ALBANY, NEW YORK

March 19, 1997

11:07 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to find their places, the staff to find their places. I'll ask everybody in the chamber to rise and join me in saying the Pledge of Allegiance and please remain standing for the invocation.

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

We're very pleased to be joined by Rabbi Shmuel M. Butman of the Lubavitch Youth Organization from Brooklyn, New York, for the invocation.

Rabbi.

RABBI SHMUEL M. BUTMAN: Dear God, the 11th day of the Jewish month of Nissan, corresponding this year to April 18th, marks the 95 years since the birth of revered Jewish leader Menachem M. Schneerson, the Lubavitcher Rebbe. It has become customary to mark this auspicious occasion as the start of this year, 95 days of education which you have proclaimed here in the Senate and in the state of New York.

Education, as the Rebbe has always emphasized, isn't just teaching facts. Education means, above all, guiding everyone, youth and adults, to improve ourselves to become ever more ethical and caring. That's why education must be a process that continues throughout our life.

On the 95th birthday, we start reading Psalm 96 -- we always do one Psalm ahead -- opening with the words, "Sing to God a new song. Sing to God the entire world." This Psalm refers to the Messianic era foretold by the biblical prophets and the Rebbe told us many times that, indeed, this time is imminent and the time of the redemption is upon us.

More and more we see, as the Psalm continues, the world is firmly established so that it shall not falter but when that era comes, God, quote, "will judge the nations with fairness and with justice." It is that era which Isaiah prophesizes when he says that nations shall not lift sword upon nation, nor shall they learn war anymore and that there is going to be universal peace and harmony for all. Divine providence has chosen each and

every one of you. You should be the custodians of peace and justice of this great state of New York and through you, friends, the entire United States and the United States as a super power through -- the only super power through the United States to the whole world. This is why you are, in a sense, the custodians of peace and justice and harmony for all people throughout the world.

Year by year as I come here, the Rebbe told me to do a custom and to offer $1 to charity so that we should know our obligations. I know you're all afraid but this is not a fund-raising mission so we don't have to go outside of the building to do it. I want to put this dollar in charity where it says In God We Trust. This, the Rebbe says, is a symbol that we have an obligation, not only to our friends but we have an obligation to each and every member of society and that is exactly what you do.

I want to conclude with what we say in our prayers every Saturday, and I want to tell you after I listened to you, I felt like I was in the synagogue and in the synagogue, we

say every Saturday that those who are serving the public, we ask Almighty God to bless them with everything and to keep all ill away. You are definitely those who serve the public and we are asking Almighty God for each and every one of you to keep you and to shine his countenance upon you and to bestow his blessings on each and every one of you, both in your private lives and in your communal lives, and let us all say Amen.

Thank you very much.

ACTING PRESIDENT KUHL: Amen.

The reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 18th. The Senate met pursuant to adjournment. The Journal of Monday, March 17th, was read and approved. On motion, the 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.

The Secretary will read.

THE SECRETARY: Senator Kuhl, from the Committee on Agriculture, offers up the following bills:

Senate Print 548, by Senator Kuhl, an act to amend the Agriculture and Markets Law, in relation to duties of the commissioner;

3055, by Senator Cook, an act to amend the Agriculture and Markets Law, in relation to the definition of crops;

3158, by Senator Kuhl, an act to amend the Agriculture and Markets Law, the Real Property Law and the Real Property Tax Law.

Senator Marchi, from the Committee on Corporations, Authorities and Commissions, offers up the following bills:

Senate Print 549, by Senator Kuhl, an act to amend the New York State Urban Development Corporation act;

999, by Senator Saland, an act to amend the Not-for-Profit Corporation Law;

2920, by Senator Leibell, an act to amend the Public Authorities Law, in relation to loan insurance;

3030, by Senator Marcellino, an

act to amend the Public Authorities Law, in relation to exempting information;

3173, by Senator LaValle, an act to amend the Public Authorities Law.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are reported directly to third reading.

Communications and reports from state officers.

Reports of select committees.

Motions and resolutions.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, could we ask for an immediate meeting of the Higher Ed' Committee in Room 332.

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

Senator Bruno.

SENATOR BRUNO: And, Mr.

President, can we at this time take up Privileged Resolution 734 by Senator Tully, have its title read, move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read the title to the privileged resolution by Senator Tully.

THE SECRETARY: By Senator Tully, Legislative Resolution commending the New Hyde Park Memorial High School Key Club for their dedicated efforts to combat iodine deficiency disorder.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

The Secretary will read the substitution at the desk.

THE SECRETARY: Senator Volker moves to discharge from the Committee on Local Government Assembly Bill Number 1666 and substitute it for the identical Senate Bill Third Reading 350.

ACTING PRESIDENT KUHL: The substitution is ordered.

Senator Bruno, that brings us to the calendar.

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

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

THE SECRETARY: Calendar Number 115, by Senator Holland, Senate Print 233, an act to amend the Domestic Relations Law, in relation to notification concerning orders of support.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 116, by Senator Skelos, Senate Print 332, an act to amend the Social Services Law, in relation to access to certain conviction records.

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

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 117, by Senator Saland, Senate Print 489, an act to amend the Family Court Act, in relation to evidence of child neglect.

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

THE SECRETARY: Section 4. This act shall take effect in 120 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 185, by Senator Levy, Senate Print 605, an act to amend the Vehicle and Traffic Law, in relation to criminal history checks on school bus attendants.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

THE SECRETARY: Calendar Number 250, by Senator Bruno, Senate Print 706, an act to amend the Vehicle and Traffic Law, in relation to the disqualification of a bus driver in certain instances.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 256, by Senator Libous, Senate Print 1231, an act to amend the Uniform City Court Act, in relation to an acting City Court judge for the

city of Binghamton.

SENATOR BRUNO: Lay it aside for the day at the request of the sponsor.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of the sponsor for the day.

THE SECRETARY: Calendar Number 345, by Senator Seward, Senate Print 3486, an act to amend the Public Service Law and the Uniform Commercial Code, in relation to financing of electric utility intangible costs and assets.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 362, by Senator Seward, Senate Print 379-A, an act to amend the Tax Law and the Public Service Law, in relation to a reduction in the rate of tax.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Senator Paterson, did you want to lay that bill aside?

SENATOR PATERSON: I've changed

my mind, Mr. President. Let it go.

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

THE SECRETARY: Section 13. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 368, by Senator Seward, Senate Print 3485, an act to amend the Public Service Law, the Public Authorities Law, the Economic Development Law and the Tax Law, in relation to the provision of low cost power.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

ACTING PRESIDENT KUHL: Senator Bruno, that completes the reading of the non controversial calendar.

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

calendar, beginning with Calendar Number 368.

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 368, Senate Print 3485, by Senator Seward.

THE SECRETARY: Calendar Number 368, by Senator Seward, Senate Print 3485, an act to amend the Public Service Law, the Public Authorities Law, the Economic Development Law and the Tax Law, in relation to the provision of low cost power.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Seward please yield for an explanation?

ACTING PRESIDENT KUHL: Senator Seward, Senator Paterson has asked for an explanation of Calendar Number 368.

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

I'd be happy to provide an explanation. This bill is called the "Power for Prosperity" bill. It's a bill that would make available 400 megawatts of low cost electricity to businesses who are considering relocating out

of New York State or otherwise leaving the electric grid because of the high energy costs here in New York.

Specifically under the bill, 200 megawatts would be supplied by the Power Authority, 200 megawatts by the investor-owned utilities and the utilities would receive a GRT tax credit to replace the utility's lost revenues by providing this low cost power and this approach prevents any cost shifting to other utility customers.

ACTING PRESIDENT KUHL: Senator Paterson.

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

ACTING PRESIDENT KUHL: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, I just have one question and it really relates to low cost power that -- under 400 kilowatts, and I wanted to know if there was any thought in drafting this legislation of extending this

protection to smaller businesses or users that use less than 400 kilowatts.

SENATOR SEWARD: Well, Mr. President, the 400 kilowatts of load that's cited in the bill is consistent with the ongoing programs in the state of New York. I must tell you, I'm as concerned as anyone in terms of providing rate relief for smaller businesses as well and, in fact, as part of our -- other pieces of legislation, one that has passed today, the GRT phase-down and the next bill we'll be considering, certainly we're looking to provide relief for small businesses in other ways and -- because that is an important issue.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR SEWARD: This particular bill, in terms of the low cost electricity, is consistent with ongoing programs that we have already in the state. That's where that number comes from.

SENATOR PATERSON: Well, thank you, Mr. President.

On the bill, there's certainly no problem with this legislation. Hopefully in a

foresighted way, the Legislature will address the issue of small business, job creation, individuals that could use the same kind of low cost power that's being provided here and will probably help to stimulate activity in the job market, but as far as this bill is concerned, the explanation is satisfactory.

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 8. 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 345, by Senator Seward, Senate Print 3486, an act to amend the Public Service Law, the Uniform Commercial Code Act, in relation to financing of electric utility intangible costs and assets.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Seward, an explanation of Calendar Number 345 has been requested by Senators Paterson and Abate.

SENATOR SEWARD: Certainly, Mr. President.

As has been mentioned with the passage of the previous two bills, high electric rates in this state are not only strangling businesses and job creation in this state but also is making New York a more expensive place to live than it needs to be.

We have to deal with the problem of high electric rates and this -- the bill before us addresses the problem of electric rates by establishing a financing mechanism through which such rates could be reduced as a result of the low cost financing of certain utility assets and intangible properties of the utilities, such as environmental remediation, demand side management provisions, IPP contracts and the like.

Under the bill, it authorizes but doesn't require utilities to present a

refinancing plan to the Public Service Commission for approval. Now, the Commission, under the bill, could approve a part of it -- of the plan and -- but in approving any refinancing plan, it would require that significant ratepayer savings would result. That's a precondition of acceptance of any refinancing plan under the bill.

The plan would also propose raising from the level of expectation to the level of property right these intangible properties belonging to the utilities. That's where the term "securitization" comes from.

Very important, under this bill, the commission would be authorized to obtain concessions from the utilities as -- such as a mandatory multi-year rate reduction or a write down of a portion of some of the utility's stranded costs. There's a great deal of flexibility in this legislation, but the only thing that is not flexible here is that it would require substantial rate relief for the consumers of this state.

Now, this bill is meant as a transition to the coming competition in the

electric utility marketplace. It's not a substitute for deregulation. It's merely an attempt to provide an additional way to reduce the -

ACTING PRESIDENT KUHL: Senator Seward, if I might interrupt you. There's - you're having a little competition. I don't know whether they're trying to explain this wonderful bill or whether they're just trying to have some other sort of conversation, but will the Senators please take their seats, or if you have to have a conversation, take it out of the chamber.

Senator Seward.

SENATOR SEWARD: Mr. President, the point I was just making is under this legislation -- this is not a total comprehensive bill to deregulate the utility industry in the state of New York. It's not meant to be. It's merely meant to provide a tool for rate relief for utility ratepayers in this state. Anyone who gets a utility bill in the mail would benefit from this legislation.

Now, since we passed this bill last year, we've had a number of developments in

the electric industry, specifically the Niagara Mohawk agreements that they announced just last week with their Independent Power Producers. They are in the process of either modifying or buying out a number of these contracts and Niagara Mohawk, to finance this, would be going out to the marketplace to borrow some in excess of $3 billion. That is going to result in - because of the buyout of these contracts and modifying them, that's going to result in rate relief, as an example, for Niagara Mohawk customers.

If this bill becomes law, Niagara Mohawk -- it's estimated that the savings could increase by some $220 million over the next few years and that would be $220 million less that just the ratepayers and consumers in the Niagara Mohawk service territory would be paying. That's real rate relief under this legislation.

So I would urge my colleagues, let's move this bill today. Let's get the discussions started with the other house in coming up with a two-house bill. Our Majority Leader just the other day at a press conference clearly stated that this house would consider a

chapter amendment to make sure that the savings derived from securitization would be directed to residential ratepayers and small businesses. I fully concur on that, and we're fully prepared to present such a chapter amendment.

In the meantime, let's pass this bill today. Let's get discussions going. The ratepayers of this state, the consumers of this state, anyone who gets an electric bill in the mail deserve the type of rate relief that's provided under this measure.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes. I have an amendment before you, Mr. President, and I would like to waive the reading of that amendment.

ACTING PRESIDENT KUHL: There is an amendment at the desk, Senator Abate. You're absolutely correct. The reading of that is waived and you're permitted an opportunity to explain the amendment at this time.

SENATOR ABATE: Thank you, Mr. President.

I commend Senator Seward in this last statement that he is considering and will

introduce an amendment. This is a great opportunity to amend this bill. I believe that his intent is that there will be significant savings that do go to all ratepayers.

I agree with Senator Seward that securitization is necessary to maintain financial stability for the utility companies. It will allow them to borrow at a lower rate. It will allow them to recover the economic costs that have been imposed upon them by government. It will allow them to recover some of the stranded costs that cannot be recouped in a competitive market, but the plan and the legislation put forward is not workable unless it clearly defines what savings will be produced to the small business owner and the residential ratepayer and it cannot be limited just to industrial users.

So while the bill does provide - and the PSC will define "significant rate savings" -- my concern is we are abrogating our responsibility in the Legislature not to define what, in fact, "significant" means, and so I am offering an amendment that defines "significant" rate savings to small businesses and residential

ratepayers. An amendment would define it as such: Ten percent in the first year. Savings would go to the small business and residential ratepayer and then within five years, in a cumulative fashion, it would reach a 20 percent savings to those ratepayers.

Now, you may say, let's just trust PSC. They will have the interest of everyone in New York State. I suggest that if we look at recent experience, we should be defining what those savings are and not the PSC, and I look to the recently proposed deregulation plan for Con Edison, and they proposed a 3.3 percent reduction for residential and small business ratepayers compared to a 25 percent reduction for industrial rates. That's a seven-time difference, and you may say, Well, maybe that difference is warranted but, if you look at the history, industrial users pay 21 percent more than the average industrial user nationwide but residential and small business users pay a whopping 60 percent more than the average. So they, I believe, in their proposed Con Edison agreement, did shortchange the small business and residential ratepayer.

I believe in light of that history, we need to define and ensure that everyone in New York State benefits by securitization. We need the utilities to benefit. We need to keep them financable, but we also have to ensure that a significant -- and we need to define what that means. Some of those savings have to be passed on to those entities that will be least able to compete once it goes into a competitive market. The small business and residential ratepayers will not have the leverage power to ensure lesser rates for themselves.

So that's why I'm putting forth this amendment. The 10 percent and 20 percent were already enacted into law in California in 1996. Let's look to the wisdom of California. They also sought, in their wisdom, to ensure and define "ratepayer savings", and I hope -- this is a good bill. It doesn't go far enough. I hope that it's the intention of the good Senator to amend this. I hope he will agree with this amendment together today and we could all, as united in a bipartisan way, support this with this amendment.

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

Senator Seward.

SENATOR SEWARD: Yes, on the amendment briefly, Mr. President.

I certainly welcome the other side of the aisle to the cause of lowering electric rates in the state of New York, and isn't it refreshing that after ten or fifteen years of constantly rising electric rates in this state, that today finally we're talking about how far rates should be reduced and can be reduced in the state of New York. That's a significant change in direction of this state and I, frankly, applaud the Public Service Commission and the leadership over there. They are moving the electric rates in the right direction and obviously we can assist in that effort legislatively, and that's what this legislation, the other two bills that we've already passed today, can help do.

I've got concerns, serious concerns, with the amendment as has been proposed in terms of specifically citing a 10 or

20 percent rate reduction in the law. Obviously laudable goals and, believe me, I want to be there with that type of rate relief, and I think we can be, but the problem in putting it into law, in my mind, is this: Every utility is different in the state of New York and every one of the qualified rate orders that would be coming forth through the securitization bill would be necessarily different because conditions in every utility are different in terms of what IPP contracts they may have and other types of contracts. It's all different.

You cited the California statute as an example. They do, in fact, have ten percent in their legislation -- in their legislation which is now law over there, but New York is not California. They had far different circumstances. In fact, they set up a quasi public financing mechanism for the utilities to use in California which helped them obtain the ten percent level, that also they had -- a number of their IPP contracts were expiring, so that provided additional savings as well.

So the point is New York is not California, and I believe that the PSC needs the

flexibility to hammer out the arrangements with these utilities so that we can achieve significant rate relief.

The last time this Legislature - that was before you and I, Senator, were here - the last time this Legislature micro-managed this electric utility industry in this state, specifically in the law, was we did the six-cent law which required utilities to pay six cents per kilowatt hour for the power supplied by the Independent Power Producers and it took us six years to negotiate that out of the law and it today continues to cause high rates in this state because we were so specific in the law.

So I'm content to say this today. We are all collectively for significant rate relief. I have a serious problem in specifying specific numbers in the statutes in the state of New York. For example, if eight or nine percent relief can be achieved under securitization, are you saying that we shouldn't provide that eight or nine percent relief under this amendment? That's what would happen.

So I think let's all work together to provide significant rate relief for

the people of this state and I've already stated, of course, in quoting our Majority Leader, that this house fully intends to pass a chapter amendment to make sure that the residential and small business owners are the true beneficiaries under a securitization plan.

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

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

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ONORATO: We're hearing today -- yesterday we were in agreement on tax relief again and today we're on the same level, again trying to bring some rate relief to our consumers. You had some difficulty in specifying a certain percentage on savings, but perhaps rather than a certain percentage, we could have a proportionate as to whatever the large utility users, such as the industry, if

they're going to -- whatever their percentage is going to be, if it would be 50 percent savings, that a comparable savings should be awarded to the residential and small business, not the way it is drafted right now where the large industrial would receive approximately seven times the amount of rate relief that the small business person and the residential user would receive. What we're trying to do is bring them together so that everybody gets a fair cut of that particular pie. This is what we're trying to accomplish here.

SENATOR SEWARD: Mr. President and Senator Onorato, I think we're talking about apples and oranges here. There's some discussion about the PSC staff and Con Edison agreement or proposal that you're citing some numbers there in terms of rate relief to certain categories of customers in the Con Ed service territory. That is going to be the subject of a number of evidentiary hearings and the full Public Service Commission has yet to even consider that. That's -- that full arrangement that's been publicized in recent days is going to get a full airing and ultimately a decision

made.

This legislation is not related to that particular announced settlement between the PSC staff and Con Ed. This is a separate issue, and this is one -- as this bill is currently drafted before us, it would provide across the board savings to all categories of customers. Anybody who gets an electric bill in the mail would receive savings under this particular legislation before us.

What I'm suggesting, in echoing what Senator Bruno has already said earlier this week, is that let us -- we will be willing to provide a chapter amendment that would, in fact, say that under this particular securitization bill, that any savings derived here would be directed toward residential and small businesses.

ACTING PRESIDENT KUHL: Senator Onorato.

SENATOR ONORATO: Senator Seward, again, what I'm trying to get at is that whatever savings are finally arrived at, that they be proportionately given out to both the industrial, the small business and the

residential, not that the discrepancy between the upper industrial should be so disparate to discriminate against the residential and the small businessman.

What I'm striving for here is that everybody gets a justifiable cut in their rates, not one so far out of proportion that everybody else says, Why are they getting so much of a break? Why am I continuing to subsidize them with my higher rate than they are?

ACTING PRESIDENT KUHL: Senator Dollinger, on the amendment.

SENATOR DOLLINGER: On the amendment, will Senator Seward yield to a question?

ACTING PRESIDENT KUHL: Senator Seward, do you yield for a question on the amendment?

SENATOR SEWARD: Certainly, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Do I understand, Mr. Chairman, that the Majority

intends to bring a chapter amendment to this bill to the floor at some time in the future that will define -- better define the term "significant savings" vis-a-vis small business customers and residential customers?

SENATOR SEWARD: Mr. President, what I'm suggesting, in echoing what Senator Bruno has indicated earlier this week, is that -- in fact, two weeks ago we had a -- the Energy and Telecommunications Committee had a hearing on this particular piece of legislation and the PSC spokesmen at that hearing were - indicated that the PSC's intent was if securitization was to become law -- and they were, in fact, looking at some of these pro posals from the utilities -- that they intended to direct the savings from securitization to the residential ratepayer and small businesses, and that is the PSC intent and Senator Bruno has indicated that we're fully prepared on this side of the aisle to present a chapter amendment that would, in fact, say that the savings would be directed toward residential and small businesses.

I'm not saying that we should put

an exact percentage in the law in the state of New York. In discussing Senator Abate's amendment, I think I've made my case there in terms of not putting a specific amount in the law of the state of New York but relying on the words "significant rate relief."

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Seward, do you yield to yield? The Senator continues to yield.

SENATOR DOLLINGER: I understand the Chairman's opposition to a specific number, but if this amendment said it was the target and that clearly ten percent relief would constitute significant savings, is that amendment acceptable to the Chair -- or to the bill?

SENATOR SEWARD: Well, Mr. President, I would have to say that, as I stated earlier, every utility is different. I just - we just can't be putting numbers in the law. I am fully confident that if we direct the savings to residential and small businesses, if we - under this bill, the PSC works out the savings plans with the utilities and it results in a

significant rate relief, that's the direction that I feel we should be going.

I should point out in the law - or in the bill, there is full public notice provided for here and, in fact, judicial review. If, in fact, there are those who would question the decision of the PSC as it relates to these proposed refinancing plans, there is an opportunity there for a process to have these reviewed through the judicial process. So these issues of whether or not there were savings derived that were significant enough, I think those are issues that could be decided in that forum, should that be the case.

SENATOR DOLLINGER: Again through you, Mr. Chairman. It just seems to me that Senator Abate's amendment gives the Majority the opportunity to do what they've already said they will do, which is to bring forward a chapter amendment that will indicate that the benefits of securitization will be spread among all the ratepayers and across the rate base. I mean, I don't think that anybody has said -- or I haven't heard any evidence yet in this debate that a ten percent savings for the residential

and small business customers is not attainable. It's not feasible and it seems to me we're just telling the utilities that their goal has to be to share the benefits of a program that needs the blessing of all the people of the state of New York. I don't necessarily think that's unreasonable.

I support the bill. I'll talk on the bill later, but it seems to me that targeting -- and we're not intervening in the marketplace. We're simply saying that we're giving -- we're using the state power to create a particular method of financing that should reduce rates. We're simply asking that it be distributed among those people, both residential ratepayers and small businesses who perhaps could benefit most from it. I also agree that the industrial base needs rate relief.

I intend to vote in favor of the bill when we get there because that's what I think it will do, but I also think there's some need to spread this benefit around.

ACTING PRESIDENT KUHL: Senator Gold, did you wish to speak to the amendment?

SENATOR GOLD: I just wanted to

ask the sponsor to yield to a question.

ACTING PRESIDENT KUHL: On the amendment, Senator? Does it relate to the amendment?

SENATOR GOLD: Yeah.

ACTING PRESIDENT KUHL: Okay. Senator Seward, do you yield to a question from Senator Gold?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, the only question -- and it's kind of in the area that Senator Dollinger was going around, but I would like to hit it right there. My memo on the bill indicates that there is opposition and that part of that opposition, in fact, comes from the Majority in the other house, and what I don't understand is why we are going through an exercise today.

We in the state of New York do not pass concepts. We pass words that go into a statute so people can read the statute and understand the law, and certainly the laws are complicated enough. Why do we have to have a

bill out there that some day will have a chapter which amends that bill and somebody's got to read two pieces of paper and put it together?

If your side of the aisle acknowledges that this idea can be improved with a chapter -- this bill is not apparently going in the Assembly -- why don't we lay your bill aside for the day. Nothing will be lost. Put in whatever chapter you think or the Abate amendment or something that does this and give us one bill that somebody some day may be able to read as one law. I don't understand why we're being asked to vote on something that your side acknowledges is not in that form to be the law.

Now, one more part of this question. We have on many occasions in committee been asked to report bills out of committee as amended and we do that knowing that the bill that we are voting for is going to have some change, but this is not the committee. This is the Senate now acting and it seems to me that to act on something which you as a sponsor and Senator Bruno as our leader acknowledge, requires some amendment, some change, is just an

exercise in futility, other than to say today's the day that we're going to deal with this issue. Today's the day that the press releases go out on this issue and we don't want to change today because maybe next Monday, Tuesday, you've got a different press organization set up.

Senator, you say we haven't discussed this in years and there's no way that I can avoid the fact that you're going to get the credit that we're discussing it, and you should get the credit. We're discussing it. All I'm suggesting is if you don't want to accept Senator Abate's amendment today, if you want to mull that through with suggestions that have been talked about by your side, lay the bill aside. Let us take a bill that is one bill. We don't need a chapter and put it all together.

Now, the question, what's wrong with that?

SENATOR SEWARD: Well, Mr. President and Senator Gold, you mentioned this as being just a concept, and I would take exception to that. This securitization legislation which first came out here in New

York last June which we passed late in June in this house, since that time actually has become law in two states, California and our neighboring Pennsylvania and, in fact, it is working there and previous to that over in the state of Washington and other states are considering it. This is a concept, as you call it, that is law in other states and is working in other states.

The reason that I would urge my colleagues to -- let's pass this bill as proposed today is that I'm fully confident that by passing the bill, that will help facilitate those discussions with the other house. Let's get something on the table that we can provide for the other house. That's my reasoning in moving ahead with the bill today.

SENATOR GOLD: Mr. President, will the gentleman yield for one more question?

ACTING PRESIDENT KUHL: Senator Seward, do you yield to another question from Senator Gold?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, I wouldn't say this to everybody, but you're a person who I respect as having an open mind. Each year, the rough number of 2,000 bills - maybe it's 1900, 17-, whatever, passes in the Senate and a similar number passes in the Assembly and then there's a crossover of maybe 1,000, 1100 bills that actually go to the Governor and maybe the Governor vetoes a couple hundred and we wind up with 7-, 8-, 900 laws and on those, if you take those numbers, Senator, it must be 5-, 6-, 700 bills that we pass to, quote, send a message to the Assembly. They pass 5- or 600 bills to send us a message but somehow in this huge divide where you need three planes and a taxicab to get from our chamber to their chamber, those messages don't seem to get through, Senator. So I don't know why we pass these bills sending messages when the proof of the pudding, since you have been a Senator, is that those messages mean nothing. We're going to pass this bill. They don't like it and they're not going to pass it.

My point to you is that we are not voting on the word. We're not voting on the

word. We're voting on a piece of legislation and Senator Abate says to you, Senator, the "concept" -- quotes-unquotes -- is good but the bill is wrong and we can do something about it. Senator Bruno says, we got to do something about it. There will be a chapter.

All I'm saying is put it together. Today is Wednesday. Put it in tomorrow, whatever. It will be ripe for birth in this house next Tuesday, Wednesday, and then we got a bill and instead of having opposition in this house, instead of it going -- really going no place because it sends no message to anybody, you could be the author of a law, and that's all I'm saying. I think somebody on your side has to take the chance that these pillars will shatter and at one point do something sensible like that.

I happen to think that these pillars will not shatter if somebody on your side lays a bill aside, amends it and does the right thing but, Senator, you're just the kind of person that can do it because you've got that stature and backbone, and I hope the next words out of your mouth will be, "Mr. President, lay

the bill aside." Come on. Do it. It won't hurt.

SENATOR SEWARD: Senator Gold, you're very articulate but you're unconvincing, and I'm shocked to hear your numbers about one-house bills around here.

In all seriousness, this -- when we're talking about the potential for savings to consumers, electric consumers of this state -- I mentioned already the Niagara Mohawk estimate of an additional $220 million of savings with the legislation before us. The Consumer Protection Board at our hearing two weeks ago cited numbers of $780 million of savings to consumers of this state under this legislation as written -- I'm very confident that this is a good piece of legislation. I'm also confident that by the passage of this bill today, that it will facilitate a further discussion on this very important issue to the people of this state and that we should move forward. That's my position.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: I just wanted to have the record indicate that Senator Paterson's counsel, Richard, said I did convince him.

ACTING PRESIDENT KUHL: Senator Abate, did you wish to speak further on the amendment?

SENATOR ABATE: Yes, on the amendment.

ACTING PRESIDENT KUHL: Senator Abate, on the amendment.

SENATOR ABATE: Senator -- would Mr. President allow me to continue to question Senator Seward?

ACTING PRESIDENT KUHL: Senator Seward, would you yield to a question from Senator Abate?

SENATOR ABATE: Are you under oath?

SENATOR SEWARD: Yeah.

SENATOR ABATE: This is a cross-examinational fashion.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: I appreciate your statement that we in the Legislature should not

micro-manage and create inflexible and prohibiting restrictions on the utility companies, but were you aware that in the competitive hearings -- competition hearings that the PSC has held, that they have stated that they would like to see a goal of a 25 percent reduction for industrial users? They have, in their own minds, have a goal of reaching 25 percent. Are you aware of that?

SENATOR SEWARD: Oh, I certainly am. There's -- would you like me to elaborate? That's a far different process than what we deal with here in the Legislature.

My point is if we get too specific in legislation with actually numbers in bills that become law in this state, that we are not -- we are a deliberative body, the Legislature. What that means to me is we are slow to react here in this process. That's why I believe that we should avoid these kinds of specific numbers in legislation. The Public Service Commission, as a regulatory body, they can much more quickly change to make adjustments that meet rapidly changing developments in this industry, in this whole area. So that's far

different than putting specific numbers in a bill.

SENATOR ABATE: Would the Senator continue to yield?

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: It's my understanding that the PSC has been pretty outspoken about their goal towards industrial users. Do you know if there's a stated goal towards small businesses and residential ratepayers other than the Con Edison agreement which might be a model for the future which they stated they're looking for a 3.3 percent reduction compared to the 25 percent for the industrial users? Have they ever stated at these hearings, we want a 25 percent goal for industrial users and what is their goal for the rest of us in this state?

SENATOR SEWARD: Well, I would point out that for the first time, we have a PSC that is driving rates down for everyone and the

only discussion that I hear is what percentage that's going to be. So I think that's a very significant achievement by the PSC.

How I could respond to your specific question is at the hearings -

SENATOR ABATE: I guess my question is do you know whether they've ever stated what their goal is for residential and small business ratepayers? We know what their stated goal is for industrial users. Have they ever stated a goal for the other users?

SENATOR SEWARD: They are -- I can't quote you a number that I've heard from the PSC for each category of customer.

SENATOR ABATE: But, Senator, aren't you concerned, given the proposal around Con Ed -- and they're still talking about a 25 percent for industrial users -- how can you assure the residential and small business users that, again, they will only be faced with a three percent reduction? What in this bill protects those consumers? I know you said that you want to make the amendment that they get - something goes to them, but how will we know that the differential will still not be as great

as the comparison between 25 percent and 3 percent? How can you assure us that the PSC will do the right thing and protect everyone in this state?

SENATOR SEWARD: Under the bill, as presented today, as I cited earlier, there is full judicial review provisions there. The stated goal of the PSC, as stated at our hearings two weeks ago, their intent is to drive the savings from securitization specifically to the residential ratepayer and small businesses. We've had that. As has been discussed already, we're very interested in a chapter amendment to actually put that in the laws of the state of New York. So I -- I believe that the savings are going to be there for the residential ratepayers of this state. I'm fully confident of that.

SENATOR ABATE: The same thing with the Con Ed. There were savings to ratepayers, the residential/small businesses but in the tune of 3 percent compared to 25 percent. Are you agreeing that when you amend the bill, there will be specifically language that addresses the issue around the

differential, that there will be proportionally enough of the savings that will go to residential and small business ratepayers?

SENATOR SEWARD: As I stated earlier, we're talking about apples and oranges here in terms of, you know, this proposed Con Ed settlement, that's a whole -

SENATOR ABATE: I only use that because they say that this will serve as a model for deregulation and other competitive plans that are going to be put in place in the future. They have stated goals of savings for the industrial users and are silent as to the rest of us, and my concern is we should not leave it up to judicial review. We have a responsibility in this body to protect everyone, to create a healthy economic climate so the utilities fare well, the industrial users, but not at the expense of the rest of us, and my concern is this legislation does not put in place enough safeguards to create the kind of climate where everyone will benefit from these savings.

SENATOR SEWARD: I disagree. The legislation, as written, would provide

significant rate relief for anyone who receives, as I said earlier, an electric bill in the mail. We are willing to, as I've stated also several times, put in place a chapter amendment that will specify that the savings under this particular measure would go to residential and small business customers. So I'm fully confident that under this legislation and the chapter amendment and other developments in the electric utility industry, that all categories of customers of this state are going to receive significant rate relief.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes. Would the Senator continue to yield?

ACTING PRESIDENT KUHL: Do you yield to another question, Senator Seward? The Senator yields.

SENATOR ABATE: Would you consider if the PSC determines goals of 25 percent for industrial and 3 to 5 percent for everyone else, would that be significant rate savings in terms of the residential and the small business users? Is that what -- is that

how you would, in your mind, define "significant"?

SENATOR SEWARD: I am -- I think I have stated this. I don't know how many times I can say it. The legislation before us, coupled with a chapter amendment, would provide safeguards and significant rate relief for residential ratepayers.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Just my last question.

ACTING PRESIDENT KUHL: Senator Seward, do you continue to yield? Yes.

SENATOR ABATE: In order to give some flexibility -- and I understand your concerns -- would you consider when you do this chapter amendment -- although I would hope that you would join us in this amendment today, or at least table the legislation -- consider setting a minimum with a goal. Perhaps the minimum should be 10 percent when they're talking about 25 percent on the high end -- 10 percent is not an extraordinary amount of savings -- with a goal of 20 percent over five years? There then

is -- we're giving them flexibility but then we give then some assurances without people defining and leaving it up to individuals to protect the interests of citizens of this state. I think we need to institutionally provide these protections. Would you consider such language such as that in the future, setting a minimum with a larger goal?

SENATOR SEWARD: Mr. President, I think I've stated my position in terms of citing any specific numbers in statute as laudable as those goals are, and one of the reasons that I would be hesitant to put a specific number in law would be -- if you cite ten percent -- what if it's eight or nine percent savings, would we not do it because we didn't reach that ten percent goal in that particular settlement and deny the people that eight or nine percent rate reduction? That doesn't make any sense in my mind. That's one of the problems with citing specific numbers.

SENATOR ABATE: But we could write an escape clause.

ACTING PRESIDENT KUHL: Senator Abate, are you asking for Senator Seward to

yield to another question?

SENATOR ABATE: No. Thank you very much. I'm finished.

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

Senator Onorato, on the amendment.

SENATOR ONORATO: I think we're getting a little bit confused as to what we're trying to accomplish here. Without getting into specifics dealing with 10 percent, 15 percent or 20 percent, my goal was to allow everybody to profit from this reduction, and whether you want to say it's 10 percent or 15 percent, perhaps we can do it in another fashion that does not set the amount of actual savings but the distribution of the savings can be administered with a percentage category. In other words, the industrial user's savings should not exceed 50 percent of what the small business and residential users are getting. That doesn't specify that they have to be a 40 percent overall savings. It specifies that the industrial users shall not exceed 50 percent of

the savings administered to the small business and residential users.

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

(There was no response.)

Hearing none, the question is on the amendment. A vote in the affirmative is for the adoption of the amendment. A vote in the negative is for opposition to the amendment. All those in favor of the amendment signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative. Call the roll.

ACTING PRESIDENT KUHL: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 25, nays 34, party vote.

ACTING PRESIDENT KUHL: The amendment is defeated. Debate is on the bill.

Any member wishing to be heard on the bill?

Senator Paterson.

SENATOR PATERSON: Mr. President,

would Senator Seward 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 don't want to prolong this or ask you questions that you've answered before, but I would just like to ask you, in the -- with the distinct advantage of hindsight, perhaps by examining this situation involving the dissolution of Con Edison and the return of savings to ratepayers, in that case, perhaps we not be condemned to repeat this process when the PSC examines any future proceedings, and my question to you is, with respect to the Con Edison situation, the savings for ratepayers who are of the industrial variety, as I understand it, was an immediate 25 percent savings. Is that correct?

SENATOR SEWARD: I believe so, yes.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: If the Senator would continue to yield.

ACTING PRESIDENT KUHL: Senator Seward, do you continue to yield? The Senator continues to yield.

SENATOR PATERSON: Consequently, Senator Seward, through you, Mr. President, the savings for residential in this similar vein would be 3.3 percent which actually would accumulate over five years; in other words, at the end of the five years we would reach a level of a 3.3 percent reduction. That's also correct.

SENATOR SEWARD: I've seen those numbers, yes.

ACTING PRESIDENT KUHL: Senator Paterson.

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

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: When Senator Abate in her amendment -- buttressing her amendment, which I thought was very well stated

and which I believe should have passed, she said that the savings was actually seven times greater for those -- for industrial savings but actually, in fact, if the 3.3 percent savings was over a graduated period of five years, it comes out to less than one percent savings per year. In fact, Senator, it comes out to 0.66 percent for each year compared with 25 percent for the industrial ratepayer. So actually the differential in savings was that the industrial savings is 37 times higher than that for consumer and residential payers. Is that correct, Senator?

SENATOR SEWARD: Well, Senator, I haven't done the math as you have, but I think it's significant to point out here that the bill before us has -- is not -- has no direct relationship with the proposed settlement with Con Ed and the PSC staff.

I would encourage you, Senator, or anyone else who has concerns about that to make your case at the upcoming evidentiary hearings regarding that settlement -- proposed settlement and directly to the PSC commission members who have not even considered that at

this point. You're talking about a staff proposal over at the PSC unrelated to this bill before us today.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

And I understand what you're saying. It doesn't necessarily relate to your legislation. It relates to the actions of the Public Service Commission, and I thank you for responding to the question.

Mr. President, on the bill, what I'm really trying to point out is that the difference in the savings, when you look at the different entities, is so disparate. It's so immense, that I think that I don't want to wait for the Public Service Commission to hold hearings. I would rather make my evidentiary complaint right here and point out that rather than this exercise in trying to figure out what the actual statistics are, we can safely say that there is a wide disparity between the savings for industrial ratepayers and for those for residential, and what I think Senator

Abate's amendment was trying to do was to in some way limit or in some way inhibit us from going through a process that would be unfair to many of the parties who are paying.

The process of securitization was one where the dollars of all concerned were going to establish what was really a property right, such that the utility could invest in the open market and create lower interest rates. When those savings are returned, we would think that they would be returned in some kind of equitable fashion and the problem that I have with the legislation is that, in my opinion, it abrogates the responsibility of the Legislature in favor of the Public Service Commission that's demonstrated historically, or at least in this instance and, as Senator Seward pointed out over the last ten years, that they don't have any great interest in returning savings to certainly residential and small businesses, and we think at this particular time in our state that, if we're going to re-ignite the engine of our economy, we're going to have to do it more through these kinds of processes as much as what we did yesterday in terms of tax reduction.

So as long as I see this significant difference in what the result is going to be and no stated position on the part of the Public Service Commission to the contrary, it is very difficult for me at this time to support this legislation.

I don't think this should be an exercise in futility for utilities, and I don't think that this is a legislation that necessarily will help any ratepayers who are residential or small businesses because we don't have even a stated position on the part of the Commission that they are going to engage in any activity that would inure to the benefit of people whose dollars provided the revenue base for securitization that provided them the opportunity to receive these savings in the first place.

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

SENATOR VOLKER: Mr. President, I want to speak.

ACTING PRESIDENT KUHL: I have a list going, Senator Volker.

SENATOR VOLKER: Oh, I'm sorry.

ACTING PRESIDENT KUHL: Senator Mendez, you want to speak on the bill also? Do you want to speak on the bill also?

SENATOR MENDEZ: Mr. President, yes, but I would like to ask a question of Senator Seward.

ACTING PRESIDENT KUHL: In a moment, Senator Mendez.

Senator Nozzolio, the Chair recognizes you.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my colleagues, the measure before us today shows great leadership, great leadership on behalf of Governor Pataki and particularly here in our house, I want to compliment the efforts of Senator Seward for bringing this measure to the floor, for taking the cutting edge leadership role in this state on trying to make the right changes in the energy field for New York.

Unfortunately, Mr. President, my colleagues, New York, as we all know, has the highest energy costs in the entire nation, more than 60 percent above the national average. In

Long Island, the rates are higher than any place else in the country. This high cost has been an extremely enormous burden to economic developers across the state who are trying to bring additional jobs into New York. We need to address energy costs if we are ever to be the job magnet that New York can be.

On the average, 18 cents out of every dollar that we pay in our energy bills goes to state and local taxes and that's the second highest rate in the country. This week, this Senate has taken good steps to phase out the gross receipts tax, to save consumers over $710 million when this cost -- tax cost cutting goes into effect through the next five-year period.

But what we have before us today is the next step. As Senator Seward so adequately addressed in the discussion on this measure, utility companies need flexibility, flexibility that all other businesses have in going to the marketplace and getting reduced costs of financing when that is appropriate. We do that for businesses in our economic development efforts. It makes sense to do it

for utility companies so that they can pass those costs directly on to customers in the form of lower utility rates.

California and Pennsylvania have already enacted securitization laws based on the New York model and that we hope this can be enacted quickly here and in the Assembly, because if we don't enact this measure, we're going to continue to languish in our economic development efforts. It's that simple.

We should all be proud of the efforts we take into cutting taxes in this chamber under the leadership of our Leader, Joe Bruno and our Governor, George Pataki, but we cannot put this entire model together unless we address the high costs of energy.

Corning Glass, just along the Southern Tier, could easily go across the border and save 30 to 50 percent on their utility rates. Companies all across the central Finger Lakes face that same dilemma and that this measure and the measures that we've enacted this week help those companies understand that New York is serious about economic development.

Thank you, Senator Seward, for

your leadership in this effort. Thank you, Mr. President, to the opportunity to support this measure.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise today to speak in favor of this bill and to join the Chairman of the Energy Committee in supporting this concept.

I have some reservations about this bill that I hope will be worked out in a Conference Committee. One of them, because I supported Senator Abate's amendment, is to try to -- and I know the Senator has spoken about a chapter amendment that would come from Senator Bruno that will try to define the term "significant savings" so that we can make sure that there is some across the board rate relief.

I, in particular, don't mind the notion that there would be some greater rate relief for the businesses that have legs in this state, that have the ability to walk and take their jobs with them. It's my sense in dealing

with both Niagara Mohawk and Rochester Gas & Electric, that we need to be able to reach out to those businesses and provide them with greater incentives to stay through lesser rates. So the notion of giving the industrial base some kind of preferential reduction is not inapposite to my thinking on this bill or, for that matter, I don't think is a bad idea for the long-term economic development of this state.

The two issues that I would like to just call your attention to that I think need -

ACTING PRESIDENT KUHL: Senator Dollinger, would you suffer an interruption. Just for my own information, I checked to see if there are any other conversations going on and I counted at least eight conversations in this chamber between members. If it's that important, take it out of the chamber.

Thank you, Senator Dollinger. I appreciate the -

SENATOR DOLLINGER: Thank you, Mr. President.

The two issues that I would call attention to the Chairman in the discussions of

what I hope will be a Conference Committee discussion, one is the 15-day time period for appeal. These are going to be irrevocable orders. I understand that they have to be irrevocable because that's the only way that we can create the stream of rates that will be necessary to secure the bills that provide the financing benefits of this bill. I understand why they have to be irrevocable.

I would just suggest that the tying of an irrevocable order to a 15-day appeal period, really, what I think substantially constricts the ability of any outside party to challenge an irrevocable order for whatever reason, even if they are just simply technical defects, and I would suggest that either expand the period of time to maybe 60 days, give greater time to allow an appeal, to allow people to evaluate the context of an irrevocable order. It seems to me that that's a minimal interruption of the process especially when, as we understand, these are going to be irrevocable long-term orders that will be used to finance the secured assets.

I would point out just one other

thing, Mr. President, in my support of this bill, is that we've heard a lot of discussion about the cost to utilities and what they have to deal with. I certainly know that in Rochester, Rochester Gas & Electric has done a very good job of paring down one-quarter of its costs that is within its control.

I've talked about this with the Chairman of the Energy Committee. Utilities face really four cost components: Their asset cost, their energy cost, the cost of buying power, their regulation tax cost and their personnel cost. Those are really the four components of utility costs in this state.

I know that Rochester Gas & Electric has cut its work force by one-quarter, has vigorously tried to reduce its own personnel costs. Now we've got to turn our attention to those other components.

I think that the Chairman of the Energy Committee properly point out that these are costs that we imposed on them. These are costs, whether it's the GRT that we imposed on them that everybody, I assume, the Majority in this chamber supported at some time, to put the

gross receipts tax on. We have supported -- and that includes the Majority and the Minority - this Senate has supported the kind of regulatory activity to benefit consumers across the state that has a cost associated with it and, as you know, we pushed the utilities into the independent power producing network. So all of those things are a result of our dabbling in the marketplace.

I think what this does is this bill gives us a chance to partly rectify what we have done wrong in trying to intervene in this marketplace. I think it's a worthwhile step. The fact that California and Pennsylvania have done it, as Senator Nozzolio have pointed out, are an indication that, if we're going to deal with the problem of stranded costs, if we're going to find a way to begin to rectify the errors in treating these captive utilities like our public property and not treating them as part of the private marketplace, the only way to step back from that is to give them the opportunity to reduce their financing costs for these assets and to begin to reduce rates across the board.

I think this is a good step. I think there's some tinkering that needs to be done in the Conference Committee process, but I'm prepared to move this bill forward, Mr. President. I think it's the right initiative. It's the right time, and I hope that we get to a point where we have the significant enough rate reduction so that businesses will look at Pennsylvania and New York and Massachusetts and say, Gee, New York is just as competitive as its neighbors on utility rates.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: First of all, I want to congratulate chairman of the Energy Committee and I mean this very sincerely, who took over the committee from the mess that it was in from the previous chairman, but and I also want to say -- for those that don't know, that was me -- but I sincerely want to say that this is a difficult period in energy. By the way, the last time we micro-managed was under my tenure, and I was the sponsor of the six-cent bill.

Let me say that remember back in

1979 the situation we were in where everybody was -- everybody had determined the price of oil was going to go through the roof. Gasoline was going to go to $2 a gallon. The assumption was that at some point within the next ten years at that time that oil would go to $30 a barrel which, of course, it never got anywhere near and the interesting part of it is at the time that my counsel and I were faced with an awful lot of people who wanted to go to eight cents a kilowatt hour, and some that wanted to take the cap off entirely and said, Let it run with the market, which by the way at times would have allowed it to go to 10 or even 12 cents.

So it was an entirely different time, and I must say that with all the talk here about helping residential people and small businesses, and I think that's very commendable, but let's understand a little bit about the utility business, something we don't often talk about. One of the reasons it's important to aim at big industrial users aside from the fact that so many of them are leaving the state, is their energy rates are so much higher than residential people. There are three or four levels of rates

in this state but two in particular.

Residential people pay a much lower amount rate on their power than do industrial people. I'm not sure exactly the percentage of it. It depends on where it is. Certainly Con Ed charges industrial ratepayers far, far higher. I would think it's five times and I'm not even sure, maybe even seven times, for all I know.

The problem is as the industrial might of this state has begun to leave it, residential ratepayers pay the price because the less you can spread those numbers over, the more the residential and the small business people are going to pay higher rates. That's been the problem.

The problem with the utilities in this state aside from problems with management, and I'd be the first to say that it's not entirely the IPPs and, by the way, nobody mandated that some of these utilities sign these long-term IPP contracts, even though they claim that the Public Service Commission encouraged them, and I think at times they did for various reasons, but nobody mandated that that be done,

the long-term contracts. So I think that should be -- that should be clear.

But the problem here is we're faced with the reality of 1997, and that is we've got a bunch of utilities that are in trouble. If we don't deal with it, residential ratepayers are going to take the gaff some place down the line.

In fact, unfortunately, what happened in the late '80s, the Public Service Commission encouraged the utilities to not do any rate increases and to do all sorts of things.

The problem with that was that they began to lose money. Their debts started piling up and their problems with the IPPs just got worse, and we were saying at the time that the problem is that down the line there's going to be real trouble unless the economy of the Northeast surges dramatically and, of course, it hasn't happened.

So I think that one thing we ought to understand and that is that the business people in this state and to a certain extent and some people might say to a large

extent have been helping to finance residen tial rates over the years and there's no question of that and, if we don't encourage business to stay in the state and if we don't make sure that we recapture part of our industrial and business base, I'm afraid residential rates are going to go up a lot more.

So my commendation to you, Senator Seward, and I mean this very sincerely, I think in stepping through a very difficult period of time, I think Jack O'Mara and the Public Service Commission, I happen to think in a very difficult time is doing the best that they can, and I think that the Public Service Commission today I think is responding very well.

Hopefully, we'll be able to get through this period. We'll be able to stabilize rates. By the way, a 3.3 percent decline in residential rates is a lot more than people realize, and if we attack, as I think we will, the gross receipts tax, everyone benefits from that, not businesses, small business, big business, everyone benefits from it and in the

long run, the residential ratepayers far and away benefit the most because the benefits that accrue to businesses works down to residential people plus their personal -- the personal residential people get their benefits.

So my commendations to you, Senator Seward. I think, and I hope very much and I think you feel like I do that before this year is out, we're going to see some dramatic changes in the whole utility industry in this state.

ACTING PRESIDENT KUHL: For the benefit of the members, this debate did start at 10:17, so we're a little over an hour into the two-hour time limit and I have three members left on the list who indicated they wanted to speak: Senator Mendez, Senator Marcellino and Senator Leichter.

I don't see Senator Mendez in the chamber. Senator Marcellino?

SENATOR MARCELLINO: Yes, Mr. Chairman, Mr. President. I thank you for recognizing me and high energy costs and high property taxes are a burden on the people of Long Island where I live and represent, and it's

to the credit of the Governor and Majority Leader Bruno and Senator Seward and Senators Cook and LaValle who initiated two sets of bills that addressed these two very, very significant areas.

Lowering property taxes, helping the schools come in with lower property taxes, we debated that yesterday and it was very interesting to get a lecture on property taxes from the Senator from Brooklyn. This was interesting because by comparison it's just non-existent when the two of you talk about property taxes on Long Island.

Energy costs on Long Island are an impedance to businesses staying there. They're an impedance to businesses staying in this state and, if we don't lower energy costs and if we don't lower property taxes, we can not keep businesses in this state, and that means jobs. That means jobs in the city of New York and it means jobs everywhere in the state, including Long Island, and that's important, and should be important to all of us.

I disagree with my colleague, Manny Gold. We must send a message to the

Assembly because they have been dragging their feet on this issue. They've been totally dragging their feet. They refuse to address the issue up front. We have to address this issue of high property taxes and high utility rates, and it's about time the issues are drawn and the lines are drawn as to who stands where.

Let's stop the silliness; let's get on with the bill, let's vote this bill up as we did the bill on property taxes yesterday and let's get on with it and move.

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

SENATOR GOLD: Mr. President, will the gentleman yield to one question?

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT KUHL: Senator yields Sure.

SENATOR GOLD: Senator, I appreciate the sincerity of your impassioned speech but when you say we've got to send a message to the Assembly, they're dragging their feet, Senator Seward in his usual candor started out by saying that this is the first time in 15 years we have discussed it on the floor.

Are you suggesting that we have been dragging our feet for 15 years?

SENATOR MARCELLINO: I'm suggesting that the issue for the first time is being drawn and being discussed, and if it wasn't for George Pataki and if it wasn't for Joe Bruno, and if it wasn't for the Senator over here who chairs the Energy Committee and, if it wasn't for Charlie Cook and Ken LaValle on the Education Committee, we wouldn't have those two pieces of legislation, the one we discussed yesterday and the one we are discussing today, and I think that's to their credit and we should get on with it. If these two bills are imperfect, and they probably are, you know, nobody here is omniscient and draws perfect pieces of legislation on either side of the aisle, so let's deal with it and let's get on with the negotiations and let's move ahead.

We made this proposal several days ago. We made the proposal on property tax and school relief a couple of weeks ago, and we now have amendments popping up now. We'll discuss them on the floor. They could have been discussed a long time ago, and if this chamber

has been dragging its feet, so be it.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. Just want to -- thank you. Senator, that's all I wanted was an acknowledgement that if the other house was dragging their feet that up until an hour and a half ago I guess we were dragging our feet also.

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

Senator Seward would like to speak on the bill.

SENATOR SEWARD: Point of information here.

ACTING PRESIDENT KUHL: Chair recognizes Senator Seward.

SENATOR SEWARD: Yes, Senator Gold, I just don't want to leave you with the impression that I said that this was the first time in 15 years that this house has talked about rate relief, because I can recall as early as 1989 this house passed a gross receipts tax repeal which would have cut electric rates for everyone in this state.

I refer to the first time in 10 to 15 years that rates are actually coming down in the state of New York, and that is due to a number of factors including the leadership of the Governor and the Public Service Commission, and we in this house, if the Assembly will get on board, we can facilitate even greater savings and that's what today's discussion is all about.

SENATOR GOLD: Will the gentleman yield for one more clarification?

ACTING PRESIDENT KUHL: Senator Seward, will you yield for one more question from Senator Gold?

SENATOR GOLD: Yeah. I certainly would never misquote you. In your last statement, just so I understand it, something happened in 1989 that resulted in a good law.

SENATOR SEWARD: In as early as 1989, Senator, this side of the aisle, and a number of people on your side of the aisle passed legislation which would have repealed, phased out the gross receipts tax in this state and we're still working on that issue.

ACTING PRESIDENT KUHL: Senator Leichter, do you still wish to speak on the

bill?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Chair recognizes Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. I think there are many, many groups and many legislators who have a lot of doubt about the securitization in many different respects. That's why it's being opposed by the American Association of Retired Persons, the American Lung Association, Citizens Utility Board, EPL, Environmental Advocates, Citizens Environmental Coalition, NYPIRG, Hudson River Sloop Clearwater, Hudson River Keeper, Sierra Club; and just to point out that when this bill came up at -- in June, if I can find my list here, a significant number of legislators on this side of the aisle, Senator Connor, Dollinger, Gold, Kruger, Leichter, Markowitz, Mendez, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Stachowski and Waldon voted against it. When it came up in December there were a few -- there weren't as many, but it was Abate, Connor, Kruger, Leichter, Montgomery, Onorato, Seabrook, Smith and

Stavisky.

What we're really doing in this securitization is, in a certain sense, we're playing the market as it exists now, the prices for wholesale electricity. We're playing the market as it exists now in bonding and we're allowing the utilities to take certain in tangible costs and assure themselves that they're going to be reimbursed by ratepayers.

Some of these are costs that the ratepayers should not have to bear. Some of these are costs that relate to poor business judgment. I heard Senator Volker say, quite rightly, nobody told them to enter into these long-term contracts for independent power. So now what we're doing by this is saying, O.K., where you made a bad decision, we're going to assure that you're going to get paid. Manage ment is not going to have to pay for that, the shareholders are not going to have to pay for it. It is the ratepayers, and if there's any savings to be made, I point out again, it is only because of the nature of the bonding and because of the price of wholesale electricity.

So we're not really dealing with

competition. We're not doing anything structurally that's going to assure us over the long period of time of actual decrease in utility rates. In fact, the decrease that we're going to get from this, even if it all works out, is going to be very minimal. Then in addition I think people have rightly pointed out that the whole process is somewhat flawed. Gives an enormous power to the Public Service Commission, and it also fails to assure the ratepayers who are going to be on the hook for all of these intangible costs that are being securitized, they don't even get the benefit. They don't get the benefit as this bill is now written. We have a somewhat vague promise and somehow this same approach that we see here because essentially it's a bail-out for the utilities. Where you made wrong business decisions, where you took risks and they didn't turn out well, we're going to now step forward -- we the public, we the Legislature -- and we're going to say we're, in a sense, going to hold you harmless. We're going to allow you to make a profit on this.

It's really the same thing with

Shoreham. It's interesting that we're debating this bill today because I understand the Governor today is announcing a multi-billion dollar bail-out for LILCO.

Now, I'm as much committed as anybody in this chamber, as much as the legislators representing Long Island, in bring ing down the costs of LILCO. But how are you doing it? You're doing it by saddling all the people of the state of New York with debt, and this is a state that's already, as you know, very, very heavily in debt.

In fact, it's interesting, somebody handed it to me. This is what George Pataki said in October 1994 when Mario Cuomo said, Let's bond out LILCO. Let's bond out Shoreham. Let's bond out the -- the real property tax, I guess, at that point that even wasn't in the picture.

So George Pataki comes out with this ad, and he says: Three weeks before the election Mario Cuomo wants to buy votes on Long Island by putting our children $9 billion further in debt. Then he goes on, says, Just to try to buy votes a few weeks before the election

Mario Cuomo promised a giant Long Island electric company a sweetheart deal. Corporate welfare -- I didn't know the Governor was using that expression. I'm glad. Since then -- since then. He seems to have embraced it, but anyhow he says, Corporate welfare for them, $9 billion in debt for us and our children. That's an outrage. It's political opportunism at its worst, and sadly it's what we've come to expect from Mario Cuomo. It shows a blatant disregard for taxpayers and the fiscal stability of our state.

Now, granted that was a little hyperbole in an election, but I'm not so sure the Governor didn't make some good points about bailing out LILCO, about saving the shareholders. Why didn't they take some of the risk? Why is it all the Long Island residents and now the taxpayers of the state of New York?

I've never had a problem with public power. Sort of interesting, because my party, 1930, with Franklin D. Roosevelt as Governor of the state of New York, fought a big fight, successful, against the Republicans to establish public power in this state.

Now, I guess some people are saying, Well, that's all the Republicans are doing now; but there's a difference. We fought to have public power to enable lower rates for residential users, for small businesses. You're using public power in a sense to try to save the shareholders, to try to save the utilities from their mistakes.

You know, I happen to believe in the free enterprise system. You people say you believe in the free enterprise system, but when it's a big corporation, when it's a big busi ness, you're always out there rushing to help them. I'd like to see that same concern for the small businesses, that concern for the -- for the ratepayers and the taxpayers, because I tell you, this Long Island deal is going to be an extremely expensive one, and I'll tell you also that this securitization may turn out to be very expensive.

It certainly comes and bails out the utilities, and I don't think that this is the right way to bring down rates in the state of New York.

ACTING PRESIDENT KUHL: Is there

any other Senator wishing to speak on the bill?

Senator Bruno, to close debate.

SENATOR BRUNO: Mr. President, I was listening partially in here, partially through the intercom, and I'm constantly amazed at the discussion and the rhetoric and in all due respect, Senator, it is nothing but rhetoric when you talk about describing the lack of savings that would come from securitization, and when someone or a group doesn't want to do something, you can think of any number of reasons not to take the proper action.

The bottom line is, it's more political than reason. Now, you apparently didn't see Crain's and I'll pass it over. In that, Con Ed indicates -- thank you, Dave -- Con Ed indicates that securitization by itself would save the ratepayers of the City and Westchester $700 million, five percent of the ratepayers base. That is more than the 655 million they indicate they can save through some of the consolidation and other incentives that they announced this past week that are going before the Public Service Commission.

So, Senator, again in all due

respect to you, your position, you're in the City. Why would you want to be making statements in the face of saving ratepayers $700 million? Now, if you don't want to support it, if you have other reasons, if you feel like some people make out better, but the Governor has said to the Speaker who has refused to take this bill up in the Assembly and I sense that you are carrying the water for the Assembly on this floor and that's your prerogative, but the Governor said, and the Speaker made the point that the savings may not go to ratepayers. We are putting in the bill specifically that any savings as a result must go to the ratepayers.

Now, that ought to be good enough for all of us. If it's in print, it would be the law, so all you have to do is support it, get the Assembly to support it, and you will save people throughout this state tens of millions of dollars, approaches over a billion, so when you talk about reasons why not, we ought to focus on why this is on the floor.

It's the high energy costs that we're addressing. Utilities are taking upon themselves, NiMo, with what they're doing with

the Independent Power Producers, LILCO this morning, the Governor is out there making an announcement that they have a tentative agreement which will save ratepayers 20 percent out there. Con Ed, and what they're doing.

What are the utilities doing? They're recognizing that New York State has the highest energy costs in the country, and the Island is the highest in the country: 18 cents on every dollar. You know the information. So we're not out here being light; we're not out higher being political. We're not out here just having a good time. We're trying to do something to keep the economy moving forward, the programs that this Governor has initiated, that we in this chamber have partnered in with the Assembly; and the bottom line is job creation. You cut personal income taxes, you create jobs. Cut business taxes, you create jobs. You cut property taxes, you save people money and you create jobs. You cut energy costs, you create jobs.

I was talking with Senator Meier earlier this morning. He has industry, the metal producing industries, can't expand in New

York State because of the prohibitive cost of power. So, Senator -

SENATOR LEICHTER: Mr. President, would -

SENATOR BRUNO: -- if you don't want to be supportive, then that's your prerogative, but in terms of conversation and the rhetoric, we ought to deal in facts.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Yes, Senator Bruno, I know you're closing but if you would yield to just one question.

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

SENATOR BRUNO: Is this a closing question, Mr. President?

SENATOR LEICHTER: It's a definitive question.

SENATOR BRUNO: Thank you.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator Bruno,

I know I heard you get up and say it, and I know you believe, you're creating jobs, the tax cuts are working, and so on. Did you read the piece in the Times-Union that showed very clearly how the state of New York is doing worse than almost every state in the union? We're doing worse than our neighboring states in job growth.

SENATOR BRUNO: I saw that, Senator, and thank you, and the reason why New York is lagging is because of the financial ruin that was perpetrated on the people of this state in the '80s and the early '90s in the Cuomo administration, and we are recovering from being 50th in job creation in this country, having led the country in job losses, so naturally New York State has a much longer way to go; but in that article, I believe if you look at a base of the last two years, not a previous going back six or eight years, I think you will find in the last two years that New York State is about eighth in the country in job creation, so it just depends on the base that you use.

But thank you for your question. Thank you for the opportunity that you've given me to be able to respond, and, Mr. President, I

sense my colleague on my left, on his feet so it appears that he has something very worthwhile to contribute to the discussion, so I would defer to Senator Paterson.

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

SENATOR PATERSON: Actually, I'd like to thank Senator Bruno for his contribution and would like to ask if he would yield to a question.

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

SENATOR PATERSON: The point well taken, the Senator shows us an article in the Crain's Insider that quotes Eugene McGrath, who is the president of the Consolidated Edison Company here in New York, as saying there would be an enormous savings, particularly in Westchester and in other parts of this state, to residents and to other ratepayers if this legislation is passed, and we agree, Senator Bruno.

This is not an issue of rhetoric. This is actually an issue of a

potential of savings. What we are simply saying is if it were restricted to the stranded costs that utilities have, and Senator Dollinger pointed out some of those costs, the costs of personnel, the costs of buying electricity and the costs of maintenance, the costs of building plants, those are some severe costs, and in many respects the utilities have to make those costs; but what this piece of legislation actually is providing is for an unlimited stream of financing offered by ratepayers that would also cover any kind of estimated debt or any kind of previous debt or any equity capital, so in other words, there's no restriction on any of the - on any of the procedures that the utility companies might take at this particular point because there's a constant really mandated stream of financing that's coming from the ratepayers who are, in a sense, the stockholders here.

Senator Volker, when he was talking before, was referring to situations in 1978-1979 where we mandated certain percentages of payments come back from the utilities, but that's exactly the point that, if we are going

to lock ourselves in where there will be no authority after the bonds are actually drawn, there would be no legislative proceeding, no action of any regulatory agency, then we're going to be locked in, but at the same time the legislation does not in any way accommodate what are the ratepayers, whoever they are, in any specificity as to what they're going to receive back.

So all we're simply -- or all I'm objecting to, not speaking for anyone else, Senator, is the situation where we have a constant stream of financing and really no guarantee at any later date that there would be any return to the actual ratepayers. There's certainly statements to that effect coming from the president of a company that's receiving a 25 percent rate reduction, while the consumers and the residents and the small businesses are receiving a 3.3 percent reduction over a period of five years which I estimated before comes out to an average of 0.66 percent of reduction every year.

So if the Senator would yield to a question: What is there that the residents or

certainly the small business can come away from this legislation that would, in a sense, make it clear that there would be a significant rate reduction that would be received by our passage of this legislation?

SENATOR BRUNO: Thank you, Senator Paterson, for that very concise and clear question.

SENATOR PATERSON: Oh, one other thing, Senator. Did you notice what the next article was after the rate reduction?

SENATOR BRUNO: I'm not sure that I did.

SENATOR PATERSON: It was on casino boats.

SENATOR BRUNO: Ahh! Casino boats, where some people should be floating.

Thank you, Senator. The bottom line really is that this language in this bill can be specifically -- and this was an agreement with the Governor and with the Speaker -- that any rate savings that accrue would go directly to the ratepayers, not to all the others that you describe, not to investors, to ratepayers. That would be the language of this legislation.

And let me just conclude, Mr. President, because we have other work to do, by saying that we ended up in trouble in this state with businesses and with utilities by micro-managing the management of businesses and utilities by government literally interfering, by overly regulatory ways, these utilities and these businesses. We're trying to change that. We're moving towards competition here in this state and in an openly competitive market with utilities, and that's way overdue to make us more competitive with other states.

So I would urge my colleagues to support the legislation that is before us.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: 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.)

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Yeah, Mr. President and Senator Bruno, I had asked some questions of Senator Seward, and I don't know, I think other business may have distracted Senator Bruno at the time, but those questions are valid based upon Senator Bruno's comments, because Senator Bruno said that the legislation will say something.

Senator Bruno said the Assembly has rejected this bill, and all that I said to Senator Seward and I repeated to Senator Bruno, is if the bill is laid aside, amended to have this so-called chapter amendment language put in it, and we have one piece of paper next Monday, Tuesday or Wednesday, maybe we could on this side give more support to the bill, but it's silly to say that we are passing an imperfect piece today, which we all know, thanks to Senator Bruno's usual candor, that it will not go in the Assembly. It will not become a law, so why ask us to vote on something which you yourself say must be amended? It's one thing to do it in a committee, it's a different thing on the floor.

So, Senator Bruno, I probably

could support this if some of the language you say will come were in this one piece of paper. I would ask you to ask Senator Seward, lay it aside. Amend it tomorrow or later today. We have legislative days, bring it back next Tuesday or Wednesday and get some broad-based support and maybe the Speaker would listen. But I don't -- when you say you're not being political, the answer is, of course, you're being political because if you weren't being political, you would say, "Senator Abate, that was a great idea," and, "Senator Leichter, you're making some sense" and, therefore, wait for my chapter amendment which will be included in the bill, we'll put it before you Tuesday in a non-political, bipartisan way and then let Speaker Silver turn it down. Perhaps he'd listen.

I vote no.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I'd like to explain my vote in the affirmative by indicating

that presently it's my understanding there's no bill in the Assembly that's in print that's even close to the bill that we're discussing here today, and it's important to get this process going for all the reasons that were cited by Senator Bruno.

The concept to wait for the Assembly is the concept that I don't think this -- this Legislature, the Senate, should ever, ever follow. If we waited for the Assembly, we wouldn't have a three-year income tax cut. If we waited for the Assembly, we wouldn't have workers' compensation relief. If we waited for the Assembly who are now complaining about our property tax bill, we will never have property tax relief, and if we wait for the Assembly to put something in print, we will never have energy relief in this state.

So it's leadership is what we're doing here. We're showing the Assembly where to go and, as soon as public opinion catches up with us, the Assembly will follow.

So I vote in the affirmative.

ACTING PRESIDENT KUHL: Senator DeFrancisco will be voted in the affirmative.

Senator Gentile, to explain his vote.

SENATOR GENTILE: Yes, I'm voting in favor of this bill as an affirmation that we are moving in the right direction. However, it baffles me sometimes to learn of some of the procedural aspects of this house when we have an amendment provided here that would do the same thing that the chapter amendment that the other side is proposing, when it's here on the floor today and it's bypassed by the -- by the sponsors of this bill. It baffles me that we can't do everything today or put it over until next week.

However, it's -- I look forward to that chapter amendment, and I agree with Senator Bruno. The good Senator said that, if something is political, we could always find ways to oppose it and I may need to remind the good Senator of that statement in regard to the constituents in my district in the very near future.

In any case, I look forward to the chapter amendment and I am voting yes.

ACTING PRESIDENT KUHL: Senator

Gentile will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 345, Senators Abate, Connor, Gold, Gonzalez, Leichter, Markowitz, Montgomery, Nanula, Onorato, Paterson, Sampson, Santiago, Seabrook, Smith, Stachowski, Stavisky and Waldon. Ayes 44, nays 17.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Yes. May I have unanimous consent to be recorded in the negative on Calendar Number 368, please.

ACTING PRESIDENT KUHL: Without objection and hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 368.

Senator Present.

SENATOR PRESENT: Mr. President, can we return to motions and resolutions and

take up a Resolution 609 which was passed, have it read in its entirety, and then recognize Senator Cook.

ACTING PRESIDENT KUHL: We'll return to the order of motions and resolutions. Secretary will read Resolution Number 609 which was previously passed, in its entirety.

THE SECRETARY: By Senator Cook, Legislative Resolution, commending the New York Association for Continuing Community Education and the 1997 Students of the Year.

WHEREAS, the Legislature of the state of New York is pleased to welcome the New York Association for Continuing Community Education, and proud to commend the 1997 Students of the Year for their outstanding work as adult learners; and

WHEREAS, Najayyah Ahmed, Robert G. Anderson, Edwin C. Andrews, Bridget Barback, Maria T. Cappello, Harriet Cole, Shirley Davis, Charles Gottschalk, Scott Gowans, Belinda Lopez, Cheryl Lemons, Andrew Moxley and Christopher Lane, all honored recipients of the year who have been selected to receive this esteemed distinction because of their demonstrated

outstanding perseverance and dedication;

The 1997 Students of the Year worked hard and overcame a myriad of challenges and, in doing so, developed within themselves a strong sense of independence, self-reliance and self-sufficiency which can never be taken away. The 1997 Students of the Year have confirmed through their earnest commitment and will to succeed that they should be looked upon as positive role models, not only to adult learners but to their community as well;

The Legislature of the state of New York also pays tribute to the teachers, coordinators, administrators and trainers of these students for their selfless dedication to the students and whose work has brought hope into the lives of many, an accomplishment that cannot be measured.

The Legislature of the state of New York also honors the board members for their guidance of the New York Association for Constituting Community Education, and for their continued dedication to education in New York and to all the individuals on the New York State committee who worked diligently in order to

ensure these students receive the recognition they deserve;

NOW, THEREFORE BE IT RESOLVED that this legislative body pause in its deliberation to commend the New York Association for Continuing Community Education and the 1997 Students of the Year for the remarkable accomplishments; and

BE IT FURTHER RESOLVED that copies of this resolution, suitably engrossed, be transmitted to each of the 1997 Students of the Year, Board President Michael Mooney and Awards Day Chairperson Marguerite Kershaw.

ACTING PRESIDENT KUHL: Chair recognizes Senator Cook to speak on the resolution.

SENATOR COOK: Mr. President, this house has just passed a piece of legislation, the major purpose of which was to open the doors for employment to the people of our state, more of the people of our state, and we're now considering a resolution that honors a group of people who have worked diligently to better prepare themselves to walk through those doors when they're open.

These are adult learners. These are people who have, through their own personal commitment and dedication and ambition, gone back into the educational process and with the help of skilled and dedicated teachers, they have brought themselves to a point now where they indeed are prepared to assume their role as productive members of our state, contributors to our economy, as people who will improve the quality of life for themselves and their families because of the increased education which they now have, and we should pause at this point, as this resolution indicates, to congratulate them for having the personal initiative to undertake this task and to successfully complete the programs which they have followed.

They are present with us, Mr. President, in the gallery, along with several of their instructors and mentors and teachers, and I would be very pleased if you would take this occasion to welcome them here today and I think perhaps they have met with several of the members as well, who are -- who represent their districts, and we all in the Senate join in

celebrating with them this -- this very significant milestone in their lives.

ACTING PRESIDENT KUHL: Thank you, Senator Cook.

Would the Students of the Year please rise and be recognized. We welcome you, congratulate you. Let this be the beginning of a wonderful life and certainly a wonderful world for all of you. Thank you for sharing a moment of your day with us, and again congratulations.

(Applause).

Senator DeFrancisco.

SENATOR DeFRANCISCO: I just want to rise and second what Senator Cook had to say. I don't -- I haven't met every one, all the Students of the Year, but judging from Cheryl Lemons who is from my district, I can imagine some of the obstacles that all of you have had to overcome not only to get to the position that you're in but to be motivated enough to start the process, and I commend all of you, and especially the New York State Association for Continuing Community Education. It's dedicated people like yourselves who make these opportunities possible and not only

provide the opportunities but provide a future for so many people.

The best of luck to all of you.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President, can we return to the controversial calendar and take up Calendar 185, by Senator Levy.

ACTING PRESIDENT KUHL: We will return to the controversial calendar, page 9, Calendar Number 185, Senate Print 605, by Senator Levy. I'll ask the Secretary to read the title.

THE SECRETARY: Calendar Number 185, by Senator Levy, Senate Print 605, an act to amend the Vehicle and Traffic Law, in relation to criminal history checks on school bus attendants.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT KUHL: Senator Levy, an explanation has been asked for.

SENATOR LEVY: Who asked for the explanation?

ACTING PRESIDENT KUHL: Senator Onorato, the Acting Minority Leader.

SENATOR LEVY: Oh, yes, Senator, this is a matter of very, very brief history and I heard Senator DeFrancisco talk about waiting for the Assembly. Well, we've been waiting for the Assembly now for about 12 or 13 or maybe 15 years, and passed it each year.

Back when we did legislation to require fingerprinting of school bus drivers, it was a long complicated negotiation, and finally there was a compromise with the Assembly, where it agreed to fingerprinting school bus drivers, refused to agree to fingerprinting school bus attendants.

Consequently over the years, we've had -- we've had people out on parole for violent crimes that have been involved in the commission of felonies, including sexual molestation of children with or without disabilities on school buses and those have been school bus attendants that have committed those crimes.

So what this bill would do would be to require the fingerprinting of school bus attendants, and I can only, in urging passage of this bill and support for it, refer to a recent

news clipping that I read where my distinguished colleague, Senator Oppenheimer, who is the ranking member of my committee, has introduced legislation to fingerprint nannies, and nannies may take care of a child or a family that has numerous children, but these school bus attendants are taking care of full buses of school children and some with developmental disabilities.

So this is really a very, very significant omission of law, and it puts school children being transported really at risk if we don't know who's on the bus taking care of them.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Last year I asked Senator Levy some questions on this bill relating to the fees for the bus attendants. They're apparently the same as the fees of the bus drivers and apparently, if I'm correct, all of the standards for the attendants are the same as they are for the -- the other employees, the bus drivers and

so I'm satisfied with that explanation.

For the record, Senators Gold, Leichter, Montgomery, Markowitz, Nanula and Santiago voted against this piece of legislation last year.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 60, nays one, Senator Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, can we return to report of standing committees? I believe there's a report at the desk.

ACTING PRESIDENT KUHL: There is, Senator Present. We will return to the order of

standing committees. I'll ask the Secretary to read.

THE SECRETARY: Senator LaValle, from the Committee on Higher Education, offers up the following bills:

Senate Print 1745, by Senator Rath, an act to amend the Education Law, in relation to requirements for written prescriptions;

2586, by Senator LaValle, an act to amend the Education Law, in relation to registration of a pharmacy;

2804, by Senator LaValle, an act to amend Chapter 31 of the Laws of 1985;

3200, by Senator LaValle, an act to amend the Education Law and the Public Health Law;

3201, by Senator LaValle, an act to amend the Education Law, in relation to proceedings in cases of professional misconduct; and

3227, by Senator LaValle, an act to amend the Education Law, in relation to the operation and regulations of licensed private schools.

All bills directly to third reading.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, all bills are reported directly to third reading.

Senator Gold, why do you rise?

SENATOR GOLD: Thank you, Mr. President.

Mr. President, I had to step out for a moment, and I'd like to be recorded in the negative on Senate 605, Calendar Number 185.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Gold will be recorded in the negative on Calendar Number 185.

We'll continue -- actually return to the order of motions and resolutions. Chair recognizes Senator Tully.

SENATOR TULLY: Thank you, Mr. President. Would you please place a sponsor's star on Calendar Number 312.

ACTING PRESIDENT KUHL: Calendar Number 312 is starred at the request of the sponsor.

Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

On behalf of Senator Libous, on page 11, I offer the following amendments to Calendar Number 256, Senate Print Number 1231, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 256 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno.

SENATOR PRESENT: Mr. President, can we return to the controversial calendar and take up Calendar 250 by Senator Bruno.

ACTING PRESIDENT KUHL: We'll return to the controversial calendar. Secretary will read Calendar Number 250, Senate Print 706, by Senator Bruno.

THE SECRETARY: On page 11, Calendar Number 250, by Senator Bruno, Senate Print 706, an act to amend the Vehicle and Traffic Law, in relation to the disqualification of a bus driver.

ACTING PRESIDENT KUHL: Senator

Bruno, an explanation has been asked for by Senator Montgomery.

SENATOR BRUNO: Mr. President, this bill is very straightforward, basically says that anyone that's driving a school bus that tests positive for drugs or alcohol twice, if they test positive they get retested, they can be retested in whatever ways that they deem appropriate and fair. If they test positive in this manner, they cannot drive a school bus and that they will and can lose their license.

That's what this bill does, in essence.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. Senator -- if Senator Bruno would yields for a question.

ACTING PRESIDENT KUHL: Senator Bruno, do you yield for a question?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, the

bill amends two sections of the law. One is section 509 (l) which we heartily concur with, where at a point where there is a conviction or there is evidence of consumption or possession or use of alcohol or substances within six hours of the time that the person is operating the vehicle, that their -- at that point that their license would be revoked, but the other section of the law, section 509 (cc) which demonstrates that upon a finding of evidence based on a -- on drug testing, and it only takes one test, that this would be the case, and this is the section that I'd like you to respond to, because we know that there are many types of situations that can set off a positive in one of the tests. In fact there was a former colleague who apparently was eating a roll with poppy seeds in it that caused a test to register positive when there hadn't been any substance abuse. Cough medicine can create that, and I was wondering if we wanted to -- if we wanted to take such extreme action when one test could set in motion the legislation that you're proposing.

SENATOR BRUNO: The bottom line, Senator, what we're saying is, when people are

tested and are tested the second time, if they test positive, we don't want them in a school bus driving a school bus. They don't belong driving children around, period. That's really what this is intended to accomplish, and with some of what is presently in law, if people are found guilty, all right, they pay a fine and then they go back to driving a bus and, Senator, I don't think you for a minute would want someone driving your children around, or anyone else's children, that have tested twice positive for drugs.

So that's really all that this is intended to do is not have a minimum fine and then say, Fine, jump back in the bus a week or two weeks later and drive the children around. That's where this is at, Mr. President.

SENATOR PATERSON: Mr. President, I agree with Senator Bruno completely.

SENATOR BRUNO: Thank you.

SENATOR PATERSON: I think that whereupon there's a finding in a second test that this is the case, it would be extremely detrimental and grave risk to have anyone driving a bus that would have anybody's children

in the bus, but if Senator Bruno would yield for a question. I don't see in the legislation where there is a provision for a second test. That's all I'm saying.

I wouldn't want to rely upon the first test which is where one test has been employed has been proven so often to not be accurate. So I'm just trying to make sure that the standard and the threshold that we're using is one that would be sufficiently accurate that we wouldn't take citizens who are not engaging in the use of any alcohol or any substances, bus drivers who care about the children, who, because of a random test which might have been administered at a time that they might have eaten a roll that had a poppy seed in it or taken a certain cough medicine, I don't see in the legislation where it shows that there is a provision for a second test.

If you can show me that, I have absolutely no problem with the legislation.

SENATOR BRUNO: Thank you, Senator.

The present law -- present law, federal law, indicates that if a test is given

and you're not satisfied you then would be tested. Isn't satisfied, you can then request another test to verify the findings, so that is present law, and that's what we're referring to. So we would appreciate your support for this because really all that we're intending is that, when this process takes place, and by the way this is the same testing procedure that takes place for anyone that has to be tested, whether you're operating a train or whatever it is, so we aren't singling these people out in any way other than that they relate to the same procedures and laws that take place for other responsible people who are responsible for other people's lives.

So I think it's the appropriate thing to do, proper thing to do, and I would appreciate your support.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I would actually like to support this legislation. Senator, does counsel agree that the federal law would preempt in this

situation because, in other words, what it says here is that after a test finds that there is a presence of alcohol or substances that there's a permanency to the revocation.

Are we clear that the federal law is the supervening law in this situation?

SENATOR BRUNO: The state presently has the jurisdiction of issuing licenses, and that's why we are legislating here in the state the procedure that we are describing, and the federal law is in existence that describes the process that would take place with the retesting if someone's not satisfied.

Now, if a person's license is taken, a person can then have recourse in the courts and go through due process to get that license back if they feel that something has happened that shouldn't have happened. Senator, they always have recourse after the fact in the courts, but our mission here is to get a person out of the driver's seat of a bus driving our children. That's the reason why this is on the floor.

I had an experience in Shenendehowa where a bus driver was found to be

under the influence of drugs, and they had trouble keeping him from driving the bus, and this is our response for that specific and others just like that all over the state.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, through you, I certainly agree and there are so many situations that we've read about that you've just described all over the state where individuals who are consuming amounts of alcohol or substances are driving buses and it's -- it is very important that this legislation that you're proposing pass, and we would like to support it, and there's just this concern that's been raised from our legal staff and research staff about the federal law as it applies to the state law.

Would you consider laying this bill aside for the day just perhaps to include in the legislation some phrase that says as is held in federal law that the right to a second test is vested in the individual who's tested just so that it is absolutely clear not only for the children that we're trying to protect but

for our citizens who we're trying to protect who submit to random drug testing and may accidentally set off the test, individuals that you and I might know who would be just as opposed to children being driven around by individuals who are suffering from diminished capacity because of the use of substance or of alcohol, that those individuals who would agree with us and do not engage in that activity not in any way be falsely accused or in any way be suffering from the fact that they set off a test, a positive finding based on some circumstances that are not induced by alcohol or substances?

All I'm saying is that I would think that with legislation this important that we would want to be scrupulously fair to all parties, and it would be in the best interest of children as our priority, would you consider laying this aside so we could just include that one line in the legislation, we'd all want to vote for?

SENATOR BRUNO: Senator, our counsels have just had a short discussion and hopefully that might be somewhat enlightening,

but I share your concern that we don't falsely accuse anyone, and create a situation that would be unfair, but there is enough protection in the law that would inhibit anyone from being convicted falsely or losing their license falsely the procedures that are presently in place and what's described here in this legislation.

So we are this far with the legislation. We think it's important and we're concluding session until next week, so we would like to move this forward and would like to do it this morning, and I think upon your review, I think you'll be satisfied that we're pretty much together in the conclusions that we would reach.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I certainly share Senator Bruno's concern although we have laid this bill aside in each of the last five legislative sessions. I just thought that a couple of days to ensure the protection of the individuals who were taking the test would be somewhat foresighted.

Being unable to of that, I'm going to take a quick look and try to come to some conclusion, but I'd like to assure all the members that those of us who are having problems with the legislation are not having any problem with the purpose of the legislation and certainly agree with Senator Bruno about the magnitude of the problem that this legislation addresses and how eagerly we would like to pass some legislation such that we don't have the problem that Senator Bruno described where you have individuals who are known to be using substances or engaging in the use of alcohol at the same time -- at the same time -- I'm not here -- at the same time not suffering from the situation with those individuals that are continuing, they are continuing to operate vehicles at a time when our children are at grave risk. We understand that, we want to protect it, and we want very much to support Senator Bruno's bill.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Thank you. By way of conclusion, Mr. President, I'd like to

remind my colleagues that this exact same piece of legislation passed in this chamber unanimously -- unanimously -- same piece of legislation, same language, same consequences, passed unanimously.

I'm also conscious of the fact that there have been some memos in opposition that relate to some of these affairs being settled through collective bargaining and while we respect the people that put in these memos in opposition, we're more concerned with getting these drivers out of the driver's seat than we are with the collective bargaining procedure, and that's why you joined us last year, Senator, in voting for this legislation and that's why I'm a little puzzled as to why now debating it and talking about delaying it.

I'd like to see it moved and perhaps in negotiations with the Assembly possibly we can address and verify some of the concerns that you're sharing, so I would ask you to just concur in that respect, that you concur as we negotiate this, and hopefully we will see it become law, all of the concerns that you express will be taken in consideration.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I saw the memos in opposition last year and I voted for this legislation, along with every other colleague in this chamber, and the reason I voted for it is exactly the reason that Senator Bruno just averred here, that we certainly must put the interest of children over some of the collective bargaining and the other matters that were discussed.

But the issue of whether or not the second test would be available to the subject was raised to us after the legislation passed last year, and that's the reason why we come back here every year, hopefully that we might be enlightened by circumstances that might be brought to our attention, and that's the reason I raised it today.

I will -- I will certainly take the word of the Majority Leader that the federal law does provide for the administration of the second test, but I just would simply ask, Mr. President, how much more foresighted would it be if we clear up these concerns by codifying this

issue into law and making it very clear, especially to the counsel who might be representing an individual who believes that they were falsely tested, that they have recourse in this situation rather than at some point having to go to court when their reputation is sneared and certainly their -- the confidence that parents would have in this individual would certainly be -- would certainly be challenged at this point because this person has tested positive in a drug test or alcohol, test for alcohol and, in fact, the positive finding was created by another source.

If the test were so accurate that only a scintilla of possibility would exist that there not be a positive test, then I would concur with the Majority Leader, but there are numbers of instances that I've previously cited where the tests have been found to be unfavorable in eliciting the result that would be accurate, and that is the only reason I raised the issue.

I don't mean to quarrel with the necessity nor with the scope that the legislation addresses.

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.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

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

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

SENATOR MONTGOMERY: I'm going to vote no on this legislation. I certainly share the concerns that have been raised by the Deputy Minority Leader and, since there are no clear and distinct provisions in the legislation to protect the -- the interest of the person who would be tested and, as I have had many experiences with people who have had false positive tests in these instances, if there is no right to appeal, I think that there is a major problem and it should be clearly stated in the bill.

But I too share the concern of the Majority Leader that we need to protect our children, and I am certainly in favor of the purpose of the bill, but I cannot vote for it as it is currently crafted. So I'm voting no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 250: Senators Montgomery, Sampson, Santiago and Smith. Ayes 57, nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the controversial calendar.

SENATOR BRUNO: Mr. President, any housekeeping, other matters to be taken care of at the desk?

ACTING PRESIDENT KUHL: All taken care of previously, sir.

SENATOR BRUNO: Thank you, Mr. President.

There being no further business to come before the Senate, I would move that we

stand adjourned until Monday at 3 p.m., intervening days to be legislative days.

ACTING PRESIDENT KUHL: Without objection, Senate stands adjourned until Monday, March 24th, at 3:00 p.m., intervening days to be legislative days.

(Whereupon at 12:29 p.m., the Senate adjourned.)