ALBANY, NEW YORK

February 10, 1997

3:04 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

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

THE PRESIDENT: The Senate will come to order. Would you please rise and join with me in the Pledge of Allegiance.

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

The invocation today will be given by Reverend William Bazemore. He is Pastor of Emanuel Church of God in Christ in Brooklyn. Reverend?

REVEREND WILLIAM BAZEMORE: Father, the Son and the Holy Spirit, I come to You today to ask You, let Your blessing smile on everyone here. Let everyone know that You are real. Let everybody know that You're the God that made everything and I think You'll rule it Your way. But, Father, make the men and women understand You will rule it Your way whether we like it or not, but help us to be ready, help us to be -- let justice come in.

Father, we are here today asking You to look on everyone here today, forget about what party they are from, but we want justice. Let every bill that they have in today be justified by You, if they justify the bill, You

will vote upon it. Father, I'm asking You right now to stand, let us be able to understand Your will more and more. We look at the situation that happens, but one thing I'm asking You in the name of Jesus. Men and women don't understand what has happened to this great nation. Our great nation has fallen, but we don't understand what this is, but I'm here to tell You what You told me. When men and women took the prayer out of the schools and the churches, that was all right because we had so many denominations that has said God be with You, but there is one thing I'm asking You to do. Let everyone in every coatroom everywhere, have three minutes of silent prayer, just three minutes nobody says nothing, and You will see this world turn upside down. You will see men and women understand because there is somebody can call Your name. I don't know who it will be, but if some way it started from the children. If we don't change the situation we have now, the world is going back all the time. This is the greatest nation in the world, but we know what we're built upon. It's built and founded upon in God we trust, and we forgot

about doing it saying we don't need the prayer in the schools. I'll go along with that, but somebody has got to realize one thing. We need to have silence, only three minutes before we start anything. If you just have three minutes of silence, God honor that, and the world would be different. You wouldn't have so many people commit suicide. Look at the hurts of our young people. It's a sad thing I see where the young people are committing suicide all over the world, but what it is because we forgot about the foundation that we're built upon.

I want everybody here to forget about their party, forget about what party they are, just say, We come here for justice. We want justice in every mayor, every governor, the governor and every mayor of every city in this world, even in New York State. Come to justice and if a bill is not for justice, don't let it pass. Build for justice. Look at your young people don't have nothing to do. Lord, look at the young people don't have nothin' to do, but the homeless people, they got no right to be the homeless people in the city. You made a way for all of us, and we can, all we got to do is trust

and obey You. Make a job for these young men. Make a job for the homeless. Don't let them walk around doin' nothing. Make a job, some kind of job. I don't know what job You can make. Make a job and then God will honor them. My book says a man don't work, he should not eat and I stand on that word of make a job but how can you not feed a man when he can't find a job.

I want this to be justice in all this Senate and everyone in this courtroom, just think about it. Think about what we got that's happening, think about it and look at what is happening, the suicide people, look at the young people. The young people, I say the old people may do it because they're sick, but now, Father, I'm asking You to test the heart of everyone in here and let them realize who You are. Let the spirit flow that nobody need be sick as long as the session go on. Let it be all one accord. Let them realize who You are. Let them realize that nothing in the world is too hard for You to do and I'm trusting You that I can -- I know You hear my cry. Can You hear my words, Lord don't leave them, and let them understand that You are

real. Let them understand that You made everything and You can rule it. This we ask in the name of the Father and the Son and the Holy Spirit. In Jesus' name. Amen.

THE PRESIDENT: Amen. Thank you.

The reading of the Journal.

THE SECRETARY: In Senate, Friday, February 7th. The Senate met pursuant to adjournment. The Journal of Thursday, February 6th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: I believe there's a privileged resolution at the desk by

-- no? We'll do the privileged resolution later. O.K.

At this time there's an immediate meeting of the Finance Committee in Room 332 of the Capitol.

THE PRESIDENT: There's an immediate meeting of the Finance Committee in Room 332.

Senator Skelos? Senator LaValle, are you prepared to make your statement?

SENATOR LAVALLE: Yes. Madam President, had I been in the chamber on Wednesday, February the 5th, I would have voted in the negative on Calendar Number 111, Senate Bill Number 1664.

THE PRESIDENT: So noted. Thank you, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time, if we could take up the non-controversial calendar.

THE SECRETARY: Calendar Number 35, by Senator LaValle, Senate Print Number 303, an act to amend the Education Law.

SENATOR STAVISKY: Lay aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 38, by Senator Levy, Senate Print 70, an act to amend the Penal Law, in relation to the offense of assault in the second degree in certain instances.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 40, by Senator Volker, Senate Print 397, an act to amend the Penal Law, in relation to the issuance of licenses to have and carry pistols.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 44, by Senator Holland, Senate Print 454, an act to amend the Penal Law, in relation to the license to carry or possess a pistol within the state.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 48, by Senator Johnson, Senate Print 502, an act to amend the Penal Law, in relation to the administrative provisions.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 68, by Senator Johnson, Senate Print 324-A, an act to amend the Public Health Law and the Penal Law, in relation to establishing ketamine as a controlled substance.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 12. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

73, by Senator Seward, Senate Print 377, an act to amend the Public Service Law, in relation to telephone blocking services.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 74, by Senator Seward, Senate Print 398, an act to amend the Public Service Law, in relation to restricting access to telephone messages.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 76, by Senator Stafford, Senate Print 305, an act to legalize, ratify and confirm the acts and proceedings of the Board of Education of the Bolton Central School District.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 80, by Senator Goodman, Senate Print 440, an act to amend the Vehicle and Traffic Law, in relation to requiring motor vehicle repair shops to be registered.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Present, Senate Print 526, an act to amend the General Municipal Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 89, by Senator Holland, Senate Print 647, an act to amend the General Municipal Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 90, by Senator Saland, Senate Print 683, an act to amend the County Law, in relation to exempting public safety agencies.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 99, by Senator Present, Senate Print 538, an act to amend the Penal Law, in relation to lawful possession of weapons by persons 11 years of age.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 99 are Senators Kruger, Montgomery and Paterson. Ayes 49, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the reading of the non-controversial calendar.

SENATOR SKELOS: Mr. President, at this time, if we could return to motions and resolutions, I believe there's a privileged resolution at the desk by Senator Connor. I ask that it be read in its entirety and that you then recognize Senator Connor.

ACTING PRESIDENT KUHL: We will return to the order of motions and resolutions and the privileged resolution by Senator Connor at the desk will be read in its entirety.

THE SECRETARY: By Senators Connor, Montgomery and Gentile: Legislative Resolution paying grateful tribute to the life and accomplishments of the Honorable Eileen C. Dugan, New York State Assemblywoman of the 52nd Assembly District.

WHEREAS, the members of the

Senate of the state of New York are greatly moved to pay reverent tribute to Eileen C. Dugan, Assemblywoman of the 52nd District and cherished friend and colleague;

Assemblywoman Eileen Dugan passed away on November 8, 1996 at age 51, after a courageous four-year battle with breast cancer, less than three days after her reelection to a ninth term by an overwhelming majority;

Eileen Dugan was a woman who took the experience of life, the joys and the sorrows, and mixing them with her own grace and creativity, caused them to work together for good in the lives of her family, friends, colleagues and constituents. We who remain seek fittingly to recognize the untimely completion of her illustrious life;

Eileen Dugan was born on April 15, 1945 in Carroll Gardens, the same community in which she lived and later so served as Assemblywoman for 16 years. She attended local schools and the Grace Business Institute. From 1963 through 1974, she worked for Joseph H. Oliphant and Company;

Concern for her Carroll Gardens

community and the quality of life of its residents drew Eileen Dugan into politics. An early community activist, she was a founder of the Carroll Gardens Association and fought to clean up the Gowanus Canal;

Eileen Dugan quickly developed a true appreciation for public service and a passion for politics. A youthful reformer, she helped establish the Bay Ridge Democrats and the Independent Neighborhood Democrats, firmly believing in the effectiveness of grass root organizations;

Recognizing her intelligence, commitment and determination, in 1974, Eileen Dugan was named Special Assistant to the Comptroller of the city of New York;

In 1980, Eileen Dugan was elected to the Assembly representing the 52nd District which includes the Bay Ridge, Cobble Hill, Park Slope, Red Hook, Sunset Park, Brooklyn Heights and Boerum Hill areas of Brooklyn, as well as her own community of Carroll Gardens;

Eileen Dugan came to the Assembly armed with determination of spirit, a quick wit, boundless energy and great wisdom, accompanied

by extraordinary sensitivity and compassion;

While her relationship with her community and the needs of her constituents were forever her overriding concern, Eileen Dugan's wide-ranging interests and immense talent quickly earned her the admiration of her Assembly colleagues and the respect of her adversaries;

Eileen Dugan's Assembly career was filled with achievements and accomplish ments. Most recently she chaired the Assembly Committee on Economic Development, Job Creation and Industry and was notably successful in establishing economic development zones in deteriorating neighborhoods;

Eileen Dugan was the first woman to be named to the crucial Assembly Ways and Means Committee. She was a valued member of the Committee since 1985;

Assemblywoman Dugan also served as the Assembly's representative to the Public Authorities Control Board and as a member of the Rules, Governmental Employees and Labor Committees;

The Brooklyn waterfront being a

significant part of her district, Eileen Dugan was a strong advocate for the revitalization of the state's waterfront areas through the introduction of new businesses and the establishment of open space and parkland areas. As chair of the Assembly Subcommittee on Water front Development, she was responsible for much of our state's progress toward these ends;

Eileen Dugan was, in addition, early in her Assembly career, the chair of the Subcommittee on Displaced Homemakers. In this capacity, she was instrumental in the passage of the legislation providing job training and educational opportunities for women, training funds for divorced or battered women, and the establishment of training centers for women throughout the state;

Trusted adviser, steadfast friend, tenacious fighter on behalf of her district, Eileen Dugan was straightforward in all her dealings. She truly merits the grateful tribute of this assembled body. Each of us can draw upon the book of memory and find therein reasons for her own gratitude.

WHEREAS, the sincere condolences

of this assembled body are offered in great respect to Eileen Dugan's treasured family, she is survived by her sister, Patricia Curtin, her two brothers Brian and Brendon, her ten nieces and nephews and her three great-nieces and great-nephews.

NOW, THEREFORE BE IT RESOLVED that this legislative body pause in its deliberations to pay grateful tribute to the life and accomplishments of Assemblywoman Eileen C. Dugan, recognizing her record of public service and dedicating ourselves anew to the causes and people she served, and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be transmitted to the family of the Honorable Eileen C. Dugan, New York State Assemblywoman of the 52nd Assembly District.

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

SENATOR CONNOR: Thank you, Mr. President.

I really don't know quite where to begin. Many of us in this chamber, either as members of the Senate, worked with Eileen in her

capacity in the Assembly and I know many members of this body also served with her in the Assembly.

I first met Eileen a long time ago. We weren't much more than kids then and she was this young fireball with long red hair down to her waist. My hair only came to the middle of my back then, and it was a different time; it was a different era. We were involved in changing things in a neighborhood, and I know the resolution talks of Eileen being born in Carroll Gardens, but the neighborhood didn't have so elegant a soubriquet in those days. It was what old-timers in Brooklyn called Red Hook. The real estate folks, in the late '60s and early '70s, changed it to Carroll Gardens and it's since had the desired effect on the value of real property.

Eileen's parents were immigrants from Ireland, County Donegal. Her father worked in the Transit Authority. She attended schools in the neighborhood and made friends, made lots of friends. For one thing, if you knew Eileen, you knew she was a generous, engaging, concerned friend. At her funeral services there were

literally thousands of people who came by and so many of them felt, as someone said to me at that time, they said, "Gee, you know, there's been a couple thousand people and they all think they were Eileen's best friend," and I said, "Well, you know, there's a reason for that above and beyond the art of politics. That's because she treated that many people the way one would treat a best friend." People didn't have a family event, a birth, a death, a family crisis, people who knew Eileen knew that she would be one of the first people on the phone or to come by, Can I help? What can I do? And she would do all she could do.

Eileen and I were just very, very good friends. She was the godmother to my oldest son, and you all know, and the resolution sets out a bit of what she meant as a public force, as a member of the Legislature, but she was, for me, one of the best friends I've ever had. She'd always treated me that way. She was like a member of my family, and she made me feel like a member of her family, and I'm certainly going to miss her, and I think a lot of people around this Capitol are going to miss her, and

it's really kind of unique that someone who was so committed to principle, so kind to other people was also so forceful and determined and any of you who ever, on any issue, crossed Eileen would know that. She also was not a shrinking violet, by any means.

I remember her first week here as a member of the Assembly. I was elected to the Senate two years before that in a special election. Week after I was elected, I remember leaving session here and racing back to New York for a Democratic County Committee meeting where Eileen was elected to the State Committee by one vote. I went down that Thruway in fear -- I knew it would be a close vote -- in fear of my life if I didn't make it to that meeting to vote and, of course, I got there as they were starting to call the roll. I voted for Eileen and in the end she won by one vote, and her answer was, "You made it, good thing you made it."

The -- but her first week up here, if you all knew her predecessor, those of you who knew her predecessor was a very, very fine justice of the Supreme Court now, Mike

Pesci. He was somewhat a rebel in those days in the Assembly, rebel to whomever the Speaker was, and somewhat played the role of a member of the Legislature as some members have done from time to time, very much the outsider, not that involved in the goings on in Albany -- very, very fine community spokesperson and leader, but what the leadership in the Assembly in those days regarded as a real pain; and Eileen upon arriving here was ushered into see Speaker - then Speaker Fink, and he began to approach her very much the way he would -- and she was very very close to Mike Pesci too, but he approached her very much the way he would Mike and she cut him off three sentences in and said, "Listen, Stanley, I'm not Mike Pesci in drag, you don't have to treat me that way," and that was her introduction to the leadership in the Assembly.

You know, I could probably sort of go on and on. I could probably write a book about Eileen, and maybe I will some day, but she meant so very, very much to me and my family and I think she also meant something to the state of New York because of her advocacy on behalf of what she believed was the right thing to do and

her dedicated efforts. And those of you who knew, and I think we all knew these last four years she went through the most heroic struggle to battle the dreaded illness of breast cancer. I remember well when she first called me Christmas four years ago, ten days before Christmas, and she always had a dinner and we'd bring the kids and, you know, she was great with kids. I mean when they were smaller, you know, taking the kids to somebody's house for dinner was like, well, you know, are they going to throw the food and all that. Well, that was fine with Eileen and she would take their side and she called to say she had to cancel that dinner because she'd just discovered something and she had to start treatment immediately, and I think we all saw that struggle the last four years. It was truly heroic, because I don't think she missed except for those stretches when she was in hospital, she didn't miss very much session. She would schedule pretty heavy treatments for Thursday afternoon, and by Monday morning, she'd be back in session, back in her office, put in long, full days, did that, frankly, right up -- at the Democratic

Convention this last August, Eileen was there. She was the honorary chair of the Democratic - of the New York delegation, and I saw her go to the floor, you know, these conventions start around 2:00 or 3:00 in the afternoon with a lot of less than noteworthy speeches. There's no TV cameras there. Most of us plan on arriving 6:30 or 7:00 in the evening after dinner when the real action began. Eileen would go over there every day and sit through every minute of it because she was a delegate and the convention was in session, and she was clearly fighting her illness then. She was very tired. She then went back and went through a primary campaign, got, I don't know if it was 88 or 90 percent of the vote in that, and then won the general election overwhelmingly just a couple days before her death, and wait -- wait, and this is obviously not the first thing.

There are things throughout the district that she loved and worked so hard for and that loved her so much, people ongoing paying tribute to her and, if you knew Eileen, you would also know the one overriding thought as she looks down on this, she would be saying

"Oh, shut up, Connor, and sit down." She didn't like a fuss about herself. She demanded respect and she earned it and she got it, but she didn't like a big fuss. So, with that said, I urge the adoption of this resolution and I invite certainly every member of the Senate to join in sponsoring it.

Thank you.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak? Senator Montgomery, on the resolution.

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

I am very pleased to be able to join with the Democratic leader, Senator Connor, in memorializing and honoring this woman who was a very special person, certainly in Brooklyn, and also in this Legislature.

When I think of Eileen, I always am reminded sort of from whence I -- I come as a political person. It was at the time when there was someone by the name of Mike Pettit, who was from Texas and a total political person and along with Mike Pesci and along with Gary Dean who was someone that I worked with very, very

early on, and Peter Vogel, who was a person organizing in a very meaningful and determined way an organization which has become known as Lamda, one of the major forces in our part of Brooklyn. It was also Marty Connor, and a number of other people, and it was also Eileen Dugan.

We all were working what we considered to be because of our youth and perhaps to some extent our political naivete at that point in time. We thought that we would be the generation of people to change the way politics went in Brooklyn. We were committed to a vision and a purpose and a cause that was really related to our neighborhoods and the people who lived there, and Eileen Dugan was a person who was identified with her neighborhood, so despite all of her political involvement and the eventually being elected to office and becoming a major force in her community, it was always in her mind solely to represent the people that were -- who were her neighbors and her friends and her family, not just constituents.

When I first decided to run for

the Senate, it was Eileen Dugan who was one of my friends from -- from my prior years as an activist in the community, I in my community and she in hers, but working together for the same purpose. She was the first person, the first elected official, to endorse my candidacy and in fact encourage and support me.

It is really a very major loss to our institution because Eileen was a person who represented the aspirations and the commitment and all of the principles that those of us who are women in the Legislature would aspire to, and that is that we want to be -- we want to be feminists. We want to be committed to the principles of freedom and opportunity for women to achieve their highest potential and to realize their own goals for themselves and by themselves.

So we indeed will certainly miss Eileen Dugan because she was a beacon unto those of us women in the Legislature as well as to women in her own district, and I certainly will miss seeing her and being, in fact, able to learn from her, having such skill and having such strength as an elected official.

Thank you.

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

Senator Skelos, Senator Connor had indicated that the resolution would be open to other members. Shall we follow the normal procedure and put everybody on the resolution with the exception of those who don't want to be on?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT KUHL: I'll direct the Secretary to do that. Then at this time, the question is on the resolution, and I would ask all the members who are going to be voting in favor to rise in a moment of silence to indicate their affirmation of the adoption of the resolution.

(A moment of silence was observed.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator

Skelos.

SENATOR SKELOS: If at this time we could take up the controversial calendar and start off with Senator Levy's bill, Calendar Number 38.

ACTING PRESIDENT KUHL: Secretary will call the controversial calendar commencing with Calendar Number 38, by Senator Levy, Senate Print 70. Secretary will read.

THE SECRETARY: Calendar Number 38, by Senator Levy, Senate Print 70, an act to amend the Penal Law, in relation to the offense of assault in the second degree in certain instances.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Levy, an explanation of Calendar Number 70 (should be 38) has been requested by the acting Minority Leader, Senator Montgomery.

SENATOR LEVY: Yes, Senator Montgomery. We've taken up this bill for a number of years, and all it really does is to raise the potential penalty for assaulting a person employed by a school district or BOCES,

and who is in a supervisory or instruction position, to the same as the laws in our state that relate to an assault on a police officer or on a fire -- some -- a police officer working for a police department or a fire person working for a fire department.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. If the -- if the sponsor of the bill would yield for a question?

ACTING PRESIDENT KUHL: Senator Levy, do you yield?

SENATOR LEVY: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MONTGOMERY: Senator Levy, I was just trying to -- I'm trying to figure out what the degree of assault is and if there's any relationship to the degree of assault and the -- the penalty itself.

SENATOR LEVY: Senator, what this bill does is to make it a "D" felony, the same punishment upon conviction as for assaulting a police officer, a fireman or firewoman.

SENATOR MONTGOMERY: And is there any level of proof -- Mr. President.

SENATOR LEVY: Beyond a reasonable doubt.

SENATOR MONTGOMERY: Thank you.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I just want to explain my vote.

I voted in the negative and it's not because I don't like teachers or supervisory personnel or administrators, but I just think creating special categories of individuals who happen to be the victim of a crime to increase

penalties, if they happen to be the victim, makes little sense to me.

It seems to me that the chances of a young child who assaults a teacher being charged with a felony will never happen, number one. It may make us feel good to have bills like this, but realistically it will never happen. I don't know of any young person who has gone to jail for even the year that the mis demeanor laws now currently allow for assault on teachers.

So I don't think it's a good idea. I think it's very, very bad precedent. If we -- I could see firefighters and police officers. They're the first line of defense in trying to protect the public, but to add teachers, do you then add clergy, do you then add legislators, do you add senior citizens? Where do you end?

There should be laws that are across the board and, for that reason, I'm voting no, not because of any discourtesy or dislike of the victims that happen to be the ones who are to be protected by this bill.

ACTING PRESIDENT KUHL: Announce

the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 38, Senator DeFrancisco, Montgomery and Sampson. Ayes 54, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Finance Committee at the desk. I would ask that it be read.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees. Secretary will read the report of the Finance Committee.

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

Director of the state of New York Mortgage Agency, Joseph Strasburg, Esq.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Stafford.

SENATOR STAFFORD: Mr. President,

before I yield to the Senator from Richmond, I would just point out that Mr. Strasburg came before the Committee. He answered questions, I might add one of the major questions was verbatim what I had asked him. I think that there were good answers.

I would point out, as I know Senator Marchi will, that Mr. Strasburg professionally has evidenced his ability, character and decency, and I compliment the Governor on this appointment and I yield to Senator Marchi.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi. On the nomination.

SENATOR MARCHI: Thank you, Senator and Mr. President.

We're very proud in my community of the nominee. He served originally as an assistant to Tom Cuite. None of you have been here long enough to remember him, but he was a colleague of mine, way back.

SENATOR STAFFORD: Who is it?

SENATOR MARCHI: Tom Cuite.

SENATOR STAFFORD: Oh, sure.

SENATOR MARCHI: And he was

Speaker -- Speaker of the City Council, and that position materialized as chief of staff and legislative counsel to the Speaker of the city of New York, Speaker Vallone. Every contact with him and his entire background, there's one unanimous echo that you get when you -- when his name comes up, and that's the quality that -- of professional expertise that he has, his honesty, his integrity, in other words all of those qualities which we -- we feel should be well represented in this agency.

So he has a fine academic background. Combine that with experience that gives him hands-on experience. Altogether, it adds up to a very superlative nomination and certainly he has the -- he had the unanimous consent of the standing committee that -- that -- where he was first heard and the unanimous verdict followed, and now at the Finance Committee a reconfirmation of that same measure of confidence.

So I certainly urge the unanimous consideration of this nomination.

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

Hearing none, the question is -- Senator Gold. Senator Gold passes or speaks on the nomination?

SENATOR GOLD: Yeah, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, on the nomination.

SENATOR GOLD: Thank you very much.

Mr. President, I'm sorry but I was called out of the room for a few moments, but it's my understanding that Senator Stafford made reference to the fact that Mr. Strasburg was asked certain questions by me at the committee meeting and, first of all, just for the record, I did request, on behalf of this Conference, that Mr. Strasburg appear even though the job is a non-paying job. I appreciate the fact that he did appear and that Senator Stafford honored the request.

I asked Mr. Strasburg some questions at the meeting because there were some matters which just should be answered for the record, but I want the record also very clear as I indicated in Finance, that I am aware of the work that Mr. Strasburg did while he served the

New York City Council.

I think that, as far as I know, there has never been a question as to his integrity or his intellect, and the questions that were raised were questions which just should be asked out on the public record, but I believe as I said in the committee that certainly he does the Governor a greater favor than the Governor does him in asking him to take this job. I believe that he will do it with integrity, as he's done other -- each and every other job he's had to do in government.

I think the fact that he worked for an organization whose views I don't always agree with are irrelevant to the issue of whether or not he is competent and capable and -- and someone who should be able to take this job and who is competent in terms of the Governor making the appointment and, with that in mind, I intend to vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Smith, you wish to speak on the nomination? Senator Smith, on the nomination.

SENATOR SMITH: Thank you, Mr. President.

I, too, would like to second the nomination of Joseph Strasburg. I would like to say for the record that it is undeniable that he has all of the qualifications to do an excep tional job, and this is one of the best appointments that the Governor has made.

I also state for the record that he is a friend, and I mean that literally, and he takes friendship very seriously as well as any job that he has undertaken, and I know that he will be a fine example of a great appointment by the Governor, and I thank the Governor for doing so.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Joseph Strasburg, Esq., of Staten Island to become the director of the state of New York Mortgage Agency. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee, Joseph Strasburg is confirmed as the director of the state of New

York Mortgage Agency.

Mr. Strasburg, congratulations and good luck.

(Applause.)

The Secretary will continue to read.

THE SECRETARY: Member of the board of directors of the New York Convention Center Operating Corporation, Stephen J. Morello.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT KUHL: Question is on the nomination of Stephen Morello to become a member of the board of directors of the New York Convention Center Operating Corporation. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed. Secretary will continue to read.

THE SECRETARY: Member of the Advisory Council on Alcoholism and Substance

Abuse Services, Paul Lewis Shechtman.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT KUHL: Question of is on the nomination of Paul Lewis Shechtman, of New York City, to become a member of the Advisory Council on Alcoholism and Substance Abuse Services. 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: Members of the Niagara Frontier State Park Recreation and Historic Preservation Commission, David S. Broderick and John Silsby.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT KUHL: Question is on the confirmation of David Broderick and John Silsby to become members of the Niagara Frontier State Park Recreation and Historic Preservation Commission. All those in favor

signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominees are confirmed.

Secretary will continue to read the Finance Committee report.

THE SECRETARY: Also Senator Stafford, from the Committee on Finance, offers up the following bill:

1373, by Senator Cook, an act to amend the Executive Law, in relation to the task force on school community.

ACTING PRESIDENT KUHL: Without objection, the bill is ordered directly to third reading.

Senator Skelos.

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

ACTING PRESIDENT KUHL: Secretary will call the controversial calendar beginning with Number 35, by Senator LaValle.

THE SECRETARY: Calendar Number 35, by Senator LaValle, Senate Print 303, an act

to amend the Education Law, in relation to the Board of Regents of the University of the state of New York.

SENATOR STAVISKY: Mr. President, I seek an explanation from the sponsor.

SENATOR SKELOS: Mr. President, could we lay that aside for the day.

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

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: While I was in the Senate Finance Committee meeting, Calendar 74 passed on the non-contested calendar. Is that bill still in the house?

ACTING PRESIDENT KUHL: No, the bill is gone, Senator.

SENATOR LEICHTER: Mr. President, I believe last year that issue was raised, and I think a procedure was set up that -- on the non-controversial calendar that bills would be held while committee meetings were proceeding. If you don't want to do it that way, we can just

lay everything aside, but I -- I do believe that that request was made, and I believe it was acceded to because committees more and more are being called off the floor.

I was in the Finance Committee, and why can't we hold these bills that pass on non-controversial, just hold them at the desk so if a member has a question, as I had about this bill, we would then have an opportunity to raise it?

SENATOR SKELOS: Mr. President, I believe there was no formal agreement like that, but that certainly the member would be able to come back in, make a statement on the record, vote accordingly or, if we were notified in advance of the meeting, that Senator Leichter will be at a Finance Committee meeting, could you hold up the bill that we would try to accommodate that way, but once a bill is voted on and it's out of the house, it's been moved out. We can't -

SENATOR LEICHTER: No, no.

SENATOR SKELOS: We can't anticipate every bill that a member is going to want to debate or not debate if they're not in

the chamber.

SENATOR LEICHTER: Senator, you're right but, as you know, with all the rush of business, it sometimes happens that you don't tell counsel, Please hold this bill or lay it aside, and I'm just suggesting it's a very easy thing, pass the bill but just hold it at the desk, and my recollection is pretty clear that we agreed last year as a matter of accommodation and the easy working of this chamber that we would do that rather than just lay every bill aside while committees are meeting, so my request would be that in the future that we would do that.

SENATOR SKELOS: We will take that under consideration, and I'm sure it's something that at the leadership level that could be discussed.

SENATOR LEICHTER: Well, I hope you won't have too many sleepless nights pondering that, Senator Skelos. In the meantime, would you be so good, with unanimous consent, may I be in the negative on Calendar 74.

ACTING PRESIDENT KUHL: Without

objection, hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 74.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 40, by Senator Volker, Senate Print 397, an act to amend the Penal Law, in relation to licenses to have and carry pistols.

SENATOR VOLKER: Same debate as last year? We can do that. Should I explain it? This is a bill, as Senator Gold just indicated -

ACTING PRESIDENT KUHL: Senator Volker, I didn't hear anybody from this end of the chamber asking for an explanation.

SENATOR VOLKER: O.K.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT KUHL: I guess Senator Stachowski recognized that you were on your feet and wanted to listen to you this afternoon, so Senator Volker, for an explanation.

SENATOR VOLKER: I knew it was

coming.

This bill, which has passed this house on a number of occasions before, is called the "proper cause bill" which provides that an applicant for a pistol permit is presumed to be of clean moral, criminal and mental character and as opposed to the situation today where a person in effect must demonstrate that there's a proper cause for a pistol license to be -- to be presented.

This, by the way, does not change the fingerprinting and the other record checks, but would provide a presumption that the person has the right to -- to obtain a pistol license rather than the present system which sets up that the person must provide, in effect, the proper cause to get a license.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 40 are Senators Abate, Breslin, Connor, Dollinger, Gentile, Gold, Goodman, Kruger, Lachman, Leichter, Markowitz, Nanula, Onorato, Sampson, Santiago, Seabrook, Smith, Stavisky and Waldon, also Senator Oppenheimer. Ayes 36, nays 21.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 44, by Senator Holland, Senate Print 454, an act to amend the Penal Law, in relation to a license to carry or possess a pistol within the state.

SENATOR PATERSON: Explanation.

SENATOR HOLLAND: Mr. President.

ACTING PRESIDENT KUHL: Senator Holland, an explanation has been asked for by Senator Paterson.

SENATOR HOLLAND: This is a bill

about fairness that I have carried in this house for seven years, and before me Senator Levy carried, and I don't know how many years he carried it.

It is a question of fairness in that if you purchase a, or are issued rather a pistol license in the city of New York you can carry it in any of the counties of the state of New York, but if you are issued a pistol license in any of the 57 counties outside of the city of New York, you cannot carry it into the city of New York unless it's in a locked box. That's the full question.

The question then that will be raised is, how about the weapons getting away or the people are untrustworthy? These are people who are issued pistol licenses by judges in the state of New York, and to -- and I used to be a county clerk, as I've said here for seven years, and to be issued a pistol license in the county of Rockland or any other county, you have to have your fingerprints taken. It takes at least three months; it could take 13 months. You have to have your fingerprints go before the F.B.I., the BCI, you have to have a mental health

review. You have to have a letter from your spouse that says she doesn't mind or he doesn't mind if there is a weapon in the house.

The people who are issued pistol licenses are very honorable, reputable and responsible. They do not cause problems. I do not see why this is a problem to some of the people in the city of New York.

Thank you.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Mr. President, I was informed by Senator Stachowski that if I was

going to engage in any physical activity at all, I should warm up before I did it, and I want to thank Senator Holland and Senator Volker and others for giving us the warm-up these few weeks in the legislative session as they do every year so we can go through this process before we get to serious legislation that may pass both houses.

I vote in the negative.

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

For those who are voting in the negative, please raise their hand one more time so that the Secretary can record your negative votes.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 44, Senators Abate, Breslin, Connor, Gentile, Gold, Goodman, Kruger, Lachman, Leichter, Markowitz, Montgomery, Nanula, Onorato, Paterson, Sampson, Santiago, Seabrook, Smith, Stavisky and Waldon. Ayes 37, nays 20. Also Senator Oppenheimer. Also Senator Dollinger.

SENATOR DOLLINGER: Thank you.

THE SECRETARY: Ayes 35, nays 22.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 48, by Senator Johnson, Senate Print 502, an act to amend the Penal Law, in relation to the administrative provisions relating to the issuance of firearm licenses.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 48 has been requested by Senator Paterson.

SENATOR JOHNSON: Mr. President, Section 400 of the Penal Law sets forth the standards for issuing a pistol licenses. In some jurisdictions additional standards, conditions, and so forth, are applied by the licensing authorities without legal authority to do so.

There are two types of pistol permits, pistol licenses, which can be issued, either premises or carry. There's no third type

there. We have a varied number of types created by local issuing officers and such as hunting, target shooting or other category where they feel it's appropriate maybe just back and forth on your job but no place else, and if it's a carry license, according to the statute, it's carry premises to premises.

This simply says no other conditions shall be placed on the licenses beyond those set forth in the section of the law to which we refer.

Thank you.

ACTING PRESIDENT KUHL: Senator Abate.

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

ACTING PRESIDENT KUHL: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: It's my understanding of the bill that, if this became law, that the number of carry permits in New

York City would dramatically increase. Is that correct?

SENATOR JOHNSON: I don't know.

SENATOR ABATE: Well, right now they -

SENATOR JOHNSON: They don't have to issue licenses if there's any reason not to, if the person is a criminal or mental case, et cetera, et cetera. They don't have to issue them, but once they do, they couldn't change it. They couldn't restrict it in any way other than simply reject it.

SENATOR ABATE: Senator, would you continue to yield?

SENATOR JOHNSON: Sure.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: See, it's my understanding in New York City there are individuals that have limited carry, who have business licenses and these are individuals because of their need, only require the possession of a licensed weapon for a limited period of time, when they're minding their store, for instance, or when they're carrying

their payroll to and from the bank, and what this law would do -- and please correct me if I'm misunderstanding the law -- it would basically say to these individuals even though it's not your need, you'll be able to carry this weapon anywhere you want to go, even though you only need it for business purposes.

So wouldn't that, in effect, proliferate the number of guns on the street in New York City?

SENATOR JOHNSON: Senator, if you're telling me that $1500 is important, but your life is worthless, then I guess you're right, but I think if someone feels the need to carry it, I think they shouldn't have to prove to the authorities. They should be able to get a license, providing there's no reason in their background that they shouldn't possess one.

SENATOR ABATE: Can you conceive, Senator, that certain localities have special needs because of dense population, high crime rates, that certain localities should be able to decide for themselves how to put in place more restrictive licensing procedures?

SENATOR JOHNSON: Well, if you

think that -- that should be done, Senator, then certainly you're free to introduce a bill like that, but that is not dealt with in this bill. This says the state law provides two types of licenses, carry or premises, and if they ask for one or the other with no reason to reject them, it should be issued.

SENATOR ABATE: On the bill.

ACTING PRESIDENT KUHL: Senator Abate, on the bill.

SENATOR ABATE: Yeah, I will be opposing this legislation because what, in effect, it does is create chaos in New York City. There's a local licensing procedure that, within the discretion of the police commission er, can authorize the licensing of the guns to fit the needs of the applicant, and what this, in effect, would do is create more guns on the street where there's not a necessity.

Many people apply for guns for limited purposes, and I do not think we should take away the option and the ability of New York City to be more restrictive, by saying they can only have two types, carry or premises. That means they would eliminate target licenses, they

would eliminate target practice licenses. They would eliminate business licenses, as well as limited carry licenses, and I think New York City should retain that authority and ability to safeguard the citizens of that region and, in so doing, if they believe they need additional restrictive licenses, they should have the authority as they do now.

So, because of these reasons, I will continue to oppose this bill.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill? Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Johnson, who I'm glad to see is recovered, would yield for a question?

ACTING PRESIDENT KUHL: Senator Johnson, would you yield?

SENATOR JOHNSON: Yes, Mr. President. Yes, I will.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator Johnson, even in view of what you're trying to

accomplish, I wonder if this legislation actually has a two-edged sword. If there isn't the rebuttable presumption that is created where there would be discretion in the enforcement of the legislation that you propose, isn't it likely that a judge, knowing that they could not put any restrictions on the licensing procedure, would just not allow the license at all for the judge's own protection and really for society's own protection, so that in trying to make it more possible for individuals to gain a license, and I would wish that they had not, but just looking at your legislation, isn't it possible that judges might be more restrictive of granting the license since they can't really grant any encumbrances along with it?

SENATOR JOHNSON: That's a possibility, I suppose, Senator, but I can tell you this, that concern about criminals asking for a license is not well founded. They don't usually apply for licenses. According to some information I received, there are possibly 20 states already which have right to carry which really goes even beyond this, saying anyone who wants to carry can carry it if you don't have a

reason to turn them down, and they said of the states which did not have right to carry laws, concealed gun provisions, had adopted them in 1992, approximately 1600 murders, over 4,000 rapes and 60,000 aggravated assaults would have been avoided yearly and the felony prisoners in state jails now said that they would not attack a potential victim if they thought there was a possibility that victim might be armed, so generally speaking, Senator, properly issued carry licenses to responsible citizens tends to reduce crime, not increase crime.

So I think you're overly concerned about that.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. Thank Senator Johnson for his answer. Mr. President, on the bill.

There is just my concern that there is more -- it is not just a black and white issue between responsible citizens and criminals who would be involved. I think there might be some restrictions that would be placed on those who would like to have a firearm. A

loaded weapon is a very dangerous object. Many of the -- there are accidents that occur with loaded weapons. We read about them every day, not because there is anything wrong with the character necessarily of the person that's applying for the license but because there's - there's something wrong with the actual use, and that's where the restriction we thought might be helpful.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 48, Senators Abate, Breslin, Connor, Dollinger, Gentile, Gold, Goodman, Kruger, Lachman, Leichter, Markowitz, Montgomery, Nanula, Onorato,

Oppenheimer, Paterson, Sampson, Santiago, Seabrook, Smith, Stavisky and Waldon. Ayes 35, nays 22.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 88, by Senator Present, Senate Print Number 526, an act to amend the General Municipal Law, in relation to economic development zones.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 89, by Senator Holland, Senate Print 647, an act to amend the General Municipal Law, in relation to indexing the interest rate on judgments.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Holland, an explanation of Calendar Number 89 has been requested by the acting Minority Leader, Senator Paterson.

SENATOR HOLLAND: Yes, Mr. President. This bill changes the rate of interest paid by municipalities upon judgment against that municipality in their discretion not to exceed nine percent of the prime rate but with the cap of nine percent to prevent the interest rate becoming excessive to the municipalities. It's really designed to save money for the taxpayers.

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

ACTING PRESIDENT KUHL: I think he retired, Senator.

SENATOR PATERSON: Well -

ACTING PRESIDENT KUHL: Would you like Senator Holland to respond to a question?

SENATOR PATERSON: Yes, I would. Oh, Senator Johnson, I'm still trying to get over his last answer about how to cut down on crime, but if Senator Holland would yield for a

question.

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT KUHL: He's still standing. He'd be happy to.

SENATOR PATERSON: Thank you. Senator Holland, my only concern is that, while you have a cutoff for the high point of the interest rate, but we don't really have a cutoff for the low point, and why is that not in the legislation?

SENATOR HOLLAND: Well, it - where we have a cutoff, Senator, in that it is based on the prime rate. The prime rate recently hasn't gone in -- in the not too distant past below six percent, so it would be limited by the prime rate.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Just one last question, Senator Holland.

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

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Mr. President, my question to Senator Holland is, a creditor that is lending money at above the prime rate, do you think this legislation would actually put the creditor in an advantageous position and actually do harm based on the fact that the - that the creditor itself is going to be able to lend at a higher rate under -- under the legislation?

SENATOR HOLLAND: Tell me once more, Senator.

SENATOR PATERSON: Yeah, what I was actually referring to, Senator, is that if the municipality is -- is paying a creditor, that that rate is going to be lower than if the creditor, because of the cash flow problem, has to go to a bank where the rate will be much higher.

SENATOR HOLLAND: I see.

SENATOR PATERSON: That's what I was asking.

SENATOR HOLLAND: I understand, Senator, but it doesn't really make any difference other than maybe a quarter percent whether they go to the bank or not. It's very

little different. They still, if they're going to have to borrow money at 11 or 12 percent, it's going to make very little difference between the prime rate and the nine percent.

SENATOR PATERSON: But, Senator Holland, there is a difference between the prime rate and the lending rate I guess is what I'm trying to say.

SENATOR HOLLAND: I understand. I understand. A bank will lend, your point is from last year's questioning, as a matter of fact a bank will lend at maybe 11 or 12 percent. If he has to go -- he or she has to go to the bank to ask for a loan, they're going to pay that anyway regardless of what this rate is, and this rate is designed to save money for the taxpayers by paying less.

What's happening, Senator, I'm sure you know, if there is a judgment, the judges are now saying, nine percent to municipalities all the time. This is just lowering that percentage a little bit. Whether the individual has to go to the bank to get a loan or not won't change the interest rate he or she has to pay.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator Holland.

Mr. President, on the bill. It was just that the rate of difference between what would be the prime rate and the lending rate I thought could actually be a couple of points or so as the prime rate is under 9 percent, when taking into account what the lending rates certainly are. It could have been a more substantial difference which individuals are going to have to inevitably pay back.

ACTING PRESIDENT KUHL: Secre... Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President.

This is such an unfair bill, just to say, well, it's good for the taxpayers. The point is that somebody's been injured, a jury or judge has found that somebody was wronged by a municipality, doesn't matter whether it's a municipality or business or an individual.

The whole idea of the law is to put people in as good a position as they would

have been if that injury -- if that wrong had not occurred. Now, if the municipality has failed to pay on a contract and a businessman has to go out to his bank and he has to borrow money at 12 or 14 percent, he ought to be compensated for the loss that he had.

You might just as well say, Senator Holland, any judgment against a municipality ought to be halved. Sure, it might be good for the taxpayers until one of those taxpayers finds out that they were the ones who were injured. Makes absolutely no sense.

Why should a municipality be in any other or different situation than any other defendant? You ought to pay to make the person right. You never should have committed the wrong in the first place.

I argued against that bill last time. I just say -- I just say to you I just hope, Senator Holland, you never find yourself in the position where a municipality has done something to you which a jury or a judge later finds to be wrong, and they'll say, Well, you know, we want to help the taxpayer so we're not going to make you whole.

I think it's a bad bill.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I would say, I think pretty much everything has been said, but there was a time when the situation was reversed, when the interest rate was really low that you could get, well, not reversed but even more dramatic, the interest rate was really low. I think it was 6 percent, and the prime rate was 14, 15 percent, and there were a whole slew of things in the city of Syracuse, certiorari cases where the property owner would win and the city would owe a certain amount of money and the city would never pay because 6 percent is all that they're risking by letting

this thing delay forever and ever to be paid and they could leave money in the bank and get a much higher interest rate because there was a higher interest rate being paid on CDs.

I think the bill's a good idea. We should save taxpayers money all the time. However, you know, in order to be fair, just link it to the prime rate, and I'm just asking for both sides, with no cap or a cap both ways, so that that inequity doesn't occur, and I would urge in the negotiations about the bill that that would be the next step.

THE SECRETARY: Those recorded in the negative on Calendar Number 89 are Senators Abate, Connor, DeFrancisco, Gentile, Gonzalez, Kruger, Lachman, Leichter, Markowitz, Montgomery, Onorato, Paterson, Sampson, Stavisky, and Waldon, also Senator Rosado. Ayes 41, nays 16.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the controversial calendar.

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There's nothing at the desk, Senator Skelos.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, February 11th, at 3:00 p.m.

ACTING PRESIDENT KUHL: Without objection, Senate stands adjourned until tomorrow, Tuesday, February 11th, at 3:00 p.m.

(Whereupon at 4:25 p.m., the Senate adjourned.)