHTER: Senator Cook, and maybe I'm wrong. You can respond to this, if you will. I have sort of the sense listening to what you are saying that this is sort of meant to be partly a club over the city of New York to get them to come to an agreement and, as we know, that agreement which was announced with much fanfare in principle is having some difficulty working out the details. That often happens, and I don't say that critically, but I want to tell you that before I and, I think, other residents of the city of New York could vote for a bill that would authorize the intercept of money at a time that the City signs an agreement without our having seen that agreement, without the comptroller of the city of New York, who has been very much involved in all of the watershed issues, saying that this is the responsible thing to do -- we're talking about millions and millions of dollars of City's money here. And without knowing -- I would like to see, at the very least, a memorandum by the

city of New York, has a representative here, and I don't hold you responsible for that. It's not the only issue where I think we ought to have seen a memo and we haven't seen it or should have explained to us that this is something that the mayor presently endorses.

So I really think, Senator, that this is very, very premature and while I'm not part of the negotiations whatsoever, I really think, Senator, that this is not going to help those negotiations. I think you are trying to put a club over the city of New York, and I think that's a mistake.

SENATOR COOK: Mr. President, one final word. Senator, the law does not take effect until a local law is passed by the City Council of the city of New York, and it is being done -- far from being a club against the City, it is frankly being done as a -- as one of the things that will be necessary for all the parties to agree to this thing. It is an effort to help the City and help everybody bring this thing to a conclusion and, frankly, if we don't

do this, we're going to be in litigation for a long time.

SENATOR LEICHTER: Mr. President, if Senator Cook would yield one more moment, please. Just one more question.

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

SENATOR LEICHTER: Senator, at the time that that agreement is finalized, it will probably still take some time to do that, and it's a very complex agreement. I suspect it's going to need a fair amount of legislation. It's certainly going to need action within the city of New York. As you say, it's going to need action by the City Council. There are some of those who, like me, will insist that we know what the position of the comptroller of the city of New York is. Why not do it at that time?

Senator, why pass this bill now, sort of, "Well, in the future if this and this and this happens, then it goes into effect" and without even providing for all the eventualities that we would like to see, even the very fact

that you and I as representatives of our districts and of the state of New York, we would like to know what that final agreement is.

Why should I vote now for something that's going to allow the intercept of City money when I don't know what that agreement is?

SENATOR COOK: Mr. President, i can only give you the final answer, Senator, that there is litigation under way that is attempting to be resolved by a consent agreement. That consent agreement will not be signed without this piece, and if we ever want to bring this thing to a conclusion, this bill has to be passed.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

Senator Leichter, my initial reaction to this bill was very similar to yours. However, I did take the time to seek out the mayor's representative here in Albany to

request directly from him as to what the mayor's position was. I will share that response with you.

It was that the mayor would like this bill to be passed. He considers it an integral part of the negotiations that have been referred to by you and Senator Cook. He feels that the safeguard in here of local law enacted by the City Council enables -- provides for a level of protection, if you will, against anything being done in regard to the flow of these funds in a manner that would be detrimental to the City.

Now, obviously, that's not going to satisfy everything you had to say, but, nevertheless, I thought you should be aware of that fact.

SENATOR LEICHTER: Mr. President, just briefly responding to Senator Padavan.

Senator Padavan, I thank you for that, and I want to tell you that at least it soothes the curious doubt that I had about this bill and sort of replaces it now with a healthy

skepticism.

I would still feel a lot more comfortable if that bill came before us when we had a signed agreement; we knew the terms of the agreement; we had a home rule message; the comptroller of the city of New York said to us, "This is City money. I've got a responsibility over City money and I'll tell you, yes, this is a good bill to pass."

Let's do it at that time. Let's not jump ahead and do it and particularly since at the present time it's definitely a one-house bill.

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.)

Record the negatives and announce the results.

SENATOR STACHOWSKI: Mr.

President, explain my vote.

ACTING PRESIDENT KUHL: Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: I'm going to vote along with Senator Cook on this because I happen to believe he and Senator Padavan. I just find it amazing, though, that there's been a captive audience for three days and, apparently, the representative of the city of New York didn't have any idea where to find the 20-some members that represent the city of New York that are on the Democrat side. I think he could have avoided this debate, and everybody in this chamber would have felt much better, but obviously he was too busy sitting some place else than to walk down the hall and grab one of these people and explain the bill to them.

I vote yes.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1800 are

Senators Connor, Gold, Leichter, Markowitz, Mendez, Montgomery, Onorato, Paterson, Seabrook, Smith and Waldon. Ayes 47. Nays 11.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1802.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1802.

THE SECRETARY: Calendar Number 1802, by the Senate Committee on Rules, Senate Print 7963, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR LEICHTER: Mr. President.

THE SECRETARY: Section 6. This act shall take effect immediately.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator

Stafford, explanation.

SENATOR STAFFORD: Mr. President, I will yield to Senator Hannon for a brief explanation of a portion and we also have a portion of another portion -- excuse me, Senator, by all means -- excuse me, Senator Nozzolio, for additional parts of the bill. I'm sure that either one could proceed, Senator Hannon and then Senator Nozzolio. That will be wonderful.

ACTING PRESIDENT KUHL: May we have a little order in the house so we can hear the explanation that's been requested?

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, thank you, Senator Stafford.

The measure before us renews our commitment, continues our commitment to the brave men and women who work in our correctional facilities across this state. We are trying to, through this legislation, remedy an inequity that exists in the law where members of earlier tiers have different compensation for if they're

injured on the job than those in the tiers that follow.

This legislation removes that inequity. It serves our commitment to those brave men and women who work in our correctional facilities, and I particularly want to thank those members, especially Senator Stafford, who worked so hard in bringing this matter to the floor today.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Will the gentleman formerly from Ithaca yield to a question?

ACTING PRESIDENT KUHL: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GOLD: Senator, I heard your explanation of the bill, and I'm just curious. The explanation that you gave, was that -- this is 7963, am I correct? It's a 40 - wait a minute, 47-page bill, am I correct? Am I

on the right bill?

Your explanation, I think, was the first two pages, am I correct?

SENATOR HANNON: You want to -

SENATOR GOLD: Am I correct?

SENATOR NOZZOLIO: My portion, Senator Gold and Mr. President, through you, was the portion which dealt with those correction officers.

SENATOR GOLD: O.K. I thank you very much, Senator, so if I understand it properly in other words, there is a lot more to this bill than the first two pages which you've explained and now Senator Hannon is going to explain the rest of the bill.

SENATOR HANNON: Yes.

SENATOR GOLD: Then I would certainly yield to Senator Hannon.

SENATOR HANNON: Section 6 of the bill would provide that in Westchester and in Nassau there be respective public benefit corporations set up to provide for the health care of -- from the public health hospitals of

those counties.

SENATOR GOLD: Mr. President, will the Senator yield to a question?

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator Hannon, I don't want to be so presumptuous to say that this is the first time I've seen anything like this because there may have been something, and it's not that relevant, but my understanding is that there was a bill that I think even passed the Assembly which dealt with the subject matter as described by Senator Nozzolio, and that took about two and a half pages. This document which I have in my hand is dated July 13th, and my watch seems to tell me it's July 13th, so apparently it didn't exist on July 12th, yesterday, and I don't know whether it was printed after the Assembly left or as they were

leaving, but what does the -- what does page 3 through page 47 have to do with pages 1 and 2, if anything?

SENATOR HANNON: They follow in numerical order, and they deal with tiering and they deal with -

SENATOR GOLD: I couldn't have asked for a better answer. That is a fabulous answer because that's about all they do have in common, is that correct?

SENATOR HANNON: I didn't finish my answer, Senator.

SENATOR GOLD: Oh, I'm sorry.

SENATOR HANNON: And they deal with the care of some of the people of the state of New York, as do -

SENATOR GOLD: I'm sorry, Senator.

SENATOR HANNON: They deal with the care of some of the people of the state of New York, as does the preliminary portion of the bill.

SENATOR GOLD: They deal with

care. They take care of people.

SENATOR HANNON: Yes.

SENATOR GOLD: Well, will Senator Hannon yield to a question?

ACTING PRESIDENT KUHL: You continue to yield?

SENATOR HANNON: Yes.

SENATOR GOLD: Aside from that -

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR GOLD: Aside from the fact that every single bill that we ever deal with takes care of somebody or something in the state of New York, in terms of germaneness, and I know, Senator, that once you put a piece of paper together I'm not going to say, I don't know whether technically we have an objection, but you being a scholar, isn't it a fact that when you get past page two and a half, the rest of this bill has no germaneness to the first two and a half pages?

SENATOR HANNON: No.

SENATOR GOLD: O.K. Mr.

President.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: Yeah, I'm not going to spar with Senator Hannon. It's ridiculous.

Senator -- I don't want to put Senator Hannon into a position where he has to spar. I respect Senator Hannon for trying to do something for his community and he certainly doesn't have to apologize to me or anybody else for trying to do something for his community, but I do resent this bill for a number of reasons.

The Majority Leader of this house is a good businessman, and when he came into his leadership position, he made a strong effort to make this house take on some of the better types of operations that a business would do. We start on time, et cetera, et cetera. We don't work quite as late into the night as the other house, although last night was not exactly early, but in the spirit of doing things in a businesslike

way and in a fair way, we have gone through a budget process and people have signed off on a budget, and then after the Assembly has basically gone from us, to put out a bill which has these kinds of numbers in them and a bill which is 47 pages long, and I will vote no for -- for many reasons, but one reason surely is that if the shoe is on the other foot, no bright businessman like Joe Bruno would put his stamp of approval on 47 legal pages, and you take a look at these pages. I'm not -- I'm not suggesting a page that changes a word so that somebody says, Well, you know, you've got to print the whole section because it's got to be in context, or you have to do the whole section in order to change the one word.

This looks to me like 47 pages of new language, and I guarantee you that once you get past the word "trust" and if you want to say we trust our counsel, so let's vote on it because the counsels told me it did something, there isn't one member aside from perhaps Senator Hannon who may have drafted or proposed

this kind of legislation which comes before us only introduced today, I don't think anybody really knows what this does or the implications of it.

This is the kind of thing where years ago you would have a bill in the bottom drawer of the Leader's desk and say, My God, we haven't introduced that yet. He says, Don't worry about it, last day of session, we'll get it printed pretty quick.

I really don't believe that this is the way to do this. I think it's an imposition on the chamber and, as I say, I certainly don't resent Senator Hannon for trying for his constituents. We all do it, but it is clear that the first part of this bill represents something that has been discussed and something that should be done and, in fact, Senator Bruno, I believe there's an Assembly bill that could be handed down that could take care of Senator Nozzolio's problem and explanation, and I would support you, Senator Nozzolio.

Over the years, we've had a lot of coupling and over the years we have had bills that say 60 or 80 things, many of the budget bills, one bill does hundreds of things, and you are placed in the position where, if you want to do some of those things, you may have to take some of the good with the bad, but this is really, really way out of line.

This is suggesting that if we want to do something for the people who are very deserving and who deal with pages two and three, we have to give away an awful lot of money to two communities without any real opportunity for most of us to be able to deal with the merits of these proposals.

I think it's the wrong thing to do. I think that from the point of view of Senator Bruno who has tried for two years -- and I don't agree with everything he's done and that's for sure, but who has tried for two years to get words like "change" and words like "reform" and words like "businesslike" into the vocabulary of how this house operates, I think

this is a step backwards and I don't think it ought to be one of the final things that we do in this legislative chamber.

I don't think, Senator Bruno, in justice to what you tried to do you want people leaving this chamber saying, Uh-uh, when all was said and done, you see that last 47 pages that came flying out of Rules at the last minute?

So I think it's a mistake. I think that it's a step backward and we shouldn't be doing it.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Yes, to close for the Minority, just let me say, I think this bill epitomizes what the people of this state are fed up with. That's the secrecy, the spending, the sausage-making that goes into the budget, and this year we have a new feature, the hostage-taking and even as we are about to free the hostages of last night and the past week or two, the loft tenants, it seems we're compelled

to take new hostages, the correction officers. Moreover, the Assembly passed a straightforward bill dealing with them and their issue which is now being sent over here and put into a new bill by the Majority to create a new set of hostages, the correction officers.

Now, they won't get their need for retirement benefits addressed until the Westchester and Nassau County Medical Centers get their millions of dollars, and I'm not making any judgment about those individual needs, but gee whiz, funding medical centers somehow is now germane to providing pension benefits for correction officers? And I suppose next year we'll see even more hostage-taking as this process hopelessly breaks down.

I look forward shortly to freeing some of the hostages, some of whom have been here with us this past week or two, but I shudder to think that legislation that representative government in the state of New York has turned into the kind of secrecy and hostage-taking under the guise of legislation

that we're seeing here today, that we've seen in these last couple weeks.

It's time to end that and have open representative government that's not so partisan that we have to take hostages, because if we keep taking hostages I shudder to think we're going to start shooting hostages by the next year's session and doing in the needs of the people of the state of New York in retribution for not having some other perceived need satisfied.

So, Mr. President, I intend to vote against this because I don't want to be party to creating a new set of hostages in this Capitol.

ACTING PRESIDENT KUHL: Senator Hannon.

SENATOR HANNON: Mr. President, just a couple of comments.

First of all, for the edification of Senator Gold who probably has learned some of the lessons that Senator Bruno has introduced but not all of them, one of those lessons is

that we don't always hear everything that is said. I think it's that we don't hear 30 per cent of what is said. If he had been listening the other day to the extensive debate between myself and Senator Leichter, he would have heard this bill debated extensively, so it didn't come out of anywhere. It is there and it has been merged in order to achieve the aim of helping people who need help.

Second, this bill does not give money. This bill saves money, doesn't create any new appropriation and it saves money in order to deliver services to some needy people in both counties.

I would say that instead of the standard of double -- or instead of this hostage being the standard, as Senator Connor would suggest, we are faced with the introduction, however, of a double standard. The Assembly always thinks that they can help their constit uents, but we can't help our constituents. I would say that's a double standard that ought not to be continued. We are all here to do the

business of the people of the state of New York and this bill is an attempt to do that.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives; announce the result.

Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, I'm voting in the negative, and we are most anxious to pass legislation that will benefit those members of the Corrections Department and particularly those correction officers, partic ularly those whose unions have fought for them and are behind them, and we're not opposed to anyone else benefiting or anyone else's constituents, whoever they might be, because I

thought correction officers were all of our constituents.

What I'm saying is we need to address these in separate bills and not be taking legislation that was really categorized to go in one particular area and tainting it in the actual process.

The issue may have been discussed before, but it was just the manner in which it was constructed that was of concern to us and that's why I'm voting no.

SENATOR OPPENHEIMER: Explain my vote, Mr. President.

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

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I will be voting in the affirmative, but I am very distressed that this is not a real bill. It's a one-house bill because the needs of Westchester County's medical center are so severe and need tending to so immediately that it is really

appalling to me that this all got so convoluted and got thrown together with other issues.

I only hope and pray that we will at some point in the near future have a clean Westchester Medical County -- Medical Center bill and that we will pass it expeditiously because it is desperately needed.

ACTING PRESIDENT KUHL: Senator Oppenheimer in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1802 are Senators Connor, Gold, Leichter, Montgomery, Onorato, Paterson, Seabrook, Smith and Stachowski. Ayes 49, nays 9.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1803.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1803.

SENATOR WALDON: Explanation.

THE SECRETARY: Calendar Number 1803, by the Assembly Committee on Rules, Assembly Print 11271, an act to allow members of the New York State Retirement System.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Because I have a certain interest in this bill that I'd like to explore.

ACTING PRESIDENT KUHL: Senator Leichter, I was not being facetious nor was I meaning to be showing any lack of respect, but you rose after Senator Waldon had asked for an explanation.

SENATOR LEICHTER: Oh, I'm sorry.

ACTING PRESIDENT KUHL: So I was just trying to maintain some order and decorum in the chamber which is the responsibility of the Chair, so if you have no objection I'll ask for an explanation on behalf of Senator Waldon.

SENATOR LEICHTER: Not only that, you do an excellent job. I didn't hear Senator Waldon ask for an explanation. I have some comments, but let's hear the explanation.

ACTING PRESIDENT KUHL: Senator Bruno, who is going to be providing the explanation on Calendar 1803?

SENATOR BRUNO: Mr. President, I believe that Senator Lack was designated to do this. I believe he is in the Law Library now doing some research and he will be here very shortly and if you will just give us a moment, I think you will be amazed by what he has to recite in relation to it.

Please get Senator Lack on the phone. (Pause).

Mr. President, it's my understanding that this may take a little more research than we may be able to accomplish in a short time frame, so if we may temporarily lay this bill aside.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

SENATOR BRUNO: Mr. President, Senator Trunzo apparently had been studying this without my knowledge for weeks and he is now rising to this occasion, so I would ask that you recognize him for a full explanation.

Thank you.

ACTING PRESIDENT KUHL: We won't lay the bill aside temporarily. The Chair recognizes Senator Trunzo for an explanation.

SENATOR TRUNZO: It's a very simple explanation. Evidently has to do with some woman who used to work for Ways and Means in the Assembly who, on January 6th of 1969, for reasons -- for whatever reasons, just failed to elect to participate in what we all had as the reopener of '88, and so that basically that's what it is, it's to reopen it for one individual to get into the 80-A system. I have no idea who she is or what it's all about but that basically is what the bill does.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thank you very

much, Mr. President.

Senator Trunzo, would you be kind enough to edify me a bit? I did read this and there's a portion of this bill which speaks to service time being folded into, meaning military service time being folded into the overall time of the employee if he or she qualifies, and I was wondering, is that your understanding of the bill that someone who put four years, good years, I think it's three years but not more than three, and that that could be folded into the time?

SENATOR TRUNZO: My understanding is she works for the Assembly, had a lapse in service and did not choose at the time. She thought she was accepted into the 80-A and apparently was not and it recently has been discovered, and she was told by Ways and Means back in those days that she didn't have to do anything and there she was in 80-A, and then it was found out she was not.

I mean it's a simple explanation, you know, but done by the Assembly Ways and

Means Committee. Even the fiscal note is done by them.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: I have one more question.

ACTING PRESIDENT KUHL: Senator Trunzo yield to one more question?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Senator Trunzo, I apologize if in any way I put you on the spot with this explanation, but if it was more than just one employee who had qualified under this explanation, but it was another employee. Could that person then qualify under this equation, under this proposal?

SENATOR TRUNZO: Well, as I understand this was a unique proposal in itself and I'm sure if something else happened, someone else, that another piece of legislation would have been appropriate.

SENATOR WALDON: All right. What you're saying that would have to be a separate act, could not be this act?

SENATOR TRUNZO: Can't open up for you. Sorry.

ACTING PRESIDENT KUHL: Secretary will read the last section.

Senator Leichter.

SENATOR LEICHTER: Mr. President, I'm sorry but this is garbage time and I guess it's the end of the session and we're really seeing the sort of bills that shouldn't be before us, and I don't know who this particular individual is. I'm at least glad to know that we've identified her in some ways because I asked Senator Trunzo before.

I've been here a number of years and others have, you have, and we've had many instances where we've been embarrassed by finding out that we voted pension benefits for people who really were not deserving. I mean to put somebody into 80-A, because of his or her negligence they failed to apply when they should

have and so on, I mean either we're going to have a pension system that's going to work in a fair, unbiased, uniform manner, or we're going to try to have all of these special benefit bills that we pass.

Now, some years ago Senator Gold took the lead on this, to try to set up a system whereby we as legislators did not have to pass on these and to turn this over to the comptroller and Senator Trunzo was extremely helpful in trying to do this. We did it in part, we didn't do it fully, but I must say I feel very uncomfortable in voting on these sort of bills, particularly when you put somebody into that sort of a pension system and one hundred percent of the cost is now going to have to be borne by the people of the state of New York.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah, Mr. President. Thank you very much.

For -- when it comes to this

issue, I have been, I hope, a proud partner of Senator Leichter, but at this point I'm going to differ with him on this particular bill, and the reason is that I would be less than candid with my colleagues in this house if I didn't say that there was a time back in the 1960s where I worked as a counsel, I sat at my desk, and if it wasn't for Joe O'Connor, may he rest in peace, I wouldn't even realize what was going on. People were running around and I was lucky, I was a counsel, somebody was concerned about me. They came, they explained the system and I signed up.

My understanding of this situation is that the person involved was -- who is -- was not informed properly, was specific ally told that she did not have to do something which under the law she would have had to do and the cost in this, I do not think is an outrageous cost. It's within reason and I'm going to support it. I think that Senator Leichter is right that we should have a system. I think Senator Trunzo is right, I supported his

bill, but as Senator Trunzo and all of us have found, even though we have done the right thing, there have been people who have fallen through the cracks because every bill we pass is not perfect. I think this is one of those people and I'm going to vote for it.

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

THE SECRETARY: Ayes 57, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1794.

ACTING PRESIDENT KUHL: The Secretary will read the Calendar 1794 which is on Supplemental Calendar Number 3, page 1.

Secretary will read.

THE SECRETARY: Calendar Number 1794, substituted earlier today, by member of the Assembly McLaughlin, Assembly Print 4011-B, an act to amend the Social Services law.

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 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1777.

ACTING PRESIDENT KUHL: On the

regular calendar, Calendar Number 70, in yellow, the bronze tint, page 4, the Secretary will read Calendar Number 1777.

THE SECRETARY: On page 4, Senator Stafford moves to discharge from the Committee on Finance Assembly Bill Number 11319 and substitute it for the identical Third Reading 1777.

ACTING PRESIDENT KUHL: It's substituted. Secretary will read the title.

THE SECRETARY: Calendar Number 1777, by the Assembly Committee on Rules, Assembly Print Number 11319, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity at the desk

on Calendar Number 1777. 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 called the roll.)

THE SECRETARY: Ayes 58 -

ACTING PRESIDENT KUHL: Senator Leichter, to explain his vote.

SENATOR LEICHTER: Yes, to explain my vote.

Mr. President, this is a very comprehensive bill which is very fondly called "the big ugly", has many provisions in it, some tax decreases but one important feature of it is that it finally frees the loft tenants, and I

certainly want to congratulate them. They've been held hostage far too long. It's been really most unfortunate, even disgraceful, that they've been treated in this way, thousands of tenants in New York whose rights were played with as our convoluted budget process and end of the year process played out, so I'm going to have to vote for it. As I dislike at least some of the tax reduction provisions, particularly the one that eliminates the mansion tax, I see no reason, no justification for doing that. That's going to cost 60, $70 million, and I just want to warn all of you, we're going to be back next year with a whopping deficit because of these tax cuts that we both willy-nilly without having the revenue for, and next year as you worry about what you're going to do for your local school districts and you worry about what you're going to do for transportation and you worry about how you're going to avoid tuition increases in SUNY and CUNY and take care of elderly people and so on, just think about all of these tax cuts that you have voted for which

have helped us create that enormous deficit.

We had one this year. We'll have a bigger one next year, but thank God we freed the loft hostages.

I vote in the affirmative.

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

Senator Gold, to explain his vote.

SENATOR GOLD: Yeah, just as a matter of order, Mr. President. I think that you would -- should inform people that we do not allow demonstrations or anything along those lines so that when we finally hear the words that this bill is passed, we don't hear the people in the balcony saying, Free at last, free at last. Thank God Almighty, we're free at last.

I vote yes.

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

Senator Marchi to explain his vote.

SENATOR MARCHI: Mr. Chairman, I was chairman of Finance many years ago when this bill was put into place and I had a major role at that time and I was very happy to have done it. I'm happy that this result is being achieved now and that we're doing what's about to happen. It was just a question of time but you've been patient, and I know that you've made substantial investments in the improvement of that property so it inures to the benefit of that area of the city of New York and the state of New York.

So we rejoice in your -- in your realization and the hope that we would validate this procedure today.

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

Announce the results.

SENATOR DOLLINGER: Mr. President. Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Just to

explain my vote, Mr. President.

ACTING PRESIDENT KUHL: Explain your vote.

SENATOR DOLLINGER: I echo the remarks of Senator Leichter, Senator Gold and Senator Marchi, about the patience of people up above me. I think what we ought to do is rename our gallery up above, the Loft and have the tenants move in and improve it.

ACTING PRESIDENT KUHL: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President.

I rise too to say on behalf of my constituents and all the residents of the city of New York my apology and our apology for the process, and I can certainly say for them that it is at times as frustrating and disappointing to me as it must have been to them to see how we have used them for purposes of negotiating this or that, and many times we don't know what the this or that is, but we just know that we're in the -- we're being used as pawns, but that is

the process and fortunately somehow in some way it comes together at times like this.

I would also say that for those of you who think that it is -- it most improbable that I would have lofts in my own district, I do and the residents of those lofts are extremely important constituents, not only to my district but to New York State and, as we have debated in this chamber in -- on prior occasions, the arts play a very important role for New York State citizens and citizens from around the world, both in terms of our economy as well as the aesthetics and the significance that it gives New York City and New York State. So it really is a wonderful opportunity to be able to vote yes for the residents.

Although I may disagree with some parts of the tax cut I certainly am proud that we have finally resolved this issue on behalf of the thousands of people, many of whom are artists, who reside in lofts in the city of New York and throughout the state.

ACTING PRESIDENT KUHL: Senator

Montgomery will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

(Applause from the gallery.)

ACTING PRESIDENT KUHL: Senator Bruno. Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1797.

ACTING PRESIDENT KUHL: Have a little order in the house, please. We'll return to Supplemental Calendar Number 3, page 1, ask the Secretary to read the title of Calendar Number 1797.

THE SECRETARY: Calendar Number 1797, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 11254-A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 11. This

act shall take effect July 1.

SENATOR LEICHTER: Mr. President, Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: Yes, Mr. President.

This is a bill that enhances tax benefits given for real estate development and renovations in lower Manhattan. It's really a giveaway to the real estate industry, and I appreciate saying that to some of you that's like putting red meat before a tiger. That's probably all you need to do to be strongly in support of the bill, but the fact is that there's no justification for that.

We voted a special lower Manhattan district last year. I think I was the only one who voted against it. I said that it wasn't going to work, that really what this was going to do with that lower Manhattan district and the benefits we were providing was going to do is to subsidize luxury housing, conversion of

commercial buildings in lower Manhattan to luxury housing paid for by the taxpayers.

That's precisely what has happened and while we were told at that time that there was going to be a commercial renewal, that hasn't occurred. What this bill does now is to enhance and to increase the benefits that go for the commercial development because, as I pointed out last year, there were absolutely no credible studies that the benefits that we were providing were going to do anything for commercial renewal in lower Manhattan.

The fact is that New York City has a surplus of commercial real estate, of office space; much of it is midtown. Much of it is in lower Manhattan, and these sort of bene fits, we're not going to bring new businesses into New York City and into Manhattan, so I hate to say it. I think I was shown to be correct, there's no justification to give even further benefits now. It is a giveaway to the real estate industry, and I would urge you to vote against that.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 11. This act shall take effect July 1.

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 one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to reports of standing committees and I believe there's a report from the Rules Committee at the desk. I would ask it be read at this time.

ACTING PRESIDENT KUHL: Return to reports of standing committees, ask the Secretary to read the Rules report.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, reports the following bill directly to third reading:

Senate Print 5097-C, by Senator Spano, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Motion to accept the report of the Rules committee. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Rules report is accepted. Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1805.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 1805, by Senator Spano, Senate Print 5097-C, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

SENATOR LEICHTER: Mr. President.

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

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Senator here to respond?

SENATOR VELELLA: I believe Senator Spano is assisting Senator Lack in his research and, in his absence, I will try to answer any questions as well as I can do.

ACTING PRESIDENT KUHL: Senator Velella will yield, Senator Leichter.

SENATOR LEICHTER: Yes, Senator, as I read this bill, it makes certain presumptions as to disability of firemen in the city of New York or maybe firemen throughout the state of New York, I don't know. Both firemen and police, is that right? Is that correct?

SENATOR VELELLA: Yes, Senator.

SENATOR LEICHTER: And one of the presumptions is that on disability if that

policeman or that fireman is found to be suffering from melanoma or prostate cancer and he was healthy at the time that he entered the service, then it's deemed to be service-related and upon retirement that police officer or that fireman would get the pension benefits of - that are -- that goes with disability yet, is that correct? Is that correct?

SENATOR VELELLA: No, it is not.

SENATOR LEICHTER: Would you explain that.

SENATOR VELELLA: You said deemed to be. It was a presumption, and being the scholarly attorney that you are, you know if it's a presumption it is rebuttable.

SENATOR LEICHTER: O.K. Senator, it is my understanding that you get melanoma ordinarily from being in the sun. Is there something about being a fireman who spends a good deal of the time in the firehouse that subjects him to melanoma more than other people, people who are not serving as firemen?

SENATOR VELELLA: I would answer

that by saying that, if we knew what caused cancer, we would all be a lot better off. There are a lot of theories and a lot of possibilities. Certainly the firefighters and the people who deal with emergency situations inhale a great deal of carcinogenics, are exposed to a lot of problems that the average person are not exposed to, and I believe that that justifies the presumption that their injury or their malady may have been job-related. However, if someone can show that there are other factors such as heavy smoking, that also might be a problem. A lot of other factors that can be competitive to the presumption and rebut that presumption, but the board would make the determination.

SENATOR LEICHTER: Right. Mr. President, if Senator Velella continues to yield.

ACTING PRESIDENT KUHL: Senator Velella, will you continue to yield?

SENATOR LEICHTER: Senator, I think you said there is no scientific proof

whatsoever, and really my question is to you in the absence of scientific proof, how can we make that presumption?

SENATOR VELELLA: I guess, Senator, that's why we're saying it's a presumption and not as you have stated deeming it to be related. We'll let the board make the medical analysis, take a look at the facts, examine the facts and make a decision. All those facts will be before the board, the pension board that makes that decision, the medical evidence, the testimony, the history of the person, the predisposition, all of these things are weighed very carefully, by these very responsible members of this board.

SENATOR LEICHTER: Mr. President, if Senator Velella will continue to yield. Senator, I was going to suggest that you join Senator Lack in doing the research, but -

SENATOR VELELLA: I'm trying to pinch-hit for one Senator that's very knowledge able on this and I may not be doing as good a job as if he were here to do it himself.

SENATOR LEICHTER: Senator, I'm particularly interested in, if you'd be good enough to yield, what relationship there possibly is to being a fire officer or being a police officer and prostate cancer. Who has ever shown that there is any connection?

SENATOR VELELLA: Senator, if - if we could only identify what it is that causes that, we'd all be better off. Certainly you and I would love to see the definite answers as to what caused these problems. However, best we can do is evaluate the medical knowledge that we have available, make a decision based on the facts, the medical testimony, and then we can make a decision. That board can make that decision.

What causes it? Nobody knows, but there are some good medical presumptions that have to be weighed and evaluated.

SENATOR LEICHTER: Senator Velella, I was under the presumption that we who now spend a good deal of our time sitting in chairs would be subject to that terrible -

SENATOR VELELLA: Yes.

SENATOR LEICHTER: -- condition, rather than a fire officer. Are you going to put in a bill to deal with that presumption that if we get prostate cancer some time, that it's subject to our work?

SENATOR VELELLA: I may not think that sitting -- yes, Senator, I may not think sitting in a chair in an inactive mode as much as you do would cause that type of cancer. However, I do think, when you're out on these emergency situations where you're exposed to not just gases but contaminants, cleaning up pollution problems, all of the things that our emergency medical service people are exposed to, I think there's a pretty good presumption there.

Thank you, Senator.

SENATOR LEICHTER: Senator, just one more question.

ACTING PRESIDENT KUHL: Senator Velella yield to one more question?

SENATOR LEICHTER: Senator, one

more question.

ACTING PRESIDENT KUHL: Senator Velella.

SENATOR VELELLA: Yes, Senator.

SENATOR LEICHTER: Can you tell me what it is that the nature of being a police officer that would cause or maybe some causal connection between being a police officer and urinary problems which you also happen to make a presumption?

SENATOR VELELLA: Well, Senator, in the words of one of our colleagues, Senator Oppenheimer, where there's smoke there's fire and maybe members of the campaign can remember that.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR VELELLA: And, Senator, when the fact is that our New York State Police have the highest incidence of urinary tract cancers because of the job that they do when there's an emergency, they're right there whether it be toxic spills, whether it be fires,

whether it be buildings burning, plastics, whatever those kinds of problems are, the contaminants that they're exposed to, it is reasonable to believe cause those cancers.

Thank you, Senator.

SENATOR LEICHTER: I want to thank you. My colleague answering that question says you get a lot of free coffee, and that may be the cause.

SENATOR VELELLA: Well, they take anything free, maybe.

ACTING PRESIDENT KUHL: Have a little order in the house.

Senator Leichter.

SENATOR LEICHTER: Mr. President, I -- I think this session has clearly run its course and, as I said, I mean this is obviously garbage time, and I'm sorry that I maybe take this -- these sort of bills too seriously in order to have the jocular and casual approach that my friend here has, but we are voting on bills where we're responsible on it. I mean we are providing millions of dollars in benefits,

disability benefits, that may cost the city of New York a great deal of money. The very least I think we have some obligation to show that there's a causal relationship between the work that these people do and the disability.

Let me say I think the firefighters are wonderful. They're terrific people. If we want to say that a firefighter has loss of hair that is related to his job and we're going to compensate him or if they get wrinkles after 20, 25 years for worrying about their jobs, we're going to compensate them, then let's put it on the -- let's do it openly and let's just say we're going to increase their pensions because these are very valuable members of the public service, but to do it in this underhanded way, I don't think does any credit to them or does any credit to us.

I don't think it's a serious bill, Mr. President.

ACTING PRESIDENT KUHL: Secretary will-

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah, Mr. President. I won't be more than 25 seconds, but, Senator Leichter, I appreciate your position, seriously, but in the world that we live in today where the press is always looking for sound bites or whatever, you made one comment, and I know at least one member of the press who picked it up and I think it should be dealt with, and you said that -- are you saying, Senator Velella, that firefighters who spend most of their day sitting around the firehouse and in all fairness I understand how you used it, I don't appreciate the way some pressmen use it. Whether you are one way or another on this bill, I mean fire fighting is one of the most dangerous occupations.

We all owe these people a great deal of gratitude, and it is very simplistic for anybody in the press to write that these people just sit around the firehouse all day, and I know, Senator Leichter, you respect them, I

respect them. I hope the press does also.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative votes. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1805 are Senators Leichter, Montgomery, Rath and Wright. Ayes 54, nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. Bruno, can we at this time return to the order of messages from the Assembly. I believe there is an Assembly hand-down.

ACTING PRESIDENT KUHL: There is a message from the Assembly. Ask the Secretary

to read.

THE SECRETARY: Calendar Number 1806, by the Assembly Committee on Rules, Assembly Print 11226, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: On motion of Senator Bruno and with unanimous consent, the rules are suspended and the bill is ordered to third reading.

Ask the Secretary to read the title.

THE SECRETARY: An act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 2.

SENATOR LEICHTER: Just hold a minute.

THE SECRETARY: This act shall take effect immediately.

ACTING PRESIDENT KUHL: Before we read the last section, there is a home rule message at the desk. I'll ask the Secretary to

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: The bill is passed.

The Chair recognizes Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I rise to make a closing statement. It seems a little bit like deja vu. About a month ago when we did this, I'm glad we're doing it again, Senator Bruno, because I forgot to say some things this time and no, you can make up for it, although I don't know how much interest there is. I noticed not even the loft tenants are here to hear this any more.

But this has indeed been a curious session. We were presented in December with a Newt Gingrich-like budget by the

Governor, cuts to health care, cuts to education, cuts to programs to help workers, children and, by the way, the timing of it, as it's July 12th, I'm really happy he submitted it early. If he hadn't submitted it on December 15th, I can't imagine when we would have finished work on it. Today is the 13th, that's right. Today was the beginning of my family vacation. My wife sends you our greetings from the hurricane seashore.

But the -- we've now seen that transformed in all seriousness, and we've had our partisan differences, but I think on the part of the Legislature there was a real bipartisan effort to make that a realistic moderate budget, to walk away from the extremist type of Republicans in Washington and to provide a budget that met the needs of the people of the state of New York, and I congratulate all my colleagues in both parties in both houses for doing that.

In doing that, of course, this house passed a budget, its own version, which

repudiated the Governor by spending $800 million more. The Assembly passed its version, both passed it unanimously, passed it unanimously, people in both parties voted for that, that spent more than the Governor because we had real needs.

Earlier in this session, my friends in the Democratic Conference called for a value-based budget that recognized values, the future, education, job development, worker retraining, providing for the elderly, maintaining a first class health care system and meeting our governmental responsibilities. In every one of these categories, this budget and the actions in this last week have reflected that.

In the last category, reforming our government, we have a long way to go. We've taken many steps backwards in the secrecy and lack of openness in this budget process. On the other hand, with respect to ballot access we've taken, in all fairness, a pretty decent step forward in providing for democracy with a small

"d".

In the other categories, we've done a NYPHRM bill. We've done Medicaid restorations which recognize that health care is important to all New Yorkers. We've provided more funds for education and higher education, and we've certainly provided for our children's future.

I want to thank all my colleagues in the Democratic Conference. I want to thank those members who held the hearings we held earlier on the criminal justice system and the criminal justice proposals that the Governor made, all of which have been soundly rejected by the Legislature.

I want to thank those who held the higher education hearings. Senator Stavisky who has been ill much of this session, and all the rest of my colleagues here who filled in for him in some of these -- most of these hearings around the state. I think the budget reflects the kind of need that these hearings came up with.

As we enter into a -- of course, I want to once again thank Senator David Paterson, my more than able deputy, whose humor, wit and intellect is just superb, and I think we've all enjoyed. He's ably assisted, of course, by Senator Stachowski and as we now complete the budget, I can now say thanks to Senator Gold, our ranking on Finance, who has been of great assistance to me both personally as leader and, of course, the chair of our Conference, Senator Mendez, and the rest of the members of the Senate Democratic Conference.

What I for got to say last time because I wanted to keep them working is I want to thank my staff, my counsel, Michael Boxley, John Ewashko, Secretary of Finance, Amy Solomon, chief of staff, my secretary and all the rest of my staff, all of whom function under these last few days with no sleep, all right, and, of course, Peter Slocum, my press secretary, and policy adviser.

All the staff functioned on both sides, I think, with very little sleep, had very

little time certainly on our side to analyze legislation, and did a great job.

As we enter into now the very political silly season, I want to wish all of you a -- of course, want to thank Senator Bruno for once again these -- these absolute courtesies, and I enjoyed working with him. The -- I do want to thank all of my colleagues here and wish you all a great summer. I wish all of you great health for the rest of the year. I wish all of you success in your outside endeavors. And I wish some of you great luck in November.

But -- so look at him, huh? But unfortunately, we set some records this year, the latest budget ever. That's something we don't, as part of this system I'm certainly not proud and I think we must do much, much better in the future. We must heed the call of Governor Pataki in his first State of the State address and in his campaign that we have an open budget process, that we open it up to all the members of the Legislature and more importantly

to public scrutiny so the public can be heard.

I'm disappointed that the Governor in his "Sophomore slump" year not only didn't accomplish those goals he set for himself but, in fact, ended up taking part in a highly secretive process which resulted in record lateness, record disappointment on the part of the public and all those who were concerned about certainly our localities and certainly all those others concerned about New York's fiscal situation.

Mr. President, thank you very much for your courtesies. I hope you all have a great summer.

ACTING PRESIDENT KUHL: Senator Bruno, to close.

SENATOR BRUNO: Thank you very much, Mr. President. Thank you, Senator Connor, for your very gracious remarks.

I think many of us that have experienced this year would -- could categorize it in any number of ways. Certainly curious, as the Senator does, would fit. I'd like to

categorize what we have done this year as out standing, productive and people will focus on that this is a late budget, but it's much better to focus on what is in the budget than when it passes.

What is in this budget? It continues the growth, continues the prosperity for the people of this state that started last year with the leadership of Governor George Pataki, with we in the Legislature as partners, and this state is turning around, and we are headed in the right direction. All of us here can be proud of what we've done. We don't have to apologize for anything.

Is this a perfect system that we are involved in? It certainly is not. Will we all work continually to improve it? I hope so and I'd pray so, because that's what our business is all about. Continual re adjustment, improvement, and we're doing that. We are getting there.

We have a budget that cuts spending second year in a row. First time in 51

years spending less than the previous year in the general fund. Cut taxes, second year in a row, most massive tax cuts in the history of this state, and the largest tax cuts throughout the United States last year, continued this year. Rescinding the property tax that got to be, for better or worse, called "the Cuomo tax" on properties primarily in New York City, that is being rescinded in this budget and that will be one of the most productive things that will happen to the people of this state. That would be the flagship of what has happened in tax cuts throughout this country.

So we can be proud of what we've done, not of the whole process because, again, there are flaws, there are flaws in the budget process. We'll work together trying to fix that. We'll work together so that we don't repeat some of our mistakes next year.

We don't do anything in this chamber by ourselves. I know that. I can't function without my colleagues here in the Majority; I can't function without my colleagues

in the Minority, so we in the Majority will do our best to keep you in the Minority, but we will do that in a good-natured way as we go really and leave the chamber to another phase of all of our lives that hopefully will be productive for all of us as we relate to the people that we represent, and this is a good season. It's time for us to get out and talk to the people that send us here to represent them to do the serious work of government, and all of us can be proud of what we've done, and I do want to say thank you to many of the people who are in this chamber, many that aren't here for helping me function and helping us in the process, and sitting in front of me Chairman of Finance Ron Stafford who spends days, nights, week ends in this process helping make it happen, ably assisted by Abe Lackman that is getting to be legendary around here and in this state. I didn't say "infamous", I said legendary, and all of his staff that assists him so well, and when I realize the hours that people put in, the days and going through week

ends, believe me, the people of this state, we are well served. So I say thank you.

My Deputy Majority Leader on my right who sits here and functions and helps us in every way that he does and can: Dean, I thank you very, very much for that, and for all of my colleagues here that chair committees and just work so hard to make us as productive as we have been this year in serving the people of the state, and Owen Johnson, who is in the high leadership position, in assisting us in more ways than I can relate, and Tim Collins, Dave Dudley, our executive counsels, who again just make it work and they make it work efficiently and effectively, and I could go on at great length, and I don't want to embarrass them or any of the others like my chief of staff Steve Boggess who just has been with me and in my life for more years than he wants to remember, but it's about 20, and that's as long as I have been in the Legislature, so I thank him for that. Pat Stackrow, my executive assistant, that works so hard to make everything run smoothly in the

office and John McArdle, our director of communications, who helps us all communicate as well as we do with our publics, and Marcia White, my press secretary, I thank her for putting up with me, putting up with you and putting up with the press.

Dean, who did I forget in assisting me? If I forgot anyone, it is my deputy's fault and he'll take full responsibility for that. And Senator Randy Kuhl, who has presided, as you all know, with such great diligence and diplomacy, Randy, we all thank you in this chamber for helping us function so smoothly.

(Applause)

ACTING PRESIDENT KUHL: There will be no demonstrations in the chamber.

SENATOR BRUNO: Please bring the chamber back to order, Mr. President. Bill Dougherty has been with us for so many years and he has just helped us in so many ways. He is leaving us this year and taking early retirement and we're going to miss Bill. Where is Bill?

We're going to miss Bill, and we appreciate your long service here, and thank you very, very much.

You all know all of the rest of the things that we have done like restructuring the hospital reimbursement rates, the bond issue, managing managed care, managing Medicaid through managed care. We've done a lot of good things. As we go forward, we'll talk about those good things and we'll meet the people out there, and I know we're all anxious to do that and I want to, as I close, thank Governor George Pataki for his leadership, for his cooperation, and his staff that surrounds him, all of them, for all of the work that they have done to help us in this process and in getting us to where we are.

Some things are difficult, some things are contentious, some things are confrontational, but when it's all said and done we debate and we do it sometimes good-naturedly, sometimes we do it more strenuously, more seriously, but we get there, and we recognize

that we are colleagues. We are colleagues in every way, and while we have differences we all share the opportunities that are out there to serve our constituency and we all want to do it as well as we can, and I recognize that and I think the people in this state recognize that.

So I thank you all in the chamber and I join Senator Connor in just wishing you happiness, health throughout the summer, stay safe and with all of us that will leave here, the mode of our lives will change as we will go from this cameraderie to some others that are out there who are watching us and eyeing us and thinking that they foolishly could do a better job than we and we will prove that between now and then, and we will be here, most of us, back in this chamber. And I want to thank you, Dean. Bill Sears, Senator Sears is not here, he is ill and Bill Sears is retiring at the conclusion of this session. He will not rejoin us, and I thank you for reminding me. Bill has served the people of this state and his district lots of years again in an outstanding way, so we

are all indebted and we all consider him a friend and hopefully he will visit when he gets well and we'll have a chance to say some things about Bill and his service again.

So have a safe summer. Have a happy summer, and I'm going to ask that all bills, Mr. President, be recommitted to Rules and -

ACTING PRESIDENT KUHL: All bills recommitted.

SENATOR BRUNO: -- there being no further business to come before the Senate, I would ask that we adjourn subject to the call of the Majority Leader and that intervening days to be legislative days. Thank you, Mr. President.

ACTING PRESIDENT KUHL: All bills will be directly recommitted.

(Applause)

Without objection, Senate stands adjourned subject to the call of the Majority Leader, intervening days to be legislative days.

(Whereupon at 5:30 p.m., the

Senate adjourned.)