ALBANY, NEW YORK

December 17, 1996

2:13 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: All right. The Senate will come to order. Ask all the members and the people in the chamber to rise and join me in saying the Pledge of Allegiance to the Flag.

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

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Monday, December 16th. The Senate met pursuant to adjournment, Senator Hoblock in the Chair. The Journal of Sunday, December 15th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: Immediate meeting of the Rules Committee, immediate meeting of the Rules Committee in the Senate Conference Room.

SENATOR SKELOS: And the Senate will stand at ease at this time.

SENATOR STAFFORD: Mr.President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Stafford.

SENATOR STAFFORD: Mr. President, when the Rules Committee is over -- and I

suggest you watch carefully, you can do that, ask somebody to go over to the meeting or stand there, so when that ends the Finance Committee is going to resume, and we'll resume in 124. Let's go back to 124 where we were and then everybody has got a seat there. So when the Rules Committee is over.

ACTING PRESIDENT KUHL: At the conclusion of the Rules Committee, the Senate Finance Committee meeting will resume in Room 124 in the Capitol.

Senator Paterson, did you wish to say something before we stand in recess?

SENATOR PATERSON: No, Mr. President, nothing that I would add would help the situation at all.

ACTING PRESIDENT KUHL: Thank you, Senator Paterson. Then the Senate stands in recess.

(The Senate recessed at 2:15 p.m. until 2:23 p.m.)

SENATOR SKELOS: Mr. President, if we could return to reports of standing

committees, I believe there's a report of the Rules Committee at the desk. If we could have it read, bills would then be distributed and there'll be -- we'll then stand at ease while the Finance Committee meets.

ACTING PRESIDENT SEWARD: The Secretary will read the bills.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills directly to third reading:

Senate Print 7110-A, by Senator Trunzo, an act to amend the Retirement and Social Security Law;

7480, by Senator Leibell, an act to permit the re-opening of the 20-year retirement plan;

7975, by Senator Trunzo, an act to amend the Retirement and Social Security Law;

7978, by Senator Seward, an act to amend the Public Service Law and the Uniform Commercial Code;

7979, by Senator Seward, an act to amend the Public Service Law, the Public

Authorities Law, the Economic Development Law and the Tax Law; and

7976, by the Senate Committee on Rules, an act to amend Chapter 709 of the Laws of 1996.

All bills ordered directly for third reading.

ACTING PRESIDENT SEWARD: Senator Skelos.

SENATOR SKELOS: Mr. President, there will now be -- I move to accept the report of the Rules Committee.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted.

SENATOR SKELOS: Now the Finance Committee will meet in Room 124 of the Capitol and the Senate will continue to stand at ease.

ACTING PRESIDENT SEWARD: The

Finance Committee will meet in Room 124 of the Capitol, and the Senate will continue to stand in recess.

(The Senate recessed from 2:25 until 3:26 p.m.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Yes, Madam President, with the consent of the Minority, we're going to have a reading of the Finance Committee report, and then at the same time have a meeting of the Rules Committee in Room 332 of the Capitol, so if we could have -- return to reports of standing committees, please have the report of the Finance Committee read.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Commissioner of General Services, Joseph J. Seymour of Glenmont.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Thank you,

Madam President.

Once again, it's a pleasure to rise, and you've heard me say previously in the last few months when I rise that this is an excellent appointment. Once again, I'm very pleased to say again without reservation that Mr. Seymour is an excellent nomination for the Commissioner of Office of General Services.

Mr. Seymour has a distinguished career in local government. He's had extensive experience in administration. I can share with you that our committee was most impressed. He's been the Executive Deputy Commissioner of the Department of Motor Vehicles, did an excellent job. He has been Acting Commissioner with the Office of General Services or in the Office of General Services, and he has done an excellent job.

When I asked him a number of questions when I first talked with him, he stated to me that he's a professional in government, he's very proud of that fact, and that he would on any issue, on any matter,

assemble the facts and professionally advise the Governor. I don't think that -- and he would run his operation professionally. I don't think any of us can ask any more than that. As a matter of fact, now that right off the top of my head, if someone would please go to the telephone, I think Mr. Seymour -- no he's not - he was to be here -

SENATOR FARLEY: He's right up here.

SENATOR STAFFORD: I was thinking that he was in an office, but again, speaking to the nominee, as I said, I think that for the Department or Office of General Services that we do need the type of individual, the type of professional, the type of dedicated public servant that John Seymour is, and will be - excuse me, Joseph J. Seymour is and will be.

With those words, Mr. President, I move his confirmation, and I now yield to Senator Leibell.

THE PRESIDENT: Senator Leibell.

SENATOR LEIBELL: Thank you,

Madam President.

I would like to join with my colleague, Senator Stafford, in recommending this nomination. I've had the good fortune to know Joe Seymour for some considerable period of time, and we are here today on this confirmation for one of the most important positions that exist in New York State government. We are most fortunate that for a position of this nature and its significance, that Governor Pataki has truly submitted to us an individual with most excellent qualifications. We are very fortunate that Joe Seymour brings to us many, many years of experience in a wide variety of areas.

He has had over 25 years of experience in local government, now and most recently as Acting Commissioner, Office of General Services. He has previously served as Executive Deputy Commissioner for the Department of Motor Vehicles. He has served as city manager for the great city of Peekskill which is within our -- my Senate district, the 37th; Commissioner of Development for Yonkers, New

York; served as assistant city manager previously for development for Peekskill; special assistant for downtown development for Rochester, New York, Executive Director and Assistant Director, East Rochester Urban Renewal Agency, as well as having been involved as members and affiliated with -- as a working member of such organizations as the Peekskill Industrial Development Agency, Peekskill Housing Authority, Westchester County Health Insurance Executive Board, American Planning Association, National Council for Urban and Economic Development.

As I noted in my comments earlier, this is one of the most important positions that we have in New York State government. It is critical for all other agencies as well as for this very legislative body. I'm immensely pleased to have the opportunity to also further the nomination of Joseph Seymour and would ask this body's support. I know that he will serve with great distinction and will be an excellent

Commissioner.

Thank you, Madam President.

THE PRESIDENT: Thank you.

Senator Spano.

SENATOR SPANO: Thank you very much, Madam President.

It's my pleasure to join with my colleagues, Senator Stafford and Senator Leibell, in seconding the nomination of Joe Seymour as the Commissioner of the Office of General Services.

I will not go through the litany of the positions that Joe Seymour has continued to hold in local government, except to say when you take a look at his resume, you will see that he has a thorough knowledge of how government works and how an agency like the Office of General Services impacts upon the daily delivery of services and the impact upon our constituents all across the state.

He has demonstrated his willingness to make a commitment to the people of this state. As a matter of fact, he's

currently -- upon our confirmation today, will demonstrate that willingness by accepting a $9,000 pay cut from going as an executive deputy to a commissioner and that alone should tell the Senate, with the willingness and commitment that he has to the people of this state and to our Governor. The Governor has, in his wisdom, appointed someone who has got the qualifica tions, who has got the professional experience, who has the skills and the strength to lead an agency like the Office of General Services and it's my pleasure to second his nomination.

THE PRESIDENT: Thank you. Senator Farley.

SENATOR FARLEY: Yes. Thank you, Madam President.

I rise also to second the nomination of Joe Seymour. You know, the Office of OGS impacts us here in the Capital District rather significantly and it's also one of the most difficult jobs in state government, and I guess the most important thing that you could say about Joe Seymour is that every job he's

done he's done well, and you can't ask any more than that. I applaud the Governor for choosing such an outstanding man to -- to head this agency. It is certainly one that everyone in this room is affected by and one that the complaints, and so forth, are numerous but I'm very, very confident that he will be an outstanding commissioner, and I wish him well, and welcome him to the Capital District.

SENATOR GOLD: Madam President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Thank you, Madam President.

Madam President, I made some remarks in the Finance Committee today, and with my apologies to those members of the committee, I think they're remarks that should be made in a general way on the floor.

When I first came to the Senate in the early 1500s, the -- I pointed out that the Constitution provides the same power to us as we see exercised in Washington all of the time by the U. S. Senate that sits on

confirmations, and I urged everybody to take it seriously. The Governor at the time was Nelson Rockefeller, followed by Malcolm Wilson, and the Majority in this house was, to be fair about it, underwhelmed with my arguments.

The people of the state then decided, Hugh Carey should be the Governor, and I don't know who it was, maybe it was Ralph Marino or somebody on your side, came over to me and said, You know, Manny, you know, your idea about us really doing a job on gubernatorial appointments, that's a great idea and all of a sudden we had a Democratic governor, a Republican Senate, and this Senate started to take its confirmation obligations seriously. And even though it was a Democratic governor, I was delighted because I am elected to this body and I have responsibility to this body.

At the present time with a Republican governor, I do not believe that the process that we are using is a proper process and I don't mean in any way that these remarks be taken personally by Senator Stafford. I

think Senator Stafford tries very hard in an atmosphere that has grown up around us all and we all have a responsibility to change.

Now, this particular nominee, I believe that was sent up by the Governor December 2nd, only about two weeks ago, and to the credit of this nominee when we were in Albany just a few weeks ago, he went out of his way to meet with me and the meeting could have been longer than I allowed, but I had time problems, but I -- I give him credit. It was important to him to try to meet members so that we would know what we were doing and who we were doing it with or to or whatever.

The purpose of the process is public confidence. If we break down the process and we don't have the proper time, the proper research and the proper hearings, the public has a right, as told by the press, if the press were into it, to just say that the process is nothing more than filling jobs with political hacks and we go through a process.

Now, we don't just fill jobs with

political hacks and, luckily and God willing, we put very competent people into important jobs, but people look at the process, and why open the door for irresponsible members of the press to criticize and to be able to give them the ammunition that we don't do our job.

In one situation which we'll get to later today, the nominee came up yesterday, name came up yesterday, and my staff went to find out information and the answer given by the Majority in this house is, Well, it's the Governor's nominee. We just got it, go talk to the Governor. And what do you think they did? They said, That's an idea; we'll go talk to the Governor. We don't want to be obstreperous, we want to keep the process going. So they went down to talk to the Governor. The report that I have is that, after speaking to one of the counsels on the other side at 4:45, they went down to the second floor to see what paperwork there was and the second floor was locked. He was gone; they were gone for the day. They sent the nomination up, and I don't know where they

were, I don't want to make any snide remarks, but they were closed. I'm informed that, when we all got pretty upset with it, that later on in the evening the Governor's office came back and somebody was able to transmit some information.

Now, the nominee involved in that particular charade is a very, very decent qualified young man, and I voted for the nominee in committee, and I will vote for the nominee on the floor, but why should the nominee have to go through a procedure where somebody from the outside could say that it was suspect.

Now, to his credit, every time I've raised this issue -- and unfortunately, this issue has come up more and more in this particular year and I've raised the issue during the regular session, and Senator Stafford, has said, you know we've got to do something about it. And I believe that Senator Stafford would like to do something about it, but the only way we'll ever do anything about it is if we do it. The only way to do it is to do it, and part of

that involves the Majority in this house, together with the Minority, talking to the Governor's office and demanding -- demanding that there be a process. That process can have emergency provisions in it. We have a process where you have to have a bill on your desk for three days, but we do permit emergency action, but the process, the way it is handled right now, I suggest to my friends in the Majority respectfully, is out of hand.

Having said that, I -- I want to repeat that I appreciate the fact that the nominee, Mr. Seymour, did come to me, make himself available. I didn't have a chance to have a conversation with him at the length I would have liked, but that was not his fault. At the committee meeting today, I wasn't thrilled with some of his responses dealing with the issue of transferring jobs around this state based upon geography and politics rather than the real needs of the people, but I think that all of us have responsibility to see that that doesn't happen, and perhaps some of the noise

and some of the experience in the past and particularly the election in Albany County in November might change some people's minds as to the way we ought to act.

At any rate, I voted for Mr. Seymour in the committee, and I will vote for Mr. Seymour on the floor, and I hope that he has a good tenure and he lives up to our hopes while he's in office.

THE PRESIDENT: Thank you.

Does anyone -- yes. Senator.

SENATOR SEWARD: Yes, Madam President. I would like to rise in support of the confirmation of Joseph Seymour to be Commissioner of the Office of General Services.

As has been outlined by a number of my colleagues, Joe Seymour has had a very distinguished career in local government for a number of years, and for the past two years has served the people of this state in capacities here in Albany with the administration.

When we think of the Office of General Services, we often think of the more

mundane matters of bricks and mortars of buildings, leases, those types of items. But in Joe Seymour's case, he brings to this office another dimension and that is Joe Seymour is a people person, and he has demonstrated that throughout his career. In every contact that I have had with him in his service, I have had that impression and Joe Seymour will be a great advocate for the people who spend their days and nights working in our state facilities.

So I rise to congratulate the Governor for making this nomination of Joe Seymour -- congratulate Joe Seymour for assuming this important post and look forward to working with him on behalf of the people of this state.

THE PRESIDENT: Thank you.

Is there anyone else who wishes to speak on the nomination? No.

The question is on the confirmation of Joseph J. Seymour as Commissioner of General Services. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Joseph J. Seymour is hereby confirmed as Commissioner of General Services. Congratulations.

(Applause)

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Member of the Workers' Compensation Board, Michael Berns, of New York City.

SENATOR STAFFORD: Madam President.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Once again, it's a pleasure for me to rise and move the confirmation of Michael Berns. There's no question that this is a field where a good deal of work has been done, a good deal of work will continue to need -- we will have to continue much more good work. That's the case, I might

add, in a number of areas of government.

I think we've moved in the right direction with the law that the Governor supported last year and that the Legislature passed.

I think that we will see no question as to the fruits of our work and that goes for all who were involved, the Majority in each house, the Minority in each house and the Governor.

I would suggest that Mr. Berns has a very impressive record in the private sector. I think he brings a good mind to the work. I think he will be able to do the job well. I compliment the Governor on the nomination. I think we will have and I know, in my opinion, I would submit that we will -

THE PRESIDENT: I'm sorry, Senator, I couldn't hear you.

SENATOR STAFFORD: Madam President, I'm sure that those people can hear me because I can hear them. I'm sure, Madam - I would submit, Madam President, that Mr. Berns

will do an excellent job as a member of the Workmen's Compensation Board, and I move his confirmation, and I would yield to anyone and I will move his confirmation. Thank you.

THE PRESIDENT: Thank you.

Senator Maltese.

SENATOR MALTESE: Madam President, I'd like to say a few words on Mike Berns. I've known Mike for over 20 years. I think the important thing to remember when we consider the Governor's nomination is for these very important boards and commissions and other agencies of government is that the Governor sought and promised to bring a new efficiency in government. It's people like Mike Berns, with an excellent educational background, a degree from Wharton, a past record of some 30 years of expertise as a chief operating officer of many, numerous companies, successful companies. I think when we bring somebody in who has expertise in knowing how a business operates, meeting a payroll and dealing with the myriad of problems facing businesses today, he comes well

equipped to handle new problems that may arise. I think the Governor's appointment in this case is an excellent one, and I join Senator Stafford in moving his confirmation.

THE PRESIDENT: Thank you.

Senator Stachowski.

SENATOR STACHOWSKI: Madam President, I rise in a different vein. I have a little trouble with this confirmation. I had trouble in committee. I think that Mr. Berns is a very qualified man. His resume is excellent, but not for this position. I think he'd be great if we were putting him on the banking board. He'd be great if we were putting him in a financial or economic situation. He would be terrific if we were doing something with data processing or computers. But we're talking about putting somebody on the Workers' Comp. Board and even with that being said and that he doesn't have a background in that, if he at least would have answered some questions on Workers' Compensation, if he had at least taken the time to maybe even have read an executive

summary of even just last year's law, if he had a vague idea that could have mentioned the fact that there is no computerization in Workers' Comp. and that the one thing he wanted to do is to put it into a computerized era, we'd be very hard-pressed to oppose him because I think the Governor should be able to choose whoever he wants but at the same time I think that, when the Governor does choose somebody, the least they could do is at least read a brief background paper that would at least enable them to say a few words about what Workers' Compensation is, what he thought he could do there and they would familiarize himself as a board member and take that hard working ethic that he has from all these businesses and work in that area.

However, I didn't get that message from this appointee, quite the opposite. I got the message of, I'm a very qualified businessman and even though I don't know a thing about Workers' Compensation when you people ask me about it, and I'm not going to

answer your questions if I happen to know them, because if you're not telling me what you know and you do know something then you're just not bothering to answer, so my impression was that he not only didn't know anything about Workers' Comp., at least as somebody who was going to be appointed to a very sensitive board, as you know, there's been changes and we hope to make more in this area because of the high cost to the employers and the slow process for the employees and the fact that we still want to make sure in this lowering of cost for employers and we want to make sure that the workers are still safe, and that the workers that are injured get what they should get as a means of compensation, so with this being one of the more sensitive areas in the state right now, I found it hard to believe that we'd have somebody come in that didn't -- didn't care to answer any questions about it or didn't even bother to read a brief position paper; so I suggest that we vote no on this appointee.

THE PRESIDENT: Thank you.

Senator Spano.

SENATOR SPANO: Yes, Madam President.

As the chairman of the Senate Labor Committee, I have had ample opportunity to review both the background and credentials of Mike Berns. I have had the opportunity to know Mike Berns and to speak to a number of people who have known him for a long, long time, and it's interesting and, of course, I have the greatest respect for Senator Stachowski as the ranking Minority member of the Labor Committee, it's interesting to hear our colleagues on this side of the aisle talk about the lack of credentials of a potential nominee for members of the Workers' Comp. Board, and I might just remind you of the late night in the session in the final hours of the Cuomo administration when there were six or seven members -- nominees to the Workers' Comp. Board that were brought into it at a late night, it was about 11:30 at night to the Labor Committee, and then quickly into the Finance Committee meeting and we very

rapidly took a look at their backgrounds in a matter of hours, and we in the waning months of that Cuomo administration, we appointed those members of the Workers' Comp. Board, and you can say all you want about the background of Mike Berns, but the people that we were offered, the people that evening included a clinical psychologist, included a doctor, included a union lobbyist, a legal administrator, and why not take someone who has 25 years of experience in the public sector -- or in the private sector who has run a number of different businesses, who understands what it's like to put together a financial plan for a business in this state, that has to pay the Workers' Comp. rates in New York State, who knows what the employees have to go through, who has worked with representatives of organized labor in his negotiations and discussions with organized labor in the positions that he's held previously. He's graduated from the Wharton School of Business. He understands the issues and the concerns of the employers as well as the workers, has a very

sincere feeling for the injured worker, as has been demonstrated to me personally with my discussions with him, that we have had a number of discussions prior to him coming to present himself to the Senate Finance Committee today, and as someone who's worked in both large and small businesses has had the experience and training in working with financial matters, has worked in accounting matters and marketing.

He has the knowledge of the steps that are needed to streamline an agency. He spoke in Senate Finance Committee today and said that he understands that the Workers' Comp. Board, under the previous administration, was not well run and that there is need for improvement in that agency and under the leadership of Bob Snashall, who is the chairman of the Workers' Comp. Board we have seen already a number of administrative changes that have resulted in safety.

We had a long debate under the leadership of our chairman last year, Senator Spano, and our Governor and the most comprehens

ive Workers' Compensation reform that we've seen in our state's history, reform that will result in lowered premiums and rates and there's a lot more that needs to be done and what we need is not someone who has come to the Workers' Comp. Board with some pre-ordained ideas but what we do need is someone who has demonstrated his interest in business and industry and in our community, that he has a common sense approach to the injured workers in this state.

Mike Berns has convinced me that he is just that person who can show that sensitivity, who can work with the other members of the board, can continue to streamline an agency, continue to make sure that the agency starts to work for injured workers as well as business across this state, and I commend the Governor for presenting us with a person with such outstanding background as Mike Berns, and it's my pleasure to second his nomination today.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you,

Madam President.

Senator Spano, with all due respect, I'm not sure that I was at the same meeting you were in front of the Finance Committee, because I agree with you last year we passed the most comprehensive reform of the Workers' Compensation Law. You were a part of that, your colleague Senator Lack before you had pushed those changes, and yet as I recall, when Senator Stachowski asked this nominee what do you think about the changes in the law, this nominee in essence said, "I don't know."

So it's -- it astounds me, Senator, that you would call it the most comprehensive set of reforms which they clearly are, and for which the Majority Leader, the Speaker and the Governor deserve credit, but that this nominee hasn't looked at it, didn't have, and I think you pointed out, shouldn't have preconceived ideas about the Workers' Compensation. I agree that we don't need them to have preconceived ideas. We would, however, prefer that they have passing familiarity.

Perhaps, as Senator Stachowski said, get someone on the second floor to write a three-page summary of what the Workers' Compensation system is all about, hand it to the nominee and say, It's a quiz, you're going to be quizzed by the Senators, take this test, simple, easy. This nominee did not appear to have that level of even passing familiarity with what the Workers' Compensation generally is all about or about the comprehensive landmark changes that we made and, in fact, if I heard correctly in response to Senator Stachowski's questions, he suggested that taxes were too high in the Workers' Compensation system, in my judgment professing an ignorance even of the way we fund the system through insurance premiums.

Be that as it may, I asked the nominee a series of what I thought were somewhat pointed questions about his experience. One, he didn't list on his application his most recent experience which is governmental experience, working for the Roosevelt Island Corporation. Can't understand why. I mean it would be right

here on his resume, but it isn't even listed. That leads me to think, why would he not list it? My guess is that this application was submitted to someone on the second floor some time around November or December of 1994, maybe January of 1995, at a time when the new administration was filling positions on the basis -- in some cases on the basis of their qualifications. There were many qualified appointees, but there were others that I voted against because I didn't think they were necessarily qualified, that their major qualification was their political contribution rather than their qualifications as an individual.

But I also asked the nominee in respect to his success which he touts on his resume, his private sector success. He said, I reduced the staff of both the finance/accounting departments and marketing support staff by 50 percent while sales increased to 20 percent per annum. I said, Which corporation did you do it for? Great success! You're touting your

success. His answer was -- and correct me if anybody heard it differently in the Finance Committee -- was, "I don't remember," so he didn't even seem to have a passing familiarity with where his successes originated from.

When I asked him about the corporations, he said most of those had either been sold or closed. He did point out in response to the question that he had been in political consulting, that he'd owned an electronics company and that both himself and two of his other three partners got jobs in this administration, all of which suggests to me at least that Mr. Berns is being put before us today for a seat on the Comp' Board not because of anything he brings to the table to help the comp' system, but because quite frankly he has political friends who are advancing his name.

Senator Stachowski, I think, was correct when he said that this may be a case, as I heard it, Senator, that this is a round peg being tried to fit in a square hole. Senator Stachowski said maybe he belongs on the banking

board, maybe he belongs some place else. Unfor tunately, based on what I heard in the Finance Committee which was my only opportunity to ask questions and get answers at this interview, this is not the right round peg to put in a square hole and, in my judgment, it's not the right round peg to put into any hole in state government until we get better answers about this nominee.

I respect the Governor's right to appoint people. I've supported people on this floor for judicial positions, for this board or other boards. I agree with Senator Spano, we need to bring a broad range of experience to the table. Unfortunately, I'm not convinced that this candidate even meets that test.

I'll be voting in the negative.

THE PRESIDENT: Thank you, Senator Dollinger.

Senator Goodman.

SENATOR GOODMAN: Madam President, I think I may be able to bring a little further perspective to this nominee's

background. I've known him for the better part of a decade. He's a very near neighbor of mine who lives within two blocks of my own apartment, and he and I have had occasion to be together on a number of matters that relate to the conduct of his party and mine. He was the chairman of his party; I'm the chairman of my party within New York, New York County, and I'd like to say that I can unhesitatingly commend Michael Berns as being an individual, first of all, of impeccable integrity and an individual also of great sensitivity to human problems. He is a very thoughtful person, in all of his aspects of his addressing problems within our community as a member of Community Planning Board Number 8, which is one of the finest in the City, as well as his extensive involvement in a series of businesses which brought to bear on his skills as a computer expert, as an inventory control expert, as a small businessman of considerable acumen and sophistication.

It seems to me that he can properly be characterized as a relevant

generalist who would be able to make a great common sense contribution to the work of this particular government body, and so I would simply like the house to know that I know him and know him well and feel confident in standing up for him and saying that he will be a truly humane and effective administrator in this important post.

THE PRESIDENT: Thank you.

Senator Gold.

SENATOR GOLD: Thank you, Madam President.

Madam President, I spoke earlier on process and, in this particular situation, my understanding is that there was a meeting of the Labor Committee which was called at the request of, I believe, Senator Stachowski, for the specific purpose of having the nominee come into the meeting and clarify his positions with regards to this position, and it -- and I want to tell you, Senator Goodman, you know a little bit about me. If it was -- if it was just emotions, I could vote for him because he does

extra work for the Metropolitan Opera, and anybody involved with the opera, Senator Marchi and I are on board.

But it's not the question here. It's the question of this job, the nominee doing this job, and as Senator Stachowski -- I'm sorry, Senator Dollinger pointed out, there are things in his resume which he didn't answer were put in by him. I didn't make his resume; you didn't make his resume, but at the Finance Committee meeting we found that Mr. Berns had not gone to the Labor Committee meeting and we were concerned about that because we have a process here where the substantive committees are given respect.

The reason they're given respect is because we expect that the substantive committees are going to deal with the substance, the Labor Law, and in this case the particular job that the nominee is being nominated for and the Finance Committee, while it is the funnel through which all of the nominees except for those from Senator Lack's Judiciary Committee

come to the floor, we expect that the substantive committees did a lot of work for the Senate.

Many times when we have tried to question nominees at the Finance Committee, Senator Stafford has made a comment which is a valid comment, that a lot of this had been gone into by the substantive committee and we in the Finance Committee look at it a little differently and all of that was taken off the table.

Now, some people, not as trusting as I or others, had suggested they didn't want him at the Labor Committee because of the lack of background and a lack of ability to answer questions in the area, and if that is the case, then with all due respect to Mr. Berns who may be a fine gentleman, he does not belong on this board, and he doesn't deserve confirmation.

THE PRESIDENT: Thank you, Senator Gold.

Senator Maziarz.

SENATOR MAZIARZ: Thank you very

much, Madam President. Madam President.

I'd like to join Senators Goodman and Spano and Stafford and Senator Maltese in seconding the nomination of Mike Berns to be a member of the Workers' Comp. Board.

I haven't had the vast knowledge of Mike's background that Roy Goodman or Serph' Maltese have had, but I have known Mike for a couple of years now, and just reviewing the credentials that he's presented here, his work in private industry, I think he's the type of nominee, somebody who's been out there on the firing line, if you will, Madam President, in private business, paying those Workers' Comp. premiums that Senator Dollinger complained that the nominee referred to as taxes. Whether they're premiums or taxes, I can tell you that from speaking to many small businessmen in my district, they feel like taxes, Madam President, so I rise, Mike, and wish you well in your new position and know that you will do a find job for the state of New York.

Thank you, Madam President.

THE PRESIDENT: Does anyone else wish to speak on the nomination? Senator Spano.

SENATOR SPANO: I -- no one else going to speak on the nomination, I'd like to just close it and to -- I think it's appropriate that we answer a couple of things that were said. I mean I'd hate to see the record go uncorrected where any member might say that there was an unwillingness to have Mike Berns appear before the Senate Labor Committee because of some inability to answer a question. In fact, there's nothing further from the truth. The fact remains that Mike Berns was not at the Labor Committee because, as the chairman of the Labor Committee, I did not ask him to be there. The fact remains that we did have a request to have a meeting from the Minority on this nomination, and we did have it. Two members of the Minority showed up at 10:15 which shows you the lack of enthusiasm, I think, on their part. We -- we had ample opportunity to hear the background and I was at the Finance meeting

where I did hear the answers to the questions that were raised, questions that were raised about the some one hundred corporations that Mike Berns worked for and when the individual question was asked about some corporation he didn't say out and out no; his answer was that "I don't have the answer at my fingertips, that I would need my records to take a look at it and I'd be happy to go back and research and get an answer."

So I think it's unfair that we - that we take a look at a person who has really shown that he's willing to put it on the line, to dedicate himself to the issues of Workers' Compensation, and I would submit to you that a lot of times people might say that politics is played when it comes to gubernatorial appointments but at this point I'd submit to you that if there's politics being played that we look to this side of the aisle.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Just for a

point of clarification, I'd like to point out I was there at 10:00 o'clock. Senator Spano and I were the only two that were waiting for another body because they were at another meeting, and if we're going to talk about that there was no one but Senator Spano and I, but he had enough signatures and if we're going to talk, I don't want to get into that kind of thing, I know they said he was stuck in traffic, and I didn't get up and say that, and I didn't plan on saying that, so to get up and say there were two members of the Minority there, that's nice but I don't think that was necessary, and I don't think that was really fair.

I was, in fact, the one with the counsels to ask for a meeting so that we could ask a few questions of Mr. Berns because we wanted to find out if, in fact, he knew anything about Workers' Comp. because there was nothing on his resume that indicated, although it's a very impressive resume as I said earlier, but to bring up the fact that two members were there didn't make sense and if Senator Spano wasn't

going to invite him, I don't know why have the meeting if you're not going to have the person there to answer the questions. It's kind of a crazy way to run the place, but that's his prerogative. I'm only the ranking member; I'm not the chairman, but if I want to brag about the fact that I had the meeting, and I had everybody but not the principal, get up and do it. I don't know what the point is, but if you want to do it, do it.

The only other thing is, Senator Spano in his earlier remarks in seconding the confirmation pointed out all the information he gathered from this nominee with his vast knowledge of Workers' Comp. and all his interest in the poor injured worker and all the other things he referred to that dealt with Workers' Comp. that Senator Spano learned from the appointee. My only regret is that the appointee didn't choose to share all that knowledge with the rest of us.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, I -- as you know, I try not to get up too much or to often. Frankly sometimes I don't get up enough. You know, sometimes I've complained that we rubber stamp and we don't do our job. Boy, are we doing our job today! Everyone has a right to speak in here, and I certainly respect that. I don't want to make light of anything that was said. I take everything seriously that was said, but I would just say to make sort of a broad stroke with the conceptual brush, I would share with any of the nominees this was not the day to come through - through the Senate, that this was a day when things were just going to be easy and we were just maybe not going to do our job, because we're doing it.

But again I do have to say and I want to emphasize with all due respect that I think the nominees today are qualified. I think they will do the job. I think Mike Berns will do the job. But I think also again, once again, I think that I've been here long enough, I've

seen it when the Senate wasn't doing its job. It was mentioned, the ones that we were talking about, how many did we do that night, six? Something, and as a matter of fact, it was not in this quadrennial either, I believe. It was in the previous quadrennial; that means every four years, and so all I'm saying is let's keep trying to do a good job. Let's not have anyone suffer here when they shouldn't, but yet, as I say, I think that this is a -- I think this has been, I was going to say constructive, but I won't go that far, but you know what I'm trying to say, and I think that we have some good nominees here.

THE PRESIDENT: Thank you.

Senator Gold? Is anyone else waiting to speak on the nomination?

SENATOR STAFFORD: Move the nomination, please.

THE PRESIDENT: Yes. The question of is on the nomination of Michael Berns as a member of the Workers' Compensation Board. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay. We're recording some negatives.

Michael Berns is hereby confirmed as a member of the Workers' Comp. Board.

(Applause)

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Member of the state Civil Service Commission, Leo J. Kesselring, Esquire, of Rochester.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Mr. President, it's a pleasure for me to move confirmation of Leo Kesselring. We go back a long, long way. It's hard to believe, but as I think about it, I think it was 1970 to 1976 that he served in the federal -- the federal government, served well. He has been involved since then, very involved. As a matter of fact his spouse also has been very involved in government. I know Leo will do

a -- do an excellent job as he always has done.

I have a -- we have to keep our sense of humor. I might add he was very, very effective in the political arena. He has volunteered the information to me. I did not ask him, but he decided both he and his wife, that they'd had enough political activity and have decided that he would rather than in a profession, not a profession, he'd rather be doing some work that didn't involve partisan politics. I note, though, that we all stay in it and enjoy it, although sometimes we criticize those who are in it.

But on a serious note, Leo Kesselring is well known to many of us. I see Serph' will be standing, and many others, John. He's done an excellent job. He will do an excellent job. I compliment the Governor. I compliment him. I move his confirmation, and I yield to Senator Maltese.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Senator Maltese.

SENATOR ONORATO: Madam President.

SENATOR MALTESE: Madam President.

SENATOR DOLLINGER: Madam President, a point of order.

THE PRESIDENT: I'm sorry, I can't hear.

Senator Stafford -- excuse me, Senator Dollinger.

SENATOR MALTESE: Madam President.

SENATOR DOLLINGER: I simply have a point of order, and I don't mean to interrupt. Madam President, was the last vote on the last nominee not recorded and, if so, would you explain to me why?

THE PRESIDENT: We recorded the negatives.

SENATOR GOLD: Madam President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yeah. I think it's a good point, and we ought to clarify

that. There were some no votes.

THE PRESIDENT: Yes, I thought they were recorded on the record, were they not?

SENATOR GOLD: Well, with the permission of the Majority, could we just suspend this for just a moment while we correct the roll call on the last nominee.

THE PRESIDENT: I'd like to do that.

SENATOR GOLD: Thank you.

THE PRESIDENT: Just a moment, please. Shall we record them in the negative? I thought they had been recorded in the negative. Would you raise your hands and we will make sure.

SENATOR DOLLINGER: Madam President, may I just repeat the point of order so I understand? Is it the practice of the Senate not to record votes on nominees?

SENATOR GOLD: Unless it's asked for.

SENATOR DOLLINGER: Unless it's

asked for.

SENATOR GOLD: And you've asked for it and you're in the negative.

SENATOR VELELLA: Those in the negative, record them by the desk.

THE PRESIDENT: Would you make sure we have them recorded, each vote. My apologies. I thought your votes had been recorded.

SENATOR DOLLINGER: Thank you, Madam President. Thank the members of the Majority as well for clarifying that.

THE SECRETARY: Those recorded in the negative on the nomination of Michael Berns: Senators Abate, Dollinger, Gold, Leichter, Nanula, Onorato, Paterson, Stachowski and Stavisky; also Senator Connor.

THE PRESIDENT: Senator Paterson, why do you rise?

SENATOR PATERSON: Madam President, I want to thank the Acting Majority Leader for that courtesy, and also thank Senator Dollinger for clearing that up. But I think we

should point out to members, under the rules of the Senate is that the voice vote on a nomination is not similar to what would be a no vote on a regular bill. The no vote on a nomination would be indicated by the member standing and indicating that the member wants to vote no, or by calling for a slow roll call, so that actually there wasn't anything done in the process that was incorrect. It's just that it's so similar to another process that we use that it probably bore some further amplification, so I want to thank the Acting Majority Leader for the assistance.

THE PRESIDENT: Thank you.

Senator Maltese.

SENATOR MALTESE: Madam President, I'd like to precede my remarks by alluding to the recent hiatus in the order of business. Good things are worth waiting for, and this particular nomination is one of those good things that was well worth the wait.

One of the pleasures of electing a new Governor is seeing the entry of new blood,

so to speak, into the governmental mixture into a recognition of bringing in bipartisan persons of worth, distinguished people in government, further into government, into decision-making positions. This nomination by Governor Pataki for member of the state Civil Service Commission is one of those happy events for me.

I've known Leo Kesselring for possibly more years than I'd like to remember but certainly more than 30 years. He is a person that brought many -- a myriad of talents into the political and legal mix both in Monroe County and across the state. He ran for political office when there was very little likelihood of winning, running for principle.

He is a man of renowned integrity, known across the state for that integrity. He, as a matter of fact, one of his many qualifications is working toward evolving and instituting a code of ethics. He received his Bachelor of Arts cum laude from St. John Fisher College, received his law degree from St. John's University, where he was on the Law

Review. He was a lecturer in business law and real estate law in his career as a private practitioner of law. He served on the Monroe County Cultural Commission, involving himself in all of the activities, cultural activities in Monroe County.

Most of all, I allude back to the matter of integrity and principle. Through these many, many years of different administra tions and changes of administration, he has remained the rock of Gibralter as to integrity and principle. I salute the Governor for this sterling nomination, and even more I salute Leo Kesselring for principle and perseverance.

THE PRESIDENT: Thank you. Senator Trunzo. Sorry, Senator Gold, you're next.

SENATOR TRUNZO: Madam President, I rise to second the nomination of Mr. Kesselring. As chairman of the Civil Service and Pension Committee, I met with Mr. Kesselring this morning and we had a very interesting talk in regards to his background and his knowledge

regarding the Civil Service Law. I was very much impressed by his knowledge of -- you know, his background didn't show that he had much to do with civil service law but evidently he did his home work and knows what it's all about and we had a very interesting conversation in which he was able to point out many of the items which we in the Legislature have done in correcting some of the civil service laws and also the recommendations made by the chairman of the commission, Commissioner George Sinnott, and as a result of that, I really would like to second the nomination. I think he's well qualified for the position.

THE PRESIDENT: Thank you, Senator.

Senator Gold.

SENATOR GOLD: Thank you, Madam President.

Madam President, I did not stand up to dispute the character of this nominee or get involved in that issue at this point. The issue that concerns me is an issue which ought

to concern every member of this chamber.

If you promise not to quote me, Madam President, I will tell you that there are probably at least three Republicans in this state who would be qualified to sit as Civil Service Commissioners. You can quote me, and I will tell you that there are, in fact, at least three Democrats that are qualified to sit as members of the Civil Service Commission.

The law that sets up the Civil Service Commission is in the Civil Service Law, Section 5, and it says that there shall be three commissioners appointed by the Governor with the advice and consent of the Senate, but not -- no more than two of whom should be adherents to the same political party.

Now, there isn't one person in this room or within the sound of my voice that doesn't know that when that was enacted into law it was to protect against the situation where we would not have three Republicans or three Democrats and that there would be either two Republicans and a Democrat or a Democrat, two

Democrats, one Republican. In this situation the nominee is a member of the Conservative Party, and in all fairness to the nominee, he did not become a Conservative an hour before his nomination, and I'm not suggesting that he was a Republican who fraudulently became a Conservative. That is not the truth nor the fact, and that is not in the character of this nominee, and I don't suggest that it is; but the fact is that in having two Republicans on the commission and then appointing a Conservative, the spirit of this law is being violated, if not in fact the letter of the law, and it is a bad precedent.

I don't recall anything like this happening under Governor Rockefeller or Wilson or Carey or Cuomo. Senator Stafford, at the meeting, suggested that my memory was lacking and he said that he thought that on an occasion or two it has happened and at the committee meeting, Senator Stafford said that things are progressing, and I think that was his word along certain lines, and that's what bothers me, the

word "progressing" and it's time to stop a progression, because if we go with this nominee, there is nothing to stop the Governor next week or next January from appointing a Republican who becomes an Independent the week before he or she is nominated, or a Conservative or whatever, people who change their nominations because it doesn't say you have to be in any party for any particular time, and as I pointed out in the committee, the sword goes both ways. This - this body would be horrified if, in two years, a Democratic governor were to send down nominees who are all Democrats, Independents, Liberals, Conservatives and with no Republicans being offered, all of whom we would say are wonderful people but we have, in fact, violated if not the letter of the law, the spirit of the law.

One of my colleagues on my side of the aisle made the comment in the committee meeting that the Senator involved was going to vote for the nominee because the nominee -- when the nominee applied for the job, the nominee didn't get involved in how many other people

there were and you only got to look at the nominee, and with love and affection I state to that particular Senator that, if there was a section in the law which required two males and two females and if we put before the house four males, she wouldn't be looking so quickly to see about the qualities of each of the four males, and that's the problem here.

The problem is that you're talking about the Civil Service Commission and the idea is to, as much as possible, not politicize the Civil Service Commission and by appointing this nominee, Mr. Kesselring, in this way, you are absolutely politicizing the process and in a very, very unhealthy way.

So I am going to vote against the nominee. I want the nominee to understand that I found his answers to questions at the committee meeting frank. We had a discussion on a point of law. He was right and I was wrong and there is nothing personal, but the bottom line here is a very important bottom line to everybody in this house, and I would urge the

members on both sides of the aisle to reject the nominee on the grounds that I have set forth.

This is a seat that ought to be a Democratic seat. When we had a Republican -- a Democratic governor, he made Republican appointments where appropriate and we should not do, as Senator Stafford suggested, have this "progressing" in this what I think is a dangerous direction.

THE PRESIDENT: Senator Stafford.

SENATOR SKELOS: Will Senator Stafford -

SENATOR STAFFORD: Mr. President, I want to apologize for using the word "progress" for I'm not sure where, one, we progress, in government, business, or at any time so I'll use another word; but let me, before I use that word, let me again try to bring a historical perspective.

It's like my son who is now 17, when he was four he asked me why -- I said I was going to a wake, and he asked me why I know so

many dead people, and I said, Because I'm getting old, but I'm not quarreling with that either. I like that. The alternative is not good.

Now -- now, I remember very, very clearly -- I wish and I'm going to try to find it, I'm going to try to find it, it involved an appointment when Governor Rockefeller was governor and interestingly enough, he appointed somebody of a -- not a Democrat or Republican but it wasn't -- it wasn't -- it was a different party. Well, anyway, it was a party that some of us were arguing that maybe it should be another party rather than the party that Governor Rockefeller was in and, frankly, it was a Liberal Party member who was being appointed, and we -- we were -- we wondered about it. Then I also remember before this quadrennial we're in -- now, remember, a quadrennial is a four-year period and I'm talking about when the Governor served, and we're speaking about a previous quadrennial within the last 20 years before the one we're in now, and I remember that there was

an appointment of a person -- once again, it was not a Democrat or Republican but it was a party and again we were -- were complaining about it and interestingly enough some of the other people weren't complaining.

Now, again if I -- I -- you know, Senator Gold and I have had positions or jobs or whatever you want, I guess we've never had positions. We've had jobs around here, sort of what do you call it? No, no, each other, you had the same jobs only on the opposite side, I guess that's the way to say it, you know, same job on opposite sides and we, rather than -- and other than just this job in the finance field, and we've always had -- we've enjoyed it and we've differed, we've differed quite directly a number of times and I was sort of halfway not agreeing with Senator Gold today, but I realize the points he was -- he was making were, I thought maybe possibly well, or could be taken anyway.

Well, I disagree with him the more I think about it completely, categorically, disagree with him on this issue, and he

disagrees with me and he has every right to. I think that, when it says he cannot be more than one -- a certain number in one political party, I think on any political party you have a right to be appointed, if the party is on the -- what do you call it -- on the ballot? And why not? Why not? Those are individuals. They enroll and they can be appointed, and I think we're not only following the letter of the law, frankly, I don't think the spirit of the law is being really violated.

Do I think it's clever? Yes, yes. But I might say, you people have done many clever things and we do many clever things. I don't mean clever in the wrong sense of the word either. I think -- I think it's something that's comparatively new and entirely proper, and, frankly, as Senator Maltese has said and many others will say and have said, we have an excellent appointment here, excellent. He has run statewide out of principle as Senator Maltese said, and he is a gentleman who I am sure and would submit will do an excellent job

on the Civil Service Commission.

So I'm not saying we're progressing. What I will say, and Senator Leichter helped me with it today, is it depends on whose ox is gored. I think that's a better way of putting it and, consequently, I shouldn't be ending on a light note, so what I say is it's an excellent nominee. It's following the law and I think Mr. Kesselring should be -- should be confirmed.

THE PRESIDENT: Thank you, Senator Stafford.

Senator Skelos.

SENATOR SKELOS: I'd like to follow up what Senator Stafford mentioned. I believe at one time with the SIC an individual by the name of Eric Seif, who was an Independent and recommended by Governor Cuomo, was confirmed by this house a number of years ago and I would also wonder that if things had not happened as they did in the year of Pierre Rinfret and Herb London, if there had been a slight change in votes that year, whether Senator Gold would then

believe that the Conservative Party or the recommendations should all be members of the Conservative Party as against the Republican Party because you did comment on how the appointments should be Republican or Democrat, but we can comment on that at some other time, if you wish.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

It's always interesting to hear the history of the Senate and I'm something of a history buff, so I'm always amazed when Senator Stafford talks about his 31 years here and what happened under Governor Rockefeller, and then Senator Marchi charms (probably should be chimes) in with the comment that I hadn't heard before about his life under Governor Harriman, and I kept waiting for someone -- I kept waiting for someone to chime in with what Governor Clinton did, but that would be DeWitt rather than Bill.

But I guess this issue, let me say about Mr. Kesselring. I have not known Leo Kesselring personally, but I've clearly known of his reputation. He's a good lawyer and solid member of the Rochester legal community. He's been generous and philanthropic. He put the Conservative Party on the map in Monroe County. I think he deserves credit for that, although I certainly probably don't agree with Mr. Kesselring on many of the major issues of the day. He has always been involved in public service, always had a commitment. Senator Maltese said it correctly, if there's anybody more principled in Monroe County than Leo Kesselring, I don't know who it is.

But I also, unfortunately, have to agree with Senator Gold. This is not an issue that involves Mr. Kesselring. It's an issue that involves a portion of the statute that was designed to create a major parity between the major parties in this state. It probably needs to be redrafted, probably should be redrafted to take into account that there are

now probably five or six major parties under our criteria, but I'm nonetheless -- I agree with Senator Gold.

I think that the message here that the Governor is trying to draw is that, in his spirit of bipartisanship, the notion of bipartisanship that is enshroud in that portion of the statute will now tend to exclude other members of major parties. I think it's a very discouraging trend. I don't think Mr. Kesselring is in any way responsible. Were this issue not on the table, I would stand here and speak in favor of this because he's a competent lawyer and I think he brings a lot to the Civil Service Commission, but because I agree with Senator Gold, it sets a dangerous precedent for the interpretation of a bipartisan relationship between the houses of this Legislature and the Governor, I think that this would be a mistake to appoint someone who is not a Democrat to this position.

So again I don't want my vote to be interpreted in any way as being opposed to

Leo Kesselring, but I believe the precedent is important, and we're in this case voting against the action of the second floor and the interpretation of that portion of the statute in such a fashion.

THE PRESIDENT: Thank you, Senator.

Senator Marchi.

SENATOR MARCHI: Yes, Madam President, just to correct the record. Not as a member, but as counsel to the Senate, I remember being in a party of five working with Governor Dewey, but this has been a -- this has been a - I think this has been a useful exchange. I mean we revisited history and, in this case, of course, we have the consolation of knowing that we are confirming someone with very, very adequate qualifications, so I take consolation in that and rejoice in the fact that we are ratifying a very qualified, highly qualified member.

THE PRESIDENT: Thank you.

Does anyone else wish to speak on

the nomination? The question is on the nomination of Leo J. Kesselring as a member of the state Civil Service Commission. All in favor, signify by saying aye.

(Response of "Aye.")

Opposed nay.

SENATOR DOLLINGER: Nay.

THE PRESIDENT: Will the votes be recorded.

SENATOR DOLLINGER: Yes, Madam President. I move the votes be recorded.

THE PRESIDENT: Senator Dollinger, in the negative.

SENATOR DOLLINGER: Yes.

THE PRESIDENT: Leo J. Kesselring is hereby confirmed as a member of the state Civil Service Commission. Congratulations.

(Applause)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Member of the state Board

of Parole, Walter William Smith, Jr., of Pendleton.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: Mr. President, I'll be very brief, but I don't -- I'm not being brief because we don't have a fine nominee here. We do, but he has also a very fine protagonist representing him in his Senate district, Senator Maziarz. I will yield to him in just one second, but once again, I would just point out that this hasn't been the easiest day and Mr. Smith has certainly been most gracious, most understanding, and it shows that he has a sensitivity in the ability to do an excellent job, as I know will be pointed out by a number of people here today, and I yield to the Senator from Niagara.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President, and thank you to the esteemed chairman of the Senate Finance Committee.

Mr. President, it's with a great deal of pleasure and a real honor for me that I stand before the Senate to second the nomination of not only a person who I know is going to be a great member of the state Board of Parole, but a good friend and a true professional in the field of criminal justice, and Bill Smith is joined here today by my colleague in the other house from Niagara, Assemblyman David Seaman and Bill has worked for a number of years with the Crime Victims Board and is going to bring the perspective of crime victims to the parole hearings that are held throughout this state, Mr. President.

I know that Bill is a true professional. He's probably one of the hardest working servants of the people that I've had the pleasure of being associated with in my brief time working for the state of New York and among many of the highlights in Bill's background are the fact that he received his first opportunity to serve in the -- or on the Crime Victims Board when he was appointed by the then chairman of

the Crime Victims Board, Senator Catherine Abate, and Senator Abate made an excellent choice a few years ago and Governor Pataki made an excellent choice today.

Thank you, Mr. President.

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: I'm sorry. Senator Abate.

SENATOR ABATE: Just briefly, I also want to stand in support of this nominee. As Senator Maziarz said, I exercised juddgment, good juddgment, once in hiring Mr. Smith. I want to exercise that good judgment again and I ask my colleagues to join me in supporting this nominee. He has a wonderful record, great experience, commitment to fairness and justice and I think he will serve well on the Board of Parole.

ACTING PRESIDENT KUHL: Is there

any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Walter William Smith, of Pendleton as a member of the state Board of Parole. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed. Congratulations, Mr. Smith. Good luck.

(Applause)

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Member of the Metropolitan Transportation Authority, Denise F. Molia, of Setauket.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of -- excuse me, Senator LaValle.

SENATOR LAVALLE: Yes. Mr.

President. I'd like to speak on the nomination. Denise Molia is a resident of Senator Lack's district, but Denise is someone that has been a personal friend and someone who I've known for many, many years. She has, in a very short period of time, distinguished herself in a role as town attorney in the town of Brookhaven, assistant deputy county attorney, county of Suffolk, and has worked on -- I've watched her work on many, many sensitive matters and has handled them with what I think we often refer to as a person using a velvet glove.

She is one of the young generation of Brookhaven individuals who has gotten involved in public service who I think we can call an individual of superstar quality and so I think the Governor has made an excellent choice in this -- in this nomination, Mr. President.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Denise F. Molia, of Setauket, to become a

member of the Metropolitan Transportation Authority. 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 read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Member of the Board of Trustees of the State University of New York, Paul R. Perez, of Bronxville.

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

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT KUHL: Hearing none, the question is on the nomination of Paul R. Perez, of Bronxville, to become a Trustee of the State University of New York, and Senator LaValle would like to speak on the nomination.

Senator LaValle.

SENATOR LAVALLE: Mr. President, very, very briefly. Mr. Perez appeared before the Higher Education Committee, and I think when the committee members looked at his background and answers to questions, I think they found him to be very highly qualified and we looked forward to his being a very dynamic member of the -- of the SUNY board and again, let's say that the Governor has made an excellent recommendation in Mr. Perez and I think he will serve the SUNY system, SUNY board, and the state quite well.

ACTING PRESIDENT KUHL: Question is on the nomination.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, at first blush, Mr. Perez does not appear to have strong identification with public higher education. However, in his appearance before the Higher Education Committee, he differed to some extent from the previous appointees recommended by the Governor when he indicated that there were times when additional funding

would be needed in support of the State University of New York, and he indicated he would have no hesitancy in asking for those additional funds.

I consider that to be a welcome change from the previous responses of new appointees to the State University trustees and on the basis of that assurance and the understanding that he will be fulfilling that commitment as an advocate for public higher education, I rise in support of his confirmation.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Paul R. Perez, of Bronxville, 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 read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Banking member of the State Banking Board, Spencer S. Crow, of Arkport.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Spencer S. Crow, of Arkport, New York, to become a banking member of the State Banking Board. 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, offers the following nomination: Public member of the State

Banking Board, Stewart Kahn, 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 Stewart Kahn, of New York City, to become a public member of the State Banking Board. 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, offers the following nomination: Director of the New York State Environmental Facilities Corporation, Ambassador John L. Loeb, of Purchase.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Ambassador John L. Loeb, Jr., of Purchase, New York, to become a director of the New York

State Environmental Facilities Corporation.

SENATOR GOLD: Mr. President. Just a minute.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the nomination.

SENATOR OPPENHEIMER: I just would like to take a moment to say that John Loeb lives in my Senate district and he is a man who is greatly respected, albeit the wrong political faith, but a very bright man, a man who has devoted himself to arts and culture and the environment, and indeed we have worked together on environmental issues, and I think this is a really fine appointment and I'm very proud to second his nomination.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Ambassador John L. Loeb, Jr., of Purchase, New York, to become a director of the New York State Environmental Facilities Corporation. All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

SENATOR STAFFORD: I was just going to speak for a second, I'm sorry, on the nomination. Let's let it go. He's a fine man.

ACTING PRESIDENT KUHL: The nominee is confirmed.

SENATOR STAFFORD: Senator Goodman, you know, if he had been here, he would have spoken.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Yes, Mr. President. Earlier today we did the confirmation of Leo J. Kesselring, and I was out of the chamber when a vote was held on that confirmation and, for the reasons stated by Senator Gold, I'd like the record to show that I want to be recorded in the negative.

ACTING PRESIDENT KUHL: Senator

Leichter, there was a roll call taken on that nomination. Your vote will be recorded in the negative. Thank you.

Senator LaValle.

SENATOR LAVALLE: Mr. President, can we return to reports of standing committees? It's at the desk, a Rules report.

ACTING PRESIDENT KUHL: We'll return to the order of standing committees, ask the Secretary to read the report of the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills direct to third reading:

7980, by Senator Bruno, an act to amend the Legislative Law and the State Finance Law;

7981, by Senator Bruno, concurrent resolution of the Senate and Assembly, proposing amendments to Article III of the Constitution.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: On motion by Senator LaValle 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 reported direct to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could just temporarily go back to motions and resolutions. I believe there's a Resolution Calendar at the desk. I move that we adopt it in its entirety.

ACTING PRESIDENT KUHL: We'll return to the order of motions and resolutions. The Resolution Calendar is on the desk of the members. The motion is to accept 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 Skelos.

SENATOR SKELOS: Mr. President, the Rules report third reading, beginning with 7701-A, by Senator Trunzo.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Senator Trunzo moves to discharge from the Committee on Rules Assembly Bill Number 10,628 and substitute it for the identical Third Reading Calendar 1808.

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

THE SECRETARY: Calendar Number 1808, by the Assembly Committee on Rules, Assembly Print 10,628, an act to amend the Retirement and Social Security Law.

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

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Excuse me. Senator Seabrook, would you like to speak on the bill?

SENATOR SEABROOK: Just like to ask the sponsor a couple quick questions if he would yield to a few questions.

ACTING PRESIDENT KUHL: Senator Trunzo, an explanation has been asked for by Senator Seabrook.

SENATOR TRUNZO: Senator Seabrook, this bill to amend the Retirement and Social Security Law is in relation to providing the Suffolk County correction officers with a special 20-year optional retirement plan.

SENATOR SEABROOK: Senator yield to a question?

ACTING PRESIDENT KUHL: Senator Trunzo, do you yield to a question from Senator Seabrook?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SEABROOK: Senator, does this differ from any other pension plans, say, for correction officers certificates in New York City or any other place?

SENATOR TRUNZO: No, it's just for the Suffolk County correction officers.

SENATOR SEABROOK: What is the difference?

SENATOR TRUNZO: Well, there is a home rule message from Suffolk County asking us to do this for their correction officers. This is strictly the Suffolk County. Doesn't affect any other correction officers in the state.

SENATOR SEABROOK: Right, but this -

SENATOR TRUNZO: Or the nation.

SENATOR SEABROOK: But this bill conforms to the regular bills for all correction officers or is it -- is there a difference in this bill?

SENATOR TRUNZO: At this point, it only affects the Suffolk County correction officers.

SENATOR SEABROOK: Yeah, I know the effect, but I'm just trying to see the provisions in this bill. Is it different than that which is, say, for correctional officers in New York City or -

SENATOR TRUNZO: Well, Senator, some correction officers do have 20-year retirement plan; some other counties they do have that.

SENATOR SEABROOK: Some other counties.

SENATOR TRUNZO: Yes, I'm not sure about New York City; I couldn't tell you.

SENATOR SEABROOK: But what is the provision now?

SENATOR TRUNZO: I believe it's 25 years.

SENATOR SEABROOK: 25 years, so that would be somewhat similar to what is in New York City?

SENATOR TRUNZO: Yeah, if New York City wanted it, we would do that bill too with a home rule message.

SENATOR SEABROOK: Thank you.

SENATOR TRUNZO: Last section.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1809, by Senator Leibell, Senate Print 7408, an act to permit the reopening of the optional 20-year retirement plan.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Trunzo moves to discharge from the Committee on Rules Assembly Bill Number 11375 and substitute it for the identical Third Reading Calendar 1810.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1810, by the Assembly Committee on Rules, Assembly Print 11375, an act to amend the Retirement and Social Security 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 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1118, by Senator Seward, Senate Print 7978, an act to amend the Public Service Law and the Uniform Commercial Code.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Seward, an explanation of Calendar Number 1811 has been requested by Senator Dollinger.

SENATOR SEWARD: Certainly.

SENATOR GOLD: Excuse me. What Calendar Number is this?

ACTING PRESIDENT KUHL: This is Calendar Number 1118? 1811 we're on.

SENATOR SEWARD: That's Senate 7978? Okay.

ACTING PRESIDENT KUHL: Calendar Number -- that's right, Senate 7978, Senator Seward. Senator Dollinger requested an explanation.

SENATOR SEWARD: Yes, Mr.

President.

This is a slightly differing version of the legislation that this house passed back in late June of this year. It deals with the problem of high electric rates in this state which, let's all face it, high electric rates are causing many hardships for our residences and -- residents and businesses alike and this bill helps to address that problem by establishing a financing mechanism through which electric rates could be reduced as a result of low cost financing of certain utility assets and so-called intangible properties of the utility, such things as the regulatory assets, such as IPP contracts, stranded assets, the demand side management costs that they have incurred, environmental remediation, all of those types of so-called intangible properties.

Now, to do this, the bill authorizes utilities on a voluntary basis to present a refinancing plan to the Public Service Commission for approval, and this plan would have to -- would propose raising from the level

of expectation to the level of a property right these intangible properties that belong to the utility and the Commission would be required to review the plan, determine if the ratepayers would, in fact, receive a savings in their electric bill with the acceptance of the plan. This is a precondition of the acceptance of the plan and the PSC could approve the plan that's been proposed to them either as a whole or in part.

Now, also, the Commission, as part of this process and under this bill, would be authorized to obtain certain concessions from the utility and while the concessions obviously are not outlined specifically in the bill, they could include such things as mandatory multi-year rate reductions or a write-down of a portion of the utility's stranded cost.

Now, this bill is meant to be a bridge to the coming competition in the electric utility industry. It expires December 31st of 1998 and in so doing, it is a bridge to the coming competition and will help address the

problem of high electric rates in the state.

ACTING PRESIDENT KUHL: Senator Dollinger, is that explanation okay? Did you have an additional question?

SENATOR DOLLINGER: Yes, Mr. President, just on the bill ever so briefly.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I think, as Senator Seward properly points out, we did this bill before earlier in this session, isn't that correct; this is the same bill or all but the same bill, through you, Mr. President, if I could just pose that question to Senator Seward?

SENATOR SEWARD: Mr. President, the change from the bill we passed in June to this bill is the addition, which I think is a very fine addition, we decided to include that a public notice upon the issuance of one of these qualified rate orders and opinions by the PSC as a result of this bill, they would have to be - it would have to be a written issuance of this

order and opinion and it would be -- outline all the terms and conditions of the -- of the order and also call for judicial review, have that option available by -- any of the parties could bring judicial review to the process.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Seward would yield to just one other question.

ACTING PRESIDENT KUHL: Senator Seward, do you yield to a question? The Senator yields.

SENATOR DOLLINGER: Under the terms of this bill, the Public Service Commission would have to make a determination that there was a substantial benefit -- or I'm not sure that's the term of art used in the bill, but a benefit to the ratepayers as a precondition for the issuance of an order pursuant to this section that we're going to amend.

My question is does that order require that the benefit be spread among all ratepayers or could the Public Service Commis

sion make a determination that a substantial reduction for one form of ratepayers?

I know that we're going to do a bill. There's a bill on the calendar that deals with using lower utility rates as a spur for economic development. My question is does anything in this bill also address that issue of possibly using the benefits of reduced borrowing costs as a spur for economic development directed at a particular class of ratepayers, but I know the utilities are competing very seriously for -- that's major buyers, major purchasers of electric power and gas.

SENATOR SEWARD: Well, Mr. President, the bill is not specific in terms of addressing your particular question. The bill, on page 2 in line 37, 38, in that area of the bill, talks about the -- that the action would result in significant rate savings to the customers of the electric corporation. Obviously lower electric rates would be a benefit economically to this state, help with job creation and it's something that we all can embrace, but also

with the coming competition, all classes of utility customers, residential customers as well as the business customers, will be able to pick their electric supplier and -- in that era of competition.

So it just strikes me that in order for the utility to, shall we say hold onto customers of all classes, they're going to have to provide lower electric rates for all classes of customers. That's my reaction to your question, although that's not delineated in this legislation.

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

I agree with Senator Seward's description of this bill. I think the language which you've highlighted points out that so long as there are significant rate savings to customers of the electrical corporation, that could be broadly interpreted to give the PSC the ability to perhaps shift a portion of the benefits of rate reduction in this case or the

reduction in costs that would be attendant upon the passage and utilization of this bill to focus that perhaps on a particular brand of customer.

I don't think that's a negative in this bill that the PSC would have the ability to perhaps focus a portion of the rate savings here to economic development, which I think is something that I wanted to see whether they had the flexibility to do that. That may depend on who's on the PSC. It may depend on political factors. It may depend on a number of factors in any given situation, but it does have the ability to say if you found a significant rate reduction for customers of an electric corporation, then you would be able to approve an order in this case, and I think that's an option that should be there that the PSC in trying to fine tune where electrical competition is going to occur, at least based on the discussions we've had in the Energy Committee, my sense is that that competition would be most vigorous among major customers and that it might

be beneficial to keep our utilities and preserve some kind of transition for utilities as we go to the new electrical market, that they be allowed to perhaps focus a major portion of these savings at their movable customers, their customers who have the ability to get up and walk away to the competition. As the chairman knows, that would be more difficult for residential customers as the market goes on.

Mr. President, on the bill. I voted for this I think in the past. I'm going to vote for it again. It seems to me it moves us further down the road to a world in which there will be competition for electrical rates.

I would simply point out to the chairman, and I think he shares this view, that when we're looking at the comprehensive picture of where utility deregulation is going to go, this is only a component of that, and I think it's a good step, but there are many other steps that we have to persevere in moving to and in getting done if we're going to make the reality of deregulation in competition a factor in our

electrical and gas industry in this state.

So I'll be voting in favor. I'll be supporting this concept. I think it's the right thing to do, but I think we should recognize that we have to take other steps as well.

SENATOR LEICHTER: Madam President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: If Senator Seward would be so good as to yield.

THE PRESIDENT: Senator?

SENATOR SEWARD: Certainly.

SENATOR LEICHTER: Senator, I have difficulty seeing how this moves utilities to a more free market condition. It seems to be just the opposite. It seems to me that what you're trying to do is, one, protect the share holders, secondly, that you're -- by providing that the stranded costs could be passed along to the shareholders, you're trying to give a certain benefit to the utilities that the market won't give them.

It seems to me, very frankly, you're trying to control the market. You're trying -- you're trying to direct the market instead of letting the market decide how the utility rates are going to go.

SENATOR SEWARD: Madam President, Senator Leichter, I would beg to differ with you. This legislation would assist and help provide relief to the ratepayers of the utility.

As it stands right now, absent of this legislation and -- or a similar legisla tion, the ratepayers are paying these costs now under this bill and will in the future.

Under this legislation, this provides a tool to be used by the PSC and the utilities coming forward with their rate reduction plans to refinance some of these obligations that the ratepayer is obligated to pay for right now, refinance those obligations at lower cost financing with the understanding -- more than understanding -- with the stated requirement under this bill that the savings be

directed to the ratepayer in the form of lower electric rates and also as we move toward the era of competition, this legislation and this refinancing will be a great help to the utili ties in dealing with their issue of such things as the stranded costs that they've incurred with the full partnership of the PSC over the years being declared prudent expenditures by the PSC in the past. These costs are going to be incurred by the ratepayer unless we provide some tools to the PSC and the utilities to refinance and to free up some capital to perhaps buy out some IPP contracts as an example.

And the bottom line here, Senator Leichter, is lower electrical costs for the ratepayer. This isn't any stockholder or utility bail-out. If it's a bail-out for anyone, it's a bail-out for our electric ratepayers who today are paying too high a cost for their electricity.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: If Senator Seward will continue to yield, please.

THE PRESIDENT: Senator Seward.

SENATOR LEICHTER: Senator Seward, but it's precisely because you are defining certain costs, you're making available the ability of utilities to go out and refinance, that you're providing a special situation for the utilities that, frankly, the market doesn't give it. Why are we better off just allowing -- utility rates are very high in upstate New York. Niagara Mohawk is -- for whatever reason, is a high cost utility. Maybe the best thing is to allow more people to come in and compete with Niagara Mohawk. Wouldn't that be maybe the best thing to do?

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Well, Senator, that type of competition is coming. The Public Service Commission has competition on a very short timetable in terms of having retail - wholesale competition in 1997, retail competi tion in 1998; that is their goal, but this bill recognizes that because of the past monopoly situation we've had with utilities, having to go

to the PSC, having a very highly regulated environment in which they have operated and incurred costs with the understanding they would pass on those costs to the ratepayers, that's why we're in the situation we're in today. Something has to give as we move into a competitive environment in the electric utility industry and this legislation will provide a mechanism for one aspect of getting the utilities ready for competition through this lower cost financing of some of these utility intangible properties.

I don't see that as a -- giving them any special protection or rights or anything of that sort at all. I see that as part of a transition from a highly regulated environment in which they've operated and conducted business in the past to the more free and open competition that is just around the corner and to give the ratepayers some relief.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Again, Madam President, if Senator Seward will yield. I

mean, with all due respect, I mean, it sounds like one of the eastern former Communist regimes gingerly moving towards a free market economy. I don't mean to make light of it because I think it's a very difficult step to go from -- from a regulated industry as we've had which we felt was beneficial to ratepayers and may no longer be until free market, but I really suggest when you say something has to give, that what you're really ending up protecting is the shareholders and the ones who may eventually -- eventually I say -- have to give are the ratepayer.

I understand initially you're helping the ratepayers, but in the long run, these capital assets, all of these stranded costs are still going to have to be paid for and depending on market conditions, depending on how the utilities use the money in refinancing, you may find yourself in a situation where these utilities are even weaker, have more financial problems. You're going to force them at that point to raise the rates to the ratepayers. Isn't that a possible scenario, and I submit

even a likely scenario?

THE PRESIDENT: Senator?

SENATOR SEWARD: Madam President, I could not subscribe to that as a scenario, Senator Leichter. Basically, as you point out, the stranded costs have been -- have been incurred. As it stands now, the ratepayer is going to have to pay. This legislation, as I've said before, would provide some relief for that ratepayer because of the fact that there will be some lower cost financing involved and also in addition to the lower cost financing which those savings would be translated into lower electric rates, also -- and this gets, I think to the heart perhaps of your concern -- under this bill, as part of adopting these plans, the PSC is authorized to, shall we say extract certain concessions from the utilities, perhaps the write-down of a portion of these stranded costs. That's where the utility and the stockholders would be contributing to the - shall we say to the ultimate rate relief that would come about under this bill.

So it's not -- it's not, as I've said, a stockholder bail-out. It's not a utility bail-out. This is a ratepayer bail-out, pure and simple.

SENATOR LEICHTER: Madam President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: If Senator Seward would yield just to one more question. It's partly been asked, but let me ask you directly, and I really don't know the answer. I don't know where I would stand on this question, but might we not be better off just saying to any other utilities, any producer of energy, "You want to come in New York State, fine. You're welcome." They come in. They may undercut Niagara Mohawk. They'll undercut LILCO. It may create enormous difficulties for Niagara Mohawk, but you're going to have cheaper rates. Maybe that's the way to really benefit the ratepayers is to allow other utilities to come in and force the Niagara Mohawks, force the LILCOs to compete on those terms. They may go

under or they may learn how to compete. Why wouldn't we be better off doing that?

SENATOR SEWARD: I would be - Madam President, I'd be very happy to respond to Senator Leichter's final question.

Seriously, Senator, the -- you're absolutely right in suggesting that the ultimate competition will also contribute to lower elec tric rates. That's happened in other segments of our -- of our economy and other industries where there's been competition, rates and costs have gone down to the consumer and we fully expect that will occur in the electric rate aspect of our economy as well.

The issue at hand, though, is this. Over the years, the utilities, because of Public Service Commission determinations in the past, have incurred these very legitimate expenses that they have in many cases been required to incur and they're just not going to go away. We have to devise a manner in which these obligations are going to be met. My suggestion -- and it's the whole thrust of this

legislation -- is let's have these obligations met in a way that provides rate relief to the ratepayers of our state as we go to this era of competition. This will provide the rate relief sooner than the scenario you suggest. You're not wrong in suggesting that competition ultimately will apply a great deal of pressure on our utilities, the investor-owned utilities of our state. There's no question about that. This legislation will provide that rate relief between now and December 31st, 1998.

THE PRESIDENT: Senator?

SENATOR LEICHTER: Madam President, I want to thank Senator Seward. As always, he answers in very reasoned tone and manner and I understand the points that he's making, but I think, Senator -- in part, I think at the end you sort of let the cat out of the bag or maybe in connection with this bill it's more appropriate to say the rabbit because you said, Well, you know, these utilities were forced to incur these costs by the PSC. I'm not certain that's so.

I mean, you take LILCO. It's true, the PSC approved of Shoreham, but it was LILCO that had the idea to come up with Shoreham and many of the facilities, many of the stranded costs that are burdening the utilities that you and I are concerned about, they didn't come just from the regulated system. They came from utilities that made some pretty bad management decisions, and to that extent, this bill certainly seeks to bail them out.

I'm somewhat amused about these debates that we have on energy because, you know -

THE PRESIDENT: I'm sorry, Senator. I just couldn't hear you.

SENATOR LEICHTER: Yes. Thank you, Madam President, and I'm glad you're interested. You may be the only one.

But I think it's a very important issue. It's a crucial issue. It's crucial for the people of New York State. It's crucial for our industry and it's extremely complex. I'm just amused because in certain respects, some of

my arguments are really the reverse of what my party has stood for. We were the party of public power. We had to fight the Republicans. You people desperately fought against public power in the governorship of Franklin Delano Roosevelt. That was the most marked political battle and now it's sort of shifting because now I see the Governor comes out with a proposal for LILCO, which is really sort of public power and some of us here, while not necessarily arguing for it, just opening up and de-regulating the market and going to free market economy cold turkey, at least are suggesting or raising the question. So it's interesting how things change and without question, there is something of an industrial policy, if you will, or a utility policy by government deciding -- you know, some people say government can't pick winners or losers or can't really regulate the market. I happen to disagree with that statement, but that's really what you essentially stand for, your party stands for, Senator Seward, but that's what you're trying to do in this

particular instance.

Let me just say, it's a complex subject and it really needs to be treated on a more comprehensive basis. I don't mean to imply that you haven't given a lot of thought and work on this, and I appreciate it, but I just want to say that this is a one-house bill and there were many of us on this side of the aisle that, Senator Seward, when you brought up almost a similar bill at the end of the session thought that you just didn't have it quite right, and I just want to remind my colleagues who voted against it, Senators Abate, Connor, Gold, Kruger, Leichter, Markowitz, Mendez, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Stachowski and Waldon.

Thank you.

THE PRESIDENT: Thank you.

Senator Abate.

SENATOR ABATE: Yes. Would Senator Seward yield to a question?

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Certainly.

SENATOR ABATE: Yes. It is my understanding that this bill provides financial relief to the stockholders and the bondholders, and that the ultimate intent is to see some of those savings passed along to the consumer. Am I correct in my assessment in those conclusions? I'm just repeating what I thought I heard you say that the intent of this bill is to provide some financial relief.

SENATOR SEWARD: The financial relief is to the ratepayers.

SENATOR ABATE: The ultimate or the interim relief? I guess what I'm trying to say is where in this bill does it actually say that the savings would be passed along to the ratepayers?

SENATOR SEWARD: On page 2, it starts on line 33 under "General requirements. Rate savings to the customers of the electric corporation."

SENATOR ABATE: That -- this is hypothetically. My concern is -- and while I think basically there's some -- I understand the

argument if we provide this relief to the utility corporation, they can then -- PSC can get involved and some of those savings can be passed along to the consumer, but where does it say specifically that that will occur? I know that there has to be a demonstration by the utility company that it will result in significant rate savings, but where does it say that as a matter of fact, that dollar for dollar those savings will be passed along in terms of rate reduction for the consumer?

THE PRESIDENT: Senator?

SENATOR SEWARD: Well, Senator, as I read that portion of the bill, it says "each qualified rate order" which would be the final result that the PSC would issue, "shall include a finding by the Commission that the rates allowed in actions authorized --" it goes on to talk about there should be significant rate relief. I'm not sure how much more clear we can be.

SENATOR ABATE: Well -- but if I heard Senator Leichter say that there was a

concern that this doesn't take a comprehensive view, on the one hand, the intent is to provide rate relief but it does not specifically call for it, and yet you point to the language in line 33 as saying specifically that once this relief is given in terms of the financing of these utilities, that will translate in direct savings to the ratepayer, and I guess I don't see dollar for dollar how that translates, and you're saying the intent of the bill is to accomplish that dollar for dollar?

SENATOR SEWARD: The intent of the bill is to provide significant rate relief to the ratepayers of our state.

SENATOR ABATE: I know ultimately that might be accomplished by that as the utility companies become more solvent, more efficient as they invest and have more money to invest in infrastructure, hopefully that will mean better service and rate reductions. It does not necessarily mean that. The money could be spent elsewhere. Where in this bill does it say that the ratepayer will benefit from these

transactions?

SENATOR SEWARD: It's in that section, Senator.

SENATOR ABATE: And you interpret it as such.

SENATOR SEWARD: That - significant rate reductions. Let me point out, there's -- this has been said by others. This is a highly complex area. There is a lot happening in this area of ushering an era of competition in the electric utility industries of our state. The Public Service Commission has a full-blown proceeding underway. This legislation is not intended to be the cure-all or end-all or that comprehensive approach that has been called for. This legislation is intended to provide the PSC with the voluntary cooperation of the utilities in coming forth with a plan. It's a tool. This bill provides one tool that will help provide rate relief for our electric consumers of our state. It's that pure and simple.

SENATOR ABATE: Will you -- since

this is a one-house bill today and you'll -- we may have an opportunity next year, I hope you will entertain some further discussions at how we can better clarify so what you perceive as the intent of the bill will actually be the reality and will become implemented in the future because if, in fact, what you say is the intent in the bill, I can support this bill. I have some concern that the language does not, in fact, represent what you say it does.

SENATOR SEWARD: Well, Madam President, it's early in the legislative day and even though there is not a companion bill in the Assembly, we certainly hope that before the day ends that the Assembly will, in fact, take up this bill.

SENATOR ABATE: But if not, I hope you will entertain further discussions in clarifying the bill next session.

SENATOR SEWARD: My door is always open.

THE PRESIDENT: Thank you.

SENATOR ONORATO: Mr. President.

THE PRESIDENT: Yes, Senator Onorato.

SENATOR ONORATO: Senator Seward, will you yield to a question, Senator Seward?

SENATOR SEWARD: Certainly.

SENATOR ONORATO: Regarding the savings, it says the item in the bill, that it is significant. Now, is there any definition of what you mean by a "significant" rate savings will be passed on if the rate -- if the utility company saves 25 percent of its costs, how much of the 25 percent will be considered significant to the ratepayer; one percent, two percent, three percent? Just how much is significant? You know, how do you differentiate between significant and insignificant?

THE PRESIDENT: Senator?

SENATOR SEWARD: Well, Madam President, the -- this legislation is -- does not specify or define the "significant" rate reduction, but let me say this. When you take a look at the various investor-owned utilities of our state, every utility is different. Every

contract that they may have with an independent power producer is different. There are different terms. There's no way, Senator, that we could do this legislation and cross every "T" and dot every "I" that would cover every situation.

This bill provides some broad guidelines to the Public Service Commission, authorizes these rate reduction plans to be submitted by the utilities using this securitization of these -- of these utility assets and intangible properties and, believe me, under this bill, with the judicial review that is allowed under this bill, if the PSC - I'm just speculating here -- if the PSC approved a plan that did not provide significant enough, shall we say, rate relief for customers in a particular service territory, I'm sure there are those parties that would bring the matter before judicial review. It would be an entirely open process and it would be reviewed.

SENATOR ONORATO: Read the last section.

ACTING PRESIDENT HOLLAND: Read the last section, please.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1811 are Senators Abate, Connor, Kruger, Leichter, Montgomery, Onorato, Seabrook, Smith and Stavisky. Ayes 47, nays 9.

ACTING PRESIDENT HOLLAND: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 1812, by Senator Seward, Senate Print 7979, an act to amend the Public Service Law, the Public Authorities Law, the Economic Development Law and the Tax Law.

ACTING PRESIDENT HOLLAND: Read the last section, please.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT HOLLAND: An explanation has been requested.

Senator Seward.

SENATOR SEWARD: Certainly, Mr. President. This second bill also deals with the issue of trying to drive lower costs of electricity to help our economy in the state of New York.

The bill establishes the Partnership in Economic Development Program, wherein the state Power Authority and the major utilities would combine to provide 400 megawatts of economic development power, low cost power to businesses of our state which are likely to close, curtail operations in this state, to relocate out of state or otherwise leave the grid entirely. Now, this is a temporary program. It's aimed at assisting businesses to retain jobs once again as we transition to competition.

Under the bill, an application for the power would have to be made within three years and the contracts for this power could not

exceed three years. So it's a temporary measure as we move toward competition. The Power Authority would contribute 200 megawatts of power, the utilities a like amount and combined, they -- it would provide the 400 megawatts of power.

To offset the loss of revenues to the utility and to avoid shifting any costs over to other classes of customers of the utility, the utilities would receive an offset against their gross receipts tax that they have collected.

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: Would you answer a question, Senator Seward?

SENATOR SEWARD: Certainly.

SENATOR LEICHTER: Senator, actually this is just about the same as the bill that we did in June. I'm not sure what we gained by doing the bills again twice in one session, but let me ask you this question. As I understand it, a four-member board will decide

on the allocation of this inexpensive power, is that correct?

SENATOR SEWARD: That is correct, Senator. It's called the Power Allocation Board which has been in existence for a number of years and it has been used to allocate the low costs to the Power Authority under previous programs.

SENATOR LEICHTER: Now, the members of this board, as I understand it, are Charles Gargano. Clarence Rappleyea is the New York State Power Authority chairman and then there's one appointee by each of the Majority legislative leaders; is that correct?

SENATOR SEWARD: That is correct. In fact, that -- the makeup of the board and the members that serve on this board, this has been -- this board has been in existence for some time. This was set up under previous administrations.

SENATOR LEICHTER: Okay. And by -- does the board have to act unanimously or is it a majority or -- which would, I guess have to

be three out of four members?

SENATOR SEWARD: I am -- let me secure an answer to that question. Senator, I'm advised by counsel it would require a majority of that board.

SENATOR LEICHTER: So that for all practical purposes, you know, the -- as it's set up, the decisions are made by Charles Gargano and Clarence Rappleyea and the Governor's appointee.

On the bill, I'm always concerned about any time government gets involved in sub sidies to business, not because I'm against it. As we said in relation to the previous bill, I'm the one who believes industrial policy, you're the people, the other side of the aisle that's against it, but you always come out with bills providing for government getting involved here, there, and so on. I think it's perfectly appropriate at some times, but if we're going to have it, I think that you need standards in the bill under the conditions under which it's going to be done. I think you have to have a much

less political system for deciding how that power is to be allocated.

I think if you take a look at the past history of allocation of power -- and I know just about what happened in New York City -- it's been pretty much a failure. It's been squandered by and large on financial firms rather than industrial firms, rather than firms that create jobs. So I'm very loathe to vote for any of the subsidy programs unless I know their criteria, standards, unless I know it's going to be administered in such a way that it's really going to be a benefit to the people of the state of New York.

This does carry a fairly big bill. I don't know whether I mentioned-- 63- or $65 million, I believe is the expected cost at least according to the memo that I have. I'm not going to spend that money that readily or that easily without knowing it's going to create some real benefits to the people of the state of New York, and for that reason and maybe others, Senator Markowitz, Senator Paterson joined me in

voting in the negative and maybe some others will want to join me this time.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT HOLLAND: The bill is passed.

The Secretary will read, please. The Secretary will read.

THE SECRETARY: Calendar Number 1813, by Senator Bruno, Senate Print 7980, an act to amend the Legislative Law and the State Finance Law.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT HOLLAND: Senator Bruno, an explanation has been requested.

SENATOR BRUNO: Mr. President, this issue relates to reforming the budget process in New York State.

The bills that we have before us are bills that we have passed before in this chamber. We have debated them at some length. There are some changes that were made that relates more to the consensus forecasting time tables than anything else in this bill.

By and large, we are attempting through this legislation to fix a budget process in this state that has not worked in the last 12 out of 13 years. So we feel in this chamber that it is time for us to recognize that the budget process has to be repaired and this bill will get us there.

We've talked to the Speaker about it. The Speaker indicates his support for budget reform. He tells me that he has a bill that he has prepared on budget reform. We want to see that bill. The Governor has supported this concept that we have on the floor now and is still supportive of doing a budget bill that

helps us get a budget in place by April 1st.

Here's what it does very quickly because we have, I think for more than a couple of hours, debated this previously. It recom mends that the Governor on December 1st submits his budget instead of the middle of January. It gives him 45 days instead of 30 to amend that budget. The budget process goes forward. We would be doing our consensus forecasting and on March 10th we would agree on what the revenues of this state would be.

By March 15th, if we have not had an agreement on a budget, we would pass our budgets in respective houses and we would form Conference Committees by March 15th. Those Conference Committees would report out on March 29th, hopefully in time to get a budget in place by April 1st.

Now, that's the essence. Failing all of that, we would have an austerity budget that would go into place on April 1st, so that the people of this state would have a budget and not have to worry and wonder on what is going to

happen and when in terms of school aid, bills being paid, welfare checks going out, Medicaid checks being paid, health care benefits, you name it. That budget would have a ten percent cut in it and the cut would be there because we would know what the revenues would be in the coming year and it would primarily be there to give us all an incentive to get a new budget in place going into '97.

Now, that's an overview of what we have before us. As I say, we've talked about it before. It's not a new concept, and if there's anyone here that thinks the way we manage this budget is the way they would like to continue in this state in the future, then we should share your thoughts now.

Thank you, Mr. President.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, I have an

amendment at the desk. I'd offer the amendment, waive its reading and ask the opportunity to explain it.

Senator Bruno, I don't want to carry on with this any more than is necessary. I understand while I was out of the room for a moment by my counsel that you were good enough to explain to the chamber that you, in fact, offered this bill earlier this year. I think we passed it as a one-house bill earlier this year and all you've done is take out a section.

Everybody understands that the Assembly, if they wanted to do this bill, could do the bill with a chapter -- not a chapter - they could just have an Assembly reprint that takes out the one section and send it over here. You say that it's important that you just keep this issue in front of the people.

Senator, my amendment, as I offered that amendment earlier this year, makes it clear that if your concept is important, it's also important when it comes to local property tax because the Democrats are very, very

concerned about the actions we take in Albany and how it reflects on local property taxes.

So, Senator Bruno, let's make a deal. I think you ought to inform the press as to the day that we handled this earlier this year -- I owe the press something. I'm always knocking the press. Let's tell them the dates so they can go to their press release stories of that day and reprint them. They don't have to work so hard today. Then, Senator, each week you introduce this bill again. We'll pass it again. I'll introduce my amendment again and we can, in the very inefficient way that you as a businessman apparently decide we ought to run this place, pass it every week and we'll make the point every week that the Democrats are concerned about property taxes and that you want to spend our time rehashing bills that have already passed.

Now, Senator, we have gone through an election a couple weeks ago. Your party has determined that they ought to be throwing jobs around the state politically and

the people in Albany County, understanding what you did, they spoke. The people in Brooklyn spoke about a different issue and we're now going in the right direction, Senator, and I know some of your people resent that, but we're now going in the right direction in this house, but the way you change that, Senator Bruno, I guarantee you, is not to repass bills that we've already passed.

Now, if this was the first week in January, I would say to you, Senator Bruno, it's a newly elected Legislature. The bill that we passed earlier this year is not live in the other house and we ought to pass a bill, make it live. I understand your commitment to an issue, but this is folly. It's really folly, and we came to Albany today in special session. The Governor wants us to do some things, and I guess at some point during the day we'll do that.

We also handled some nominations, some in a very orderly way, some in a way that you ought to be ashamed of, along with your Governor. You ought to be proud of Senator

Stafford because he was able to deal with his committee in trying to accommodate some of these absurdities but, Senator Bruno, if you want to rehash it, let's rehash it totally and from our side of the aisle, I would imagine everyone on your side of the aisle will support this amendment because certainly if we have concerns about raising taxes, we ought to get down to the nitty-gritty -- and I see my distinguished colleagues over there from Nassau and Suffolk and I know they're going to support this amendment because as a Queens County resident for some 59 years -- yes, I lived in Brooklyn for two -- I know how property taxes are handled out at Nassau and Suffolk and their great concern for it and this amendment of mine is going to help you, and when it comes to Randy Kuhl, who I know is concerned about local property taxes and its effect upon golf courses upstate, you're going to support my amendment.

SENATOR LACK: That's the lowest blow of the year.

SENATOR GOLD: Lowest blow of the

year? What are you talking about? I wanted to be invited to some of those golf courses. I admit it, Senator Lack, but let's put this thing where it's at.

We are in December. We have just finished Hanukkah. You are looking forward, some of you, to Christmas. Let's not waste our time. You've made this point earlier in the year. Go argue it out with the Assembly. If they really thought that this bill was the answer, they would pass it, but if we're going to go through this, let's go through it the right way, Senator Bruno. If we're going to do it the right way, the only right way to do it is with the Gold amendment which is going to protect, as the Democrats in this house have said time and time again, as Senator Nanula has fought for, as Senator Onorato has fought for, et cetera, et cetera, et cetera, and that is to take care of the homeowners and the property owners by giving them the same advantage.

I move the amendment.

ACTING PRESIDENT HOLLAND: The

question is on the amendment. All in favor say aye.

SENATOR STACHOWSKI: Party vote in the affirmative.

SENATOR BRUNO: Party vote in the negative.

ACTING PRESIDENT HOLLAND: The clerk will call the roll and record the party votes.

SENATOR BRUNO: Mr. President, are we going to now vote on the bill?

SENATOR GOLD: Let's see the results.

SENATOR BRUNO: No. I wanted to speak to the bill. I'm sorry, Senator. I got so carried away with your debate here.

ACTING PRESIDENT HOLLAND: Announce the results, please.

THE SECRETARY: Ayes 22, nays 34, party vote.

SENATOR GOLD: Excuse me. I'm sorry. I didn't hear that.

ACTING PRESIDENT HOLLAND:

Senator Gold.

SENATOR GOLD: I didn't hear the results.

ACTING PRESIDENT HOLLAND: 22, 34.

SENATOR GOLD: 34 against property owners in the state? Oh, okay.

ACTING PRESIDENT HOLLAND: The amendment is not agreed to.

Senator Bruno.

SENATOR BRUNO: Mr. President, on the bill.

ACTING PRESIDENT HOLLAND: Senator Bruno.

SENATOR BRUNO: I want to thank my esteemed colleague for his observations, his comments and his amendment, as well intentioned as it is. His comments, though, were well intentioned but misdirected and misguided and for this reason, Senator, we have debated this issue before and if we were back next week, which we won't be, we would debate it again. If we were back the following week, we would debate

it again and in January, we will debate it again until your side of the aisle and the Assembly recognizes that this is an issue that the people of this state want us to address in a serious way and resolve our differences.

Now, I have invited the Speaker to pass a bill. To my knowledge, Mr. President, the Assembly did not pass a budget reform bill all this year. So we are here tonight as a reminder that the people have not forgotten that we set a world's record for a late budget this year. We were within two hours of a world's record last year. I, my colleagues in this chamber today, want to avoid going forward into '97 without fixing a process that is flawed. The Speaker knows it's flawed or he wouldn't be getting a bill together. The Governor knows it's flawed and that's why he supports where we are. So this is not fun and games. I don't take this lightly. I think this is serious business.

Now, one thing, Mr. President, then I'll conclude my remarks, in my review of

this bill, is that we have in this constitutional amendment and requirements in that if we make a judgment to raise taxes over 50 million, it would take a super majority, two-thirds vote. Why? Because we have learned, when you cut spending in this state, you cut taxes in this state, you create jobs, you create economic development, revenues go up, everybody prospers. So that's the intent of what we're doing here tonight.

Mr. President, I very much appreciate your attention, your indulgence and the orderly way we are functioning here this evening.

Mr. Gold, Senator Gold, thank you very much for your comments.

SENATOR GOLD: You're welcome.

ACTING PRESIDENT HOLLAND: Senator Gold.

SENATOR GOLD: Yeah. Mr. President, with all due respect, I don't know whether Senator Bruno is serious or whether he wants a circus. When you talk about this week,

next week, Senator, we can go through this. You run this house and the people have decreed that even though you passed the bill this year and the Assembly didn't, they gained a seat and you lost two, but it's okay, Senator. If you want to have this every week of the session, have my amendment every week of the session, we'll do it. You're running the house.

Senator, it's not me. I think in the last two years you have politicized an awful lot about this house more than any other person has done that, and that's your judgment and I respect that. That's your right to do it as long as you have your majority.

Senator, by passing this bill again today, you do nothing for the budget process, and if you want to talk about the budget process, it's simple. In the first year of the Pataki administration, this house decided that it was going to pass the Governor's budget and then we went on from that. This year the Governor's budget was so terrible the first time and so terrible the second time that you

wouldn't even pass it. So don't talk to me about why the budget was late and point fingers around. At least the first year you tried to give the Governor a little encouragement and hope that he would learn from the process but, Senator, look at this year what you did as the Majority Leader of this house.

You would not put the Governor's budget before us before March 31st. You didn't even put it before us at all, and when you finally put a budget before us, Senator, if my numbers are accurate, you were about a billion one over the Governor and when we finally settled, we were 700 million over the Governor. So don't stand here and tell me the way we're going to save this state is by your bill which, if, God forbid, it had been in existence this year, you couldn't have even lived with. I couldn't have lived with it.

If this bill had been the law of this state this year, you wouldn't have lived with it because the final budget that you put out unilaterally on your own with your members

was over $1 billion more than would be allowable under your own bill.

So for God's sakes, we're here in December. Who do you think you're kidding? I mean, I have my opinion of the press. You have your opinion of the press, but you, Senator Bruno, have to have a very, very low opinion of the press to think that they are not going to understand what this is about in view of the fact of your own actions in 1996.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: Yeah. Senator Bruno, if you would yield just to one question.

ACTING PRESIDENT HOLLAND: Senator Bruno, do you yield?

SENATOR BRUNO: Yes, Mr. President.

SENATOR LEICHTER: Senator, I accept and I applaud your desire to reform the budget process. I think we all share your characterization. The budget process in this

state is awful. It hasn't served the people of this state well, and I think that your desire to change it is one that we all share, and some of your suggestions are good suggestions, and I'm talking now just about the budget process, insofar as requiring a super majority or two-thirds vote for taxes.

I happen to be -- I happen to be a real believer in democracy and majority rule. So I'm satisfied with that system, but I want to ask you one question -- two questions, okay?

The first one, if you had it in your power now to do some of the changes that need to be done absent legislation, would you do it?

SENATOR BRUNO: Yes, I would.

SENATOR LEICHTER: All right. Well, may I make a suggestion to you and get your response to it? One of the worst features, I think everybody agrees in the budget process is you end up getting three people sitting behind closed doors negotiating and they negotiate and they negotiate. I don't know what

they do because it's behind closed doors. Maybe you're playing gin rummy, but it goes on and it goes on and it goes on and, frankly, it wasn't any better or any worse -- or let me say, it was just as bad when you had, let's say Mario Cuomo, Ralph Marino and Mel Miller as when you had Joe Bruno, Sheldon Silver and George Pataki.

Why don't you state right here and now as a means of achieving reform that you will no longer participate in these closed door negotiations; you're going to do it out in the open. You're going to involve the whole Senate and in this way move towards openness, democracy and getting away from the worst feature of the budget process in this state. Would you do that?

SENATOR BRUNO: I kind of lost track of the question as you were going on, but let me just share with you, Senator, that I have advocated open meetings. You know that, I think, and that I have encouraged that whenever we meet, that it be open to the public and to the press, and I welcome that and encourage that

and do so tonight and will continue to do so, but it takes more than one individual to allow and organize and participate in open meetings.

I welcome open meetings because this house and we with the Governor are on the right side of most of the issues that hold up a budget getting in place by April 1st. So I would welcome public exposure and participation. I will commit that I will do everything I can to continue to encourage that. We will continue to encourage that because that's important, and if we have more open meetings, I do believe it will help move the process forward and by way of our conference participating, we have participated. We have opened up the process legislatively in this chamber over the last two years beyond anyone's expectation.

So when Senator Gold talks about my shortcomings, you have been here and I accept whatever your opinion is. You have your opinion and you're welcome to it, but I am proud of what we've done in this chamber to open up the process of expenditure review, the legislative

reforms that we've put in place, Conference Committees that no one dreamed would be part of our process, we put those in place. We initiated all of that, and we will continue - we will continue to ask for openness in everything that we do.

So we'll join and we'll go forward and, by the way, Governor Pataki has supported participating and opening up the process and he has demonstrated that time and time again.

Thank you, Mr. President.

ACTING PRESIDENT HOLLAND: Senator Farley.

SENATOR FARLEY: Yes. I rise to support this. You know, Senator Bruno, coming from this area, I don't think there's an issue that tears at us more than the late budget. It's giving everybody in the Legislature and everybody in elected office a bad name, a bad reputation. These late budgets are a disgrace and we have to do something to change it.

I don't know if you've noticed -

I have been around here, Senator Gold -- this house is running a lot better under Senator Bruno. We don't have any all night sessions. Things start on time and I'll tell you, if it was for passing a budget and Senator Bruno had his way, that budget would be passed on time.

As I recall, we passed a complete budget in this Senate and one that was very close to what was the final budget, but basically, this is an issue that I think we have to keep pushing on. It is an issue that needs to be done because it is embarrassing. It is embarrassing to everybody in the Legislature. It is embarrassing to the state of New York and it's something that we can correct and this piece of legislation is a way to correct it.

I support it. Everybody says they're for it, but you know what? It just doesn't happen. I think the major fault here lies in the two houses getting together. This makes us get together. It makes us do a budget on time, and I think that we have to -- we should pass this legislation again and again and

until we have some budget reform, we all should be ashamed of ourselves, but I don't really believe it's the fault of this house and when you're talking about real property -- did you want to interrupt me, Senator Gold?

SENATOR GOLD: No, I'm going to wait. I want to ask you a question, but I'm sorry. I'll give you the courtesy to finish it.

ACTING PRESIDENT HOLLAND: We have a list.

SENATOR FARLEY: You have a list, I guess, but anyway -

SENATOR GOLD: People who want to ask you questions?

SENATOR FARLEY: I don't know what the list is about, but let me just say, there's a tremendous issue out there. It's called real property taxes, particularly to upstate Senators and I don't think that there's an issue that is perhaps more poignant to all of my constituents and, you know, I don't think that the Republican party or the Governor or this house can take a second place in trying to

address real property tax reform, but I certainly think this is a good piece of legislation and I support it.

SENATOR GOLD: Mr. President, will the Senator yield to a question?

ACTING PRESIDENT HOLLAND: Senator Farley, would you yield?

SENATOR FARLEY: Yes, I'll yield.

ACTING PRESIDENT HOLLAND: The Senator yields.

SENATOR GOLD: All right. Senator, first of all, I don't want to get in debate about it, but I had an amendment a minute ago which would secure local property taxes and you voted against it. So to say you're for it and to vote against it, I don't know how that works but -

SENATOR FARLEY: I didn't say I was for your amendment.

SENATOR GOLD: Yeah. I know you weren't. You voted against it, even though that would have secured local property taxes but, Senator, this is my question. You're against

late budgets and I understand that. It's devastating. The Governor is going to introduce his budget some time in January. He's got a 30-day amendment period in February. Are you prepared, Senator, to take the Governor's budget in February and vote yes for it and put it before us?

SENATOR FARLEY: No. I don't think we have to do that. That's what the role of the Legislature is to work on that budget that is presented. Even the Governor has changes that he has to make within that 30-day amendment period.

SENATOR GOLD: Well, Senator, would you yield to another question?

SENATOR FARLEY: Yes.

SENATOR GOLD: Well, Senator, this year, 1996, the Governor introduced his budget. The Governor did his amendments and that was way before March 31st. Senator, why - maybe you can explain to me why the Republican Majority in this house didn't vote on either the Governor's budget or its own budget by March

31st of 1996.

SENATOR FARLEY: I would be very happy to refresh your memory on that. We passed a complete budget, and I recall the Majority Leader saying that this is a budget that the Governor could support.

SENATOR GOLD: What was the date of that?

SENATOR FARLEY: It was before March 31st.

SENATOR GOLD: And, Senator -

SENATOR FARLEY: I don't have it at my fingertips, but I'll tell you it was before March 31st. It wasn't March 31st.

SENATOR GOLD: I'm talking about 1996, Senator. You want to check your numbers on that? 1995, your party put forth the Governor's budget. Senator -

SENATOR FARLEY: We also put forth a budget in 1996.

SENATOR GOLD: And what was the date that it passed?

SENATOR FARLEY: I don't know,

the latter part of March.

SENATOR GOLD: Senator -

SENATOR FARLEY: I'll check with learned counsel.

SENATOR GOLD: Well, why don't you do that. I'm patient.

Senator, will you yield to another question? Senator, will you yield to another question?

SENATOR FARLEY: I got learned counsel's answer. Go ahead.

SENATOR GOLD: Will you yield to another question? I'll make it easy for you, Senator. I'll make it easy for you. When the Republican budget first came to the floor of the Senate in 1996, Senator, did you vote in favor of it?

SENATOR FARLEY: When it first came to the floor?

SENATOR GOLD: Yeah. When the Republican Majority of this house in 1996 first passed its budget in 1996, whether it was before or after March 31st, did you vote for the

budget?

SENATOR FARLEY: I believe I did.

SENATOR GOLD: Well, Senator, isn't it a fact that that budget that you voted for was $1.1 billion more richer than the Governor's budget as submitted to the Legislature?

SENATOR FARLEY: I think it was.

SENATOR GOLD: Well, Senator - if you'll yield to one more question.

SENATOR FARLEY: I think so.

SENATOR GOLD: Assuming, Senator, that you are concerned about the dollars in the pockets of your constituents as you say all the time -- and I believe you to be an honorable man, Senator Farley.

SENATOR FARLEY: Thank you.

SENATOR GOLD: That has never been an issue -- if you're so concerned about the dollars, I have to assume, Senator, that you would not have voted for a budget that was $1.1 billion richer than the Governor's budget unless you, Hugh Farley, believed that every dollar you

were voting for to be spent was absolutely necessary to run this state, to take care of the problems of the people of this state, that was a bare bones budget that did the right things efficiently and, Senator, if that is so -

SENATOR FARLEY: That's not so. Go ahead.

SENATOR GOLD: It isn't so?

SENATOR FARLEY: No, it's not.

SENATOR GOLD: Well, how much waste did you vote for?

SENATOR FARLEY: In every budget that's ever been passed here, it's not perfect, but you know there comes a time for closure and we have to vote and we had to have a budget. That budget is not perfect. You've never voted for a perfect budget and neither have I in all the years that you have been here.

SENATOR GOLD: Only because I haven't been in the Majority, but you've been in the Majority.

SENATOR FARLEY: Well, you have voted for budgets that weren't perfect.

SENATOR GOLD: Yeah, but, Senator, you're avoiding the issue.

SENATOR FARLEY: I'm not avoiding the issue.

SENATOR GOLD: The bottom line, if I can ask the question, Senator -- and maybe I just didn't ask it articulately. I'll try better -- Senator, you voted for a budget that spent 1.1 billion more than the Governor and I have to assume that Hugh Farley, who cares about his people and their pocketbooks, would have not voted for a billion more than the Governor if it wasn't necessary.

Senator, if this bill that we're talking about today, if this resolution that we're talking about today had been the law, you in effect would have shortchanged your people and the people of the state of New York by over $1 billion of necessary, necessary funding. Isn't that true?

SENATOR FARLEY: No, it's not.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT HOLLAND:

Senator Stafford.

SENATOR STAFFORD: At the direction and request of the Majority Leader, I have been working in this field and there are many others that have also, and I would suggest that we have neighboring nabobs of negativism here today.

SENATOR GOLD: Can I get a transcript? I want to quote that some day.

SENATOR STAFFORD: Neighboring nabobs of negativism. Now, as I said earlier today at the Finance meeting, we're talking about both issues here today right now, both the -- what do you call it when you change the Constitution -- the proposition and the bill. I mentioned at the meeting, as did Senator Bruno today, that we should bring this up every day and pass it and debate it until we get people understanding that some of us go to our districts and people have many things on their mind but one is "When are you going to revise the budget process" and to the Leader's credit and to the credit of many others, this is on the

front burner where it should stay, and let me suggest this.

We all have our own ideas here. I would suggest this. One point we have to make here and we have to get into law is we've got to get a fail-safe. We can talk and talk about it as long as we want, but there has to be a budget. If we don't sit down and get one timely, this does it.

I hope that the media is listening to this point. This does it. Is it perfect? No. We could debate on what this fail-safe should be. This puts the budget in place of the last year less ten percent. Therefore, there isn't necessarily an advantage for stalling but there's something there in place. I hope the media will pick that up and point that out and that is something and I'll conclude with this.

Sometimes we say this and we emphasize it too much, that perception is 85 to 90 to 95 percent to 99 percent of all of it. Well, that isn't quite true, but with our

constituents, perception is important and if there's one point, one hangup, one criticism, it's that we can't sit down and get the system whereby we'll have a timely budget. This does it. The leader has said it. Anything I would say would deserve little more than a footnote. Anything anyone else will say, I'm sure will deserve more than a footnote and with that, this certainly is a bill that should prevail.

ACTING PRESIDENT HOLLAND: Senator Goodman.

SENATOR GOODMAN: Mr. President, I must confess that during this benign holiday season, I was more than a little shocked, Senator Gold, with what I have to call a - knowing you to be a good-natured fellow - knowing you -- maybe if we can get the hirsuteness out of the way between you and me, we can do this.

SENATOR GOLD: Excuse me. Is his microphone on?

SENATOR GOODMAN: Senator Gold, I was duly shocked by your vitriol directed at the

Majority Leader in your accusations concerning the assertion that he has politicized this house more than any other leader. The fact of the matter is that that is completely in contraven tion of the facts. You know that your side has been fulsome in its praise of the Majority Leader for his reform of this house, for the fact that we now run the railroads on time here. We do not have all night sessions. We have procedures which are far more open than at any time in the history of this body and you and I have both been here for at least a quarter of a century, I think.

You also know that there have been reforms which have made it available to the public in minute detail, the expenditures of every Senator and his office and his payroll. In short, there's been a good revolution in this house which has enlightened the public and has made us a far better body.

So I really must take respectful exception and assume that something you ate for lunch might have disagreed with you because it's

not in your nature to speak with such extraordinary political persiflage.

Let me just say, though, that in regard to the serious matter before us, that the budget is a very complicated process in which mighty forces come into conflict. There are different philosophies of life and of government and they're all reflected in the fact that a budget sees these through different lenses and brings about different proposed solutions to the suffering of our fellow New Yorkers and to the needs that they have and hope they will solve.

So, Senator, I would just like to say to you that in the bills before us, as the Majority Leader and the chairman of Finance have properly pointed out, we have a series of specifics which are designed to come to grips with making this process work better. It's not easy to compose the differences that we all have and that's why budgets often run late, but the question that the Majority Leader and our conference is trying to solve is, can we find a way to lubricate the levers of government to

make them work better and quicker and we are not dealing in abstractions here. This is a series of specific measures which we've debated internally and have honed to a fine, I think point of efficiency and I'll just touch on a couple of them.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Gold.

SENATOR GOLD: Yes. Will the distinguished gentleman continue to yield?

SENATOR GOODMAN: As soon as I'm through, I'll be glad to.

SENATOR GOLD: Thank you.

SENATOR GOODMAN: I want to point out to you that we institute a process of early agreement among all parties on the level of available revenues. We consolidate the executive budget submission in no more than 18 substantive bills. We rationalize the raising of revenues by instituting a two-thirds majority requirement with substantial increases in revenue sources, that we have a procedure called

the austerity budget which Senator Stafford has just appropriately outlined to you which seeks to prevent the government from grinding to a halt as it unfortunately has been forced to do from time to time in the past as we've tried to compose our differences.

Senator Gold, this is serious stuff. We do not want to be in a position where the public looks to us and says -- and I quote directly from one of my constituents -- "Why can't you jokers come up with a budget on time for a change?" This reflects badly on each and every member of this house and it certainly is something which does not serve the public interest.

So this is a genuine effort thoughtfully generated by a whole group of Senators of which I'm a member to try to come up with a means of accomplishing a specific purpose, and I think you do yourself and us little justice by characterizing this as a political ploy. It's nothing of the sort. It's rich in substance and its objective is an

admirable one and it would help all of us if we could pass these measures in both houses and institute them into law.

SENATOR GOLD: Mr. President, would the Senator now yield?

ACTING PRESIDENT HOLLAND: Senator Goodman, do you yield to a question?

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT HOLLAND: The Senator yields.

SENATOR GOLD: Senator, you recall our budget fiascoes this year and, Senator, in 1996 when we finally did pass a one-house budget in this house, whether it was in March, whether it was waiting for the Governor in May, whatever it was, did you vote for that, the budget?

SENATOR GOODMAN: Senator, I realize your effort is to cross-examine each and every member with respect to that budget and if you don't mind, I'll answer you in this fashion. There are differing opinions as to the levels of expenditure which were appropriate for

the people of this state. We had our opinions here in the Senate as reflected in the action we took and the Governor had his opinions and the Assembly had their opinions. These were not all identical, obviously and it took time in the crucible of discussion to work them out.

The fact of the matter is that that is precisely the reason the budget is late. We have serious disagreements as to how much money can be saved in welfare, as to how much taxes can be cut in this state, as to how much government can be down-sized in this state, as to the extent to which we can generate the job economy of this state. These are not trifling matters and it takes time to debate them and to work them out and, unfortunately, as our problems have expanded exponentially, the time in which to solve them has remained the same and we have invariably run late because of serious debate.

So that I would point out to you most respectfully that you minimize and trivialize the process by suggesting that one

house or the other house disagreed with the Governor's budget. Of course, we disagree with his budget and you too disagreed with it. If you had your druthers, I suspect based on past performance, you would have greatly overexpended the amounts that we thought were appropriate.

So let it be said simply that the process again is a serious one designed to solve a serious problem which cannot easily be solved. It's not easy to do this budget on time. It's a $63 billion document. Of course, there's disagreement and, of course, it's tough to bring it in on schedule and this says if we can't do that, don't penalize the people. Have an austerity budget which will at least keep the engine of government going while we try to resolve our differences.

SENATOR GOLD: So is that yes or no, Senator? I just asked you a simple question.

SENATOR GOODMAN: I'll let you infer it any way you choose.

SENATOR GOLD: Senator, I don't

want to infer anything. I want you to be able to speak for yourself. You are one of the most articulate people who has ever served here, the statesman of the state Senate.

Senator, I'm just asking you when we passed our budget, our one-house budget in 1996 the first time, did you or did you not vote for that budget?

SENATOR GOODMAN: I'll answer your question with a question. What is the relevance of that to this debate?

SENATOR GOLD: Very simple, Senator. I didn't plant that question, all right? Senator, very simple. You voted for, I understand and, Senator, you voted for the budget which was a billion one more because coming from your area of New York City, I think maybe you were a little more sensitive to some of the social issues than some of your colleagues but, Senator, you voted for a budget that was $1.1 billion more than the Governor. Under this bill -

SENATOR GOODMAN: Is this a

question or may I be seated?

SENATOR GOLD: Yes. It's a question, but you asked me one. It's a question. Senator, under this bill, if it were the law this year, the budget would have been cut, the austerity budget, by approximately $3.3 billion because -- I'll wait -- it would have been cut by about, Senator, $3.3 billion at least because that's not -- that's ten percent off which means, Senator, that the people of this state would have been stuck with a budget that was $4.3 billion less, Senator, than the budget you voted for. Now, are you prepared to say to the people of the state of New York that you voted for a budget that wasted 4.3 billion, that threw away 4.3 billion, that didn't need that 4.3 billion?

SENATOR GOODMAN: Unfortunately, Senator, you reveal in the question a complete lack of understanding of the mechanism we propose. The mechanism we propose says that if we can't agree on a budget by a date certain, we will at least provide an austerity amount which

is ten percent less than the prior level. It does not permanentize that amount for the balance of the fiscal year. It gives us time to let the state continue to operate so we don't have people on the state payrolls not able to support their children and their baby-sitters and pay their tuition and the like. It gives us the chance to have breathing room in which to negotiate further so that we don't paralyze the state.

I'm shocked that you don't understand that, Manny. That's something - Senator -- that's something which we discussed at great length and I think all parties agree we must not penalize the state while we try to compose these major differences.

SENATOR GOLD: Will the Senator continue to yield to one question?

SENATOR GOODMAN: Yes, I will.

SENATOR GOLD: Senator, I don't understand why you with your intelligence and your financial background don't understand that if this were the law of this state the way it is

right here, Senator, that there's no inclination or necessity for some of the people on your side of the aisle who haven't shown the slightest inclination to care about the poor -

SENATOR GOODMAN: Oh, please, Senator.

SENATOR GOLD: -- or people who are in need in this state to be able to get a budget because they've got a budget that takes care of the rich.

The expression was used earlier, Senator, that this was a fail-safe. It's a fail-safe for the rich because the bottom line is if you're cutting the budget ten percent every year, those people will take care of themselves, but the people who are in need, the people who need us in their disaster or in their hope to get a job or get education, those are the people who are not being helped in a fail-safe. Those are the people who are disasterified under this bill and I'm shocked, Senator -

SENATOR GOODMAN: Senator, what's

the question?

SENATOR GOLD: -- because I know you have a heart in there. I know you, and this proposal has no heart.

SENATOR GOODMAN: Senator, I must say with all due respect, your effort to inject a note of class warfare in this debate, it comes with unseemly ill grace. The simple fact is there's not a responsible member in this house who would press down upon the poor conditions which were not supportable by them.

You know full well that even in our welfare reform package there's been carved out a series of measures which are designed to try to protect the poor and to give a safety net. You may disagree on how that should be done, but we're dealing with entire cultures and methods of attack on how best to serve society, and certainly I would ask you to credit each and every one of the members of this house with pure motives in trying to solve problems in the best way. You may not agree with it but don't tell us that it's a rich versus poor scenario.

That's preposterous. You know it and everyone within the sound of my voice knows it.

ACTING PRESIDENT HOLLAND: Senator Marchi.

SENATOR MARCHI: Mr. President, I recall when we passed the budget on March 31st, I believe it was, and it was 1.1 billion over. I'm not ashamed of having voted for it. Probably I felt it didn't go far enough, but in any event, we were -- the difficulty that we were operating under I called attention to it on this floor.

The problem is that we don't have anything happening over there. During those first three months, no public discussion was held in the Assembly on the budget for or against anything constructive. We cannot operate. We have to resort to heroic measures to bring about some impact, something that will provoke them from making the statement. What does it prevent them from passing a bill and sending it to us? What does it prevent them from sending us a statement, a consensus of

where they are? Nothing, except they are incapable, and I guess out of sympathy Shelly probably figures, Well, maybe if I say no long enough something will happen that I'm satisfied with, but they are incapable of making an affirmative presentation of where they stand.

So actually we have unicameral legislation and when you have unicameral legislation that still has to travel down there, we have to have some expression. This is an attempt -- this is an attempt to deal with a second chamber that's an echo chamber at best but does not function. It's not your fault because they are the same party. I don't know whether the other side would be any different, but that is the problem we face. All of us, Republicans, Democrats, the entire membership of this Senate are dealing with a problem that exists down there where they are not reflecting as you are. At least you're telling us something. You're being critical. That's okay too. That's part of the dialogue that should be going on, but it's not going on down there, not

going on down there. Can anybody show me even a scintilla of evidence, and I'm not talking about -- there are very fine legislators who get bills passed and get signed into law and they're good, but I'm saying on the matter of the budget where you need a consensus of an institution, there is an institutional absence that doesn't do you any credit, you on the same party as the Majority. It doesn't do you any discredit because I know that if you were there, you would have a response. You have a response here. Why can't they give us a response? That is the problem we are contesting and faced with, an institutional failure to exercise the responsibility that is every bit as much as theirs as ours.

Now, I don't look at any of you critically on the other side of the aisle. You're advancing arguments that they ought to be doing and forcefully, but we are -- we are behaving positively because if we don't, it stops in midstream.

Do I have any apologies to make

for the vote I cast on that ballot? Absolutely not, absolutely not, but let them do something like that. Let them express themselves. It certainly would benefit the whole process here and lead to speedier solutions, and I submit what Senator Bruno offered hopefully will have that impact that will be productive and conducive to firm statements and to firm positions that we can negotiate with and act out in our deliberations in passing a budget for this year.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1813 are Senators Abate, Connor, Gold, Kruger, Leichter, Markowitz, Onorato, Paterson, Santiago, Smith and Senator Stachowski, also Senator Nanula.

Ayes 44, nays 12.

ACTING PRESIDENT HOLLAND: The bill is passed.

The Secretary will read, please.

THE SECRETARY: Calendar Number 1814, by Senator Bruno, Senate Print 7981, concurrent resolution of the Senate and Assembly proposing amendments to Article III of the Constitution.

ACTING PRESIDENT HOLLAND: Call the amendment -- the Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56 -- in relation to Calendar Number 1814, those recorded in the negative are Senators Abate, Connor, Kruger, Leichter, Markowitz, Montgomery, Nanula, Paterson, Santiago, Smith and Stachowski. Ayes 45, nays 11.

ACTING PRESIDENT HOLLAND: The resolution is adopted.

Senator Dollinger.

SENATOR DOLLINGER: Mr.

President, I wasn't present in the chamber. May be I recorded in the negative on Calendar Number 1813, which is the one before us?

ACTING PRESIDENT HOLLAND: Without objection.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT HOLLAND: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to be recorded in the negative on Calendar Number 1813.

ACTING PRESIDENT HOLLAND: Without objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT HOLLAND: The Secretary will read.

THE SECRETARY: Calendar Number 1815, by the Senate Committee on Rules, Senate Print 7976, an act to amend Chapter 709 of the Laws of 1996.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT HOLLAND: The bill is passed.

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Majority in Room 332 of the Capitol and the Senate will stand at ease.

ACTING PRESIDENT HOLLAND: There will be an immediate meeting of the Majority in Room 332 of the Capitol and the Senate will stand at ease.

Senator Paterson.

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

ACTING PRESIDENT HOLLAND: There will be an immediate meeting of the Minority in Room 314. The Senate will stand at ease.

(Whereupon, at 6:32 p.m., the Regular Session of the Senate stood at ease until 11:33 p.m.)

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: We'll now call an immediate meeting of the Rules Committee and stand aside for that report.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee, an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332, immediate meeting of the Rules Committee in the Majority Conference Room, Room 332. The Regular Session will stand at ease pending the report of the Rules Committee.

(Whereupon, the Senate stood at ease from 11:34 p.m. until 11:50 p.m.)

ACTING PRESIDENT KUHL: The Regular Session will come to order.

Senator Johnson.

SENATOR JOHNSON: Mr. President, now I would like to have -- there's a report of

a standing committee.

ACTING PRESIDENT KUHL: Return to the order of reports of standing committees. There's a report of the Rules Committee at the desk.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills direct to third reading:

Senate Print 6559-B, by Senator Nozzolio, an act to amend the Retirement and Social Security Law;

7973, by Senator Seward, an act to amend the Public Health Law, in relation to continuation;

7982-A, by the Senate Committee on Rules, an act in relation to authorizing the city of Yonkers;

7811-A, by Senator Hannon, an act to amend the Public Authorities Law, in relation to the creation of the Nassau Health Care System;

And 5993-B, by Senator Spano, an

act to amend the Public Authorities Law.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: I move that we accept the report.

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 Johnson.

SENATOR JOHNSON: Please call up Senate 6559-B.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Senator Nozzolio moves to discharge from the Committee on Rules Assembly Bill Number 11205-B and substitute it

for the identical Third Reading Calendar 1821.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1821, by the Assembly Committee on Rules, Assembly Print 11205-B, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Nozzolio on the bill.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my colleagues, I'm sure we all agree New York State's correction officers are in the front lines of defense from society's most dangerous criminals. It's dangerous work but it's work that must be done to provide safe streets in our city -- in our cities across the state. Correction officers put their lives on the line to protect the people of New York State. We owe them and their families a tremendous debt of gratitude.

What this bill does before us today is correct an inequity in the current law for correction officers who are injured in the line of duty. Currently both Tier I and Tier II, those employed under those systems receive three-quarters accidental disability when they're injured on the job. Meanwhile, Tier III and IV correction officers only receive one-third accidental disability benefits while they're injured performing the same job. So picture two correction officers responding to the same incident, both injured in the line of duty, one a Tier II member, another a Tier III member, same injury, same incident. One would receive 33 percent disability, the other 75 percent disability for the same injury in the line of duty.

What this bill does, Mr. President, my colleagues, is correct this inequity by providing three-quarters performance of duty disability retirement for all correction officers injured in the line of duty while working to protect us and keeping those behind

our prison walls who are dangerous to society.

It's with great appreciation to Governor Pataki, Senator Bruno, Senator Stafford, Senator Volker and others who worked very hard to -- along with members of Council 82, the correction officers' union, to bring this bill before us today.

Our governor, Governor Pataki, deserves particular credit for his tremendous leadership in supporting this measure, in fighting for this measure, in building the momentum necessary for its passage.

Governor Pataki's support on this issue underscores his understanding of the tremendous difficulties a correction officer faces on a daily basis in his commitment to work for us and his commitment to improve working conditions for them.

I'd also like to thank Council 82 Vice-president Mike Graney, President Rich Abrahamson and special issue task force member Lou Delmonte for their efforts in bringing this bill before us. All the correction officers of

this state owe them a tremendous debt of gratitude as well.

Mr. President, my colleagues, it is a measure that is long overdue. It's before us today. I believe it should be passed, and I urge you to support the measure.

Thank you very much.

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

The Chair recognizes Senator Stafford.

SENATOR STAFFORD: Mr. President, in complementing Senator Nozzolio, there's an excellent release, I suggest anybody just cross his name off and put their own in and it reads very well, but on a serious note and I mean a serious note, I do compliment Senator Michael Nozzolio, as he mentioned, the Governor, Senator Bruno, everyone who worked very hard. He has stated very, very eloquently why this should prevail and I would say, for his reasons and many others, there are specific reasons why this should be passed into law and I certainly,

together with Senator Nozzolio and others, urge its adoption.

ACTING PRESIDENT KUHL: Senator Farley, on the bill.

SENATOR FARLEY: Yes. I just rise to support this bill, and I'd like to thank Senator Nozzolio for the tremendous effort that you put in at this eleventh hour. These are tough nights and this bill would not have happened without the effort of a number of members in this chamber, particularly led by Senator Nozzolio. This is an inequity that needed to be corrected. It will be corrected and it's long overdue, and I'm very pleased to support it, and I would hope that everybody in this chamber would support it.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1818, by Senator Seward, Senate Print 7973, an act to amend the Public Health Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Seward, an explanation of Calendar Number 1818, Senate Print 7973, has been requested by the Acting Minority Leader, Senator Paterson.

SENATOR SEWARD: Certainly, Mr. President. This legislation simply extends the deadline for filing an application for advanced life support first response services to allow those operations who have been in continuous practice to comply with Chapter 445 of the Laws of 1993.

Back in 1993 under Chapter 445, this Legislature substantially revised the -

Article 30 of the Public Health Law which governs the prehospital emergency medical services.

These amendments include a grandfather provision for the advanced life support first response services, those of which were in bona fide operation prior to January 1, 1993.

Under the grandfathering language of that 1993 law, the Legislature's intent was to exempt the existing ALS first response ser vices from having to go through the very lengthy and complex certificate of need provisions and that whole process, and the statute set a dead line for the existing ALS first response teams to provide documentation of their operation to the Department of Health.

This bill extends that deadline to January 1st, 1998 so that the remaining ALS, the first response services units, can get their documentation in to the Department of Health.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Seward would yield for a question.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, I really don't have any problem with the contents of the bill. I'm just wondering at this point three years after we passed it, was there any particular reason why you're acting to extend the coverage or why would we not just try to pass a law that would make it permanent?

SENATOR SEWARD: Well, basically there are some 90 of these ALS first response units around the state and thus far because of what I would describe as poor communications and inattentiveness, there are only five units that have actually been grandfathered, and so it's

apparent that more time is needed and this bill would give it more time for them to complete the process of submitting the documentation.

SENATOR PATERSON: Thank you, Mr. President.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1819, by the Senate Committee on Rules, Senate Print 7982-A, an act in relation to authorizing the city of Yonkers.

ACTING PRESIDENT KUHL: Senator

Johnson.

SENATOR JOHNSON: Is there a home rule message at the desk?

ACTING PRESIDENT KUHL: There's a message of necessity at the desk, Senator Johnson.

SENATOR JOHNSON: I move we adopt the message of necessity.

ACTING PRESIDENT KUHL: The motion is to adopt and accept the message of necessity at the desk on Calendar Number 1819. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

There is a home rule message at the desk.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Spano, an explanation has been requested by Senator Paterson.

SENATOR SPANO: Mr. President,

this -- the city of Yonkers has for a long time been going through court-ordered integration. The mayor and the City Council have been in negotiations with the federal court and with the NAACP in the City to try to get control of their own destiny once again.

As a part of the negotiations with the federal court, there has been an agreement reached to build housing in the city of Yonkers. The agreement has been reached with the federal court, with the NAACP and the City Council and the mayor have designated a five acre parcel of land on East Grassy Spring Road as an area where they want to build 17 duplex housing -- affordable housing. That land is currently designated parkland. What -- so that the City Council met tonight, gave us a home rule message asking us to dededicate that parkland to allow them to have control over the parkland so that they can utilize that to comply with the order of the United States District Court and they have designated an equal amount of parkland in another section of the City.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Senator Spano moves to discharge from the Committee on Rules Assembly Bill Number 10682-B and substitute it for the identical Third Reading Calendar 1816.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1816, by the Assembly Committee on Rules,

Assembly Print Number 10682-B, an act to amend the Public Authorities Law.

SENATOR PATERSON: Explanation.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT KUHL: Senator Spano, did you hear an explanation has been requested by Senator Paterson.

SENATOR SPANO: This bill would authorize the county of Westchester to transfer control of the management of the Westchester County Medical Center to a new Westchester Health Care Corporation which would be a public benefit corporation that would be established for the purpose of running the medical center.

The purpose of this would be to give the medical center the type of flexibility that they need to be a lot more competitive, to provide a good quality of services to the people of Westchester, to reduce the taxpayer support.

This bill has been negotiated with the county legislature. It's been agreed upon by the bargaining unit, CSEA, who repre sents the employees and protects the employees

of the medical center, and there have been safeguards written into it to make sure that we maintain public accountability and provide the continuing quality of services to the people of Westchester.

SENATOR LEICHTER: Mr. President, would Senator Spano yield, please?

SENATOR SPANO: Yes.

ACTING PRESIDENT KUHL: Senator Paterson, is that explanation satisfactory? You did have the -- you did have the floor. Do you wish to continue or do you yield to Senator Leichter?

SENATOR PATERSON: Actually, if Senator Leichter would yield just for a moment.

SENATOR LEICHTER: Certainly.

SENATOR PATERSON: Mr. President, if Senator Spano would yield for a moment.

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

SENATOR SPANO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: If I could just get everybody to yield, we might get out of here.

Senator Spano, this same method of operation that you're proposing is also done in Nassau County. What is the distinction in which the public benefit corporations are set up in similar fashion to Nassau County? We talked about this on July the 3rd, and I remember that part, but I don't remember what the distinction was.

SENATOR SPANO: Currently there is no public benefit corporation for hospitals in Nassau County. Are you talking about legislation that's been presented to create that, Senator?

SENATOR PATERSON: Yes, that's right, Senator.

SENATOR SPANO: I'm not totally familiar with all the contents of the Nassau County bill, but these two bills are very, very similar in nature except for the section that comes -- that describes the governance and the

appointment of the members of the board.

The corporation -- the governing corporation, the language that is in this bill is different than the language that is in the Nassau County bill, inasmuch as these -- in this corporation, there are 15 voting directors that are appointed by the Governor with some certain criteria. Others are appointed by the county legislature with the concurrence of the county executive. The Nassau County bill, I believe, has appointments by the Governor and appointments by the county executive with the concurrence of the county legislature.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Spano would yield. Actually, Senator Paterson -

ACTING PRESIDENT KUHL: Senator Spano, do you yield to Senator Leichter?

SENATOR LEICHTER: -- with his usual prescience asked actually the question that I was going to ask, but -- because I was

intrigued at the fact that in the Westchester bill -- we have two bills before us. We're now dealing with the Westchester bill. One sets up a hospital corporation in Westchester. One sets it up for Nassau. You would think they would be the same, but for the Westchester bill, the appointment of the directors is essentially by the Governor, which is difficult to understand. In Nassau, the appointment is by the county executive, which seems to make sense. Why the difference, Senator?

SENATOR SPANO: This bill, Senator, was negotiated with the Assembly - between the Assembly and the county. The Assembly indicated, in fact, that they would prefer to have this method of appointment. This came -- this language came to us by the Assembly Majority where they would prefer to have the members appointed in the fashion that's described in the statute. I'm not sure - frankly, I'm not sure why there's a difference with the Nassau piece -- legislation and I'm not sure the -- what negotiations are taking place

between my colleagues from Nassau and the Nassau Assembly colleagues as well.

SENATOR LEICHTER: Senator Spano, if you would continue to yield. It does disturb me because it seems to me that, first of all, the county health corporation or authority as this is, that the appointment should be by the county executive, but for some political reason guiding the Majority in the Assembly, it was their desire to have the appointments go through the Governor. An appointment, of course, is being made by the Speaker. An appointment is made by the Majority Leader of this house. I don't think it's appropriate. I think the Nassau model is the one that makes sense. Similarly in New York where we have a Health and Hospitals Corporation, the appointments are made by the mayor. I fail to understand except for some arcane political reason which maybe somebody once whispered in your ear and you might remember.

SENATOR SPANO: That's not entirely accurate to say that, Senator

Leichter. The eight directors that would be appointed by the Governor are solely the Governor's appointments. If you look at lines 15 through, you'll see that they are, in fact, appointments that are made from the recommendation of the county executive, the recommendation of the Legislature and the Speaker of the Assembly and the Majority Leader of the Senate.

So technically it's the Governor who does make those appointments there but they're upon the recommendation of the -- of those individuals as I described, but I think you can make an argument that this will supply some additional degree of independence from the local politics to do it in this fashion.

SENATOR LEICHTER: To have the Majority Leader who comes from Rensselaer County and the Speaker who comes from Manhattan make these appointments. Well, that's one way to look at it.

Senator Spano, if I could ask you a question that also concerns me and it would

seem to me ought to concern the people of Westchester. As I see the powers of the corporation, among the powers that they may exercise is the power of condemnation which, of course, is a very ultimate power. Why is it necessary to give that authority the power to condemn land in Westchester County?

SENATOR SPANO: In this legislation, what we are doing is giving the county -- we're trying to protect the county of Westchester by providing for a lease arrangement between -- for the land between the county of Westchester and the new public benefit corporation and the powers of condemnation are allowed in the statute but will be a part of an agreement that will be reached between the county of Westchester and the public benefit corporation, and part of what I'm told is just to protect and to allow the public benefit corporation and the issuance of their bonds to get a much more competitive type of rating if they can maintain that type of control.

SENATOR LEICHTER: Senator Spano,

if you would be good enough to continue to yield.

SENATOR SPANO: Yes.

SENATOR LEICHTER: Isn't it true that giving it the power of condemnation has absolutely nothing to do with the issuance of bonds? It has nothing to do with the marketability of the bonds or the rates at which these bonds are going to pay interest. It just seemed -- and I don't see anything in here - and that was really -- my other question is where does it say that before exercising the power of condemnation that it has to enter into some agreement with the county of Westchester?

SENATOR SPANO: I didn't say prior to condemnation, but prior to the establishment of this agreement. After this public benefit corporation is created, there will have to be an agreement that will be reached between the county of Westchester and the public benefit corporation that will describe the type of services that would continue to be provided.

SENATOR LEICHTER: Am I not correct, Senator Spano, that the power of condemnation under this bill can be authorized by the authority without the prior consent of the county of Westchester either through its county executive or through its legislative body?

SENATOR SPANO: That is correct, yes, and that will be given to the discretion of the members of the governing board of the public benefit corporation.

SENATOR LEICHTER: Senator, if you would -- if I can ask you another question.

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

SENATOR SPANO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: You finally answered my question whether in Nassau County a similar power was given the authority, and I see that it is -- well, I'm not sure that it is. I just want to compare the two for a moment.

Yes. I see that same power exists.

Senator, finally, let me ask you, have there been hearings by the county legislature in Westchester County or any other hearings relating to the establishment of this authority?

SENATOR SPANO: There have been -- this study has taken some two years from the county legislature. There have been a number of public hearings in Westchester County. The board of legislators as well have a consultant that they brought on board to take a look at public benefit corporations, for instance in Dade County, to take a look at how that public health corporation did perform its function there and there's been ample opportunity, Senator Leichter, in Westchester for people's voices to be heard. As a matter of fact, what we tried to do is to make this as fair and open a process as possible. There were a number of concerns that were raised relative to the employees, and as I noted in the beginning that the CSEA who represent most of the employees at

the medical center are very enthusiastic about the passage of this measure.

SENATOR LEICHTER: Senator, is there any obligation that the state of New York is assuming in relation either to the bonds that are issued or any of the debts or activities of the corporation?

SENATOR SPANO: No.

SENATOR LEICHTER: I see that in the Nassau County bill there's a specific provision that the state shall not be liable on the corporation's bond. Is there a similar provision in the Westchester bill?

SENATOR SPANO: Yes, there is. I'd have to find it, but I know it's in here somewhere.

SENATOR LEICHTER: I found it, Senator. It's on page 20, line 18.

Thank you.

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

(There was no response.)

Hearing none, the Secretary will

read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1817, by Senator Hannon, Senate Print 7811-A, an act to amend the Public Authorities Law.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill

is passed. Can we have a little order in the house, please. Members take their seats.

SENATOR BRUNO: Mr. President, there being no further business to come before this session -- Regular Session, I move that we adjourn subject to the call of the Majority Leader with intervening days being legislative days.

ACTING PRESIDENT KUHL: Without objection, the Senate Regular Session stands adjourned subject to the call of the Majority Leader, all intervening days to be legislative days.

(Whereupon, at 12:24 a.m., December 18, 1996, the Regular Session of the Senate adjourned.)