ALBANY, NEW YORK

May 7, 1997

11:14 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: Senate will come to order. Ask the members to find their places, staff to find their places. I'd ask everybody in the chamber to please rise and join me in saying the Pledge of Allegiance to the Flag.

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

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

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 6th. The Senate met pursuant to adjournment. The Journal of Monday, May 5th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of you, Senator, Mr. President, I wish to call up your bill -- no, I'm sorry. I move to recommit the Senate Print 1456, Calendar Number 876 -- it's on the order of the First Report -- to the Committee on Investigations and Taxation. I think that's the motion, isn't it? I haven't done that kind of motion before, a motion to recommit.

ACTING PRESIDENT KUHL: Without objection, the bill is recommitted.

SENATOR FARLEY: And on behalf of Senator Marcellino, would you place a sponsor's star on Calendar Number 615.

ACTING PRESIDENT KUHL: Calendar Number 615 is starred at the request of the sponsor.

Senator Farley.

SENATOR FARLEY: That's it.

ACTING PRESIDENT KUHL: Thank you. Any other motions or resolutions? Senator Skelos, we have some substitutions; ask the Secretary to read.

SENATOR SKELOS: Do the substitutions.

ACTING PRESIDENT KUHL: Ask the Secretary to read.

THE SECRETARY: Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 1069 and substitute it for the identical Senate bill, First Report 739.

Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 6488 and substitute it for the identical Senate bill, First Report 749.

Senator Meier moves to discharge from the Committee on Judiciary Assembly Bill Number 6489 and substitute it for the identical Senate bill, First Report 753.

Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 5229 and substitute it for the identical

Senate bill, First Report 757.

Senator Trunzo moves to discharge from the Committee on Civil Service and Pensions Assembly Bill 7594 and substitute it for the identical Senate bill, First Report 792.

Senator Present moves to discharge from the Committee on Commerce, Economic Development and Small Business Assembly Bill 6084 and substitute it for the identical Senate bill, First Report 847.

Senator Leibell moves to discharge from the Committee on Energy and Telecommunications Assembly Bill Number 422 and substitute it for the identical Senate bill, First Report 850.

Senator Farley moves to discharge from the Committee on Tourism, Recreation and Sports Development Assembly Bill 6160, and substitute it for the identical Senate bill, First Report 908.

Senator Maziarz moves to discharge from the Committee on Crime Victims, Crime and Correction Assembly Bill 5793 and substitute it for the identical Senate bill, First Report 916.

Senator Trunzo moves to discharge from the Committee on Environmental Conservation Assembly Bill 6667, and substitute it for the identical Senate bill, First Report 926.

ACTING PRESIDENT KUHL: Substitutions are ordered.

Senator Skelos, that brings us to the calendar.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Veterans Committee in Room 332 of the Capitol.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the non-controversial calendar, please.

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

THE SECRETARY: Calendar Number 388, by member of the Assembly Parment, Assembly Print 4920, an act to amend the Agriculture and

Markets Law, in relation to the definition of crops, livestock and livestock products.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 477, by Senator Saland, Senate Print 815, an act to amend the Family Court Act, in relation to expanding the jurisdiction of the Family Court.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 510, by Senator Leibell, Senate Print 3626, an act to amend the Executive Law, in relation to allowing designees of certain members of the state Uniform Fire Prevention and Building Code Council.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 537, by member of the Assembly John, Assembly Print 7045, an act to amend the Mental Hygiene Law, in relation to receivership authority of the Office of Alcoholism.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 565, by member of the Assembly Weisenberg, Assembly Print 339, an act to amend the Education Law, in relation to display of flags in the classrooms.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 578, by Senator LaValle, Senate Print 3739, an act to amend the Education Law, in relation to the membership of the Board of Trustees of the Higher Education Services Corporation.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 585, by Senator Trunzo, Senate Print 4298, an act to amend the Retirement and Social Security Law, in relation to increasing the maximum amount which retired persons may earn.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 593, by Senator Maltese, Senate Print 1650-A, an act to amend the General Business Law, in relation to advertisements on private property.

SENATOR PATERSON: Lay aside,

please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 594, by Senator Kuhl, Senate Print 2059, an act to amend Section 1 of Chapter 628 of the Laws of 1996.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 599, by Senator Marcellino, Senate Print 2848, an act to amend the General Municipal Law, in relation to establishing the town of Huntington Industrial Development Agency.

ACTING PRESIDENT KUHL: There is

a home rule message at the desk. Secretary will read the last section.

SENATOR GOLD: Hold on. Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 600, by Senator DeFrancisco, Senate Print 3005, an act to amend the County Law, in relation to the autopsy of an inmate of a correctional facility.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 601, by Senator Seward, Senate Print 3095, an act to amend the Town Law, in relation to qualifications of electors at town elections.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 602, by Senator Rath, Senate Print 3638, an act to amend the Town Law, in relation to applicant fees paid for certain services.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

604, by Senator Meier, Senate Print 3937, an act to authorize the town of Paris to convey certain park lands.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 605, by Senator Nozzolio, Senate Print 4039, an act to authorize the town board of the town of Sodus to exclude from the Sodus Water District Number 5 certain lands.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR SKELOS: Could we take up the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar beginning with Calendar Number 537, by Senator Wright, on page 53.

THE SECRETARY: Calendar Number 537, by member of the Assembly John, Assembly Print 7045, an act to amend the Mental Hygiene Law, in relation to receivership authority of the Office of Alcoholism and Substance Abuse Services.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Wright, an explanation of Calendar Number 537 has been requested by the Acting Minority Leader, Senator Paterson.

SENATOR WRIGHT: Thank you, Mr. President.

The bill amends the Mental Hygiene Law to establish a procedure for placing providers in receivership when warranted and authorizing the Commissioner of the state OASAS agency, Office of Alcoholism and Substance Abuse Services to intercede and utilize these powers. It is comparable to existing statute that provides those powers and authorities to the

Commissioner of Health as well as the Commissioner of Mental Hygiene.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you. If Senator Wright would please -

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

SENATOR WRIGHT: Yes, I do, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, actually this is a very good idea and even the Trial Lawyers who are objecting to this concede that it is a good idea.

SENATOR WRIGHT: Albeit reluctantly, but that's appreciated.

SENATOR PATERSON: Mr. President, they raise an issue, I think, relating to Section 7 of the legislation, lines 42 to 48, which speak to the issues of -- of suits being brought against -- against the individuals who would be holding the -- who would be holding the

receivership.

Now, obviously, you would not want to hold anyone liable for any activity that took place before any company operated the premise, but it appears in the legislation that there would be in a sense a bar to any litigation after the fact, and I was wondering if that's the correct reading of the -- of the proposed legislation.

SENATOR WRIGHT: Well, the intent of the legislation is to ensure that we have accessibility to individuals and agencies that will function as receivers in this temporary and short-term capacity and, as an encouragement to do that, there are restrictions on the exposure that they're going to incur, but it does not preclude the ability to pursue liability, particularly in instances of gross negligence and intentional acts, so I think we've attempted to cover the issue from that standpoint.

ACTING PRESIDENT KUHL: Senator Paterson.

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

ACTING PRESIDENT KUHL: Senator

Wright, would you yield?

SENATOR WRIGHT: I will, Mr. President.

SENATOR PATERSON: With respect to the fact that there is compensation, why would there be a higher standard of the legal threshold in this instance. The encouragement to -- the encouragement to become involved in receivership is certainly understood, but isn't this really a very high standard that would be to some extent unreasonable, that it would preclude any kind of legal action against the company that's holding, even though the company is being compensated?

SENATOR WRIGHT: Well, Senator, I don't believe it precludes any kind of legal action. I think it defines when that action can take place and, more importantly, I think it's consistent with existing statutory authority that is already extended to other agencies and other commissioners.

SENATOR PATERSON: Thank you, Mr. President. One last question.

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

SENATOR WRIGHT: Yes, I do.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: But there are outlined in these lines 42 to 48, two specific and separate protections that actually exist and, in my opinion, that is not the way it usually would be or is outlined for any other agency, so what I'm suggesting, Senator, is that this is a specific instance where we are actually putting in writing, in other words we are codifying the fact that it would be much more difficult to bring an action in this particular case, even though the entity is being compensated for their action. So the only situation that's different in this particular case is that there's a possibility that OASAS would lose the facility, the facility is in a great deal of trouble, it's in receivership, and what I'm saying is I can understand establishing an incentive for a company to come in and operate the facility, and the tremendous need on the part of those who would be utilizing the facility.

But I'm just requesting that, Mr.

President, that Senator Seward give me an idea as to whether or not this changes the legal standard from the way it would usually be.

SENATOR WRIGHT: Senator Wright doesn't believe that it does change the legal standard and believes that it's consistent and while I can appreciate the point that you're making, I don't happen to share it.

SENATOR PATERSON: Thank you, Mr. President.

SENATOR WRIGHT: Thank you.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 49, nays 2, Senators Connor and Paterson recorded in the negative.

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Consumer Protection Committee in the Majority Conference Room.

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

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 593, by Senator Maltese, Senate Print 1650-A, an act to amend the General Business Law, in relation to advertisements on private property.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of Calendar Number 593 has been requested by Senator Paterson.

SENATOR MALTESE: Thank you, Mr. President.

First of all, this bill has been requested by numerous civic and community

organizations throughout the state, not only in the city of New York and throughout the state. It is a reaction to the large amount of -- the proliferation of these menus and leaflets and pamphlets that are not newspapers that in most cases, especially in urban areas, are flung into the vestibules and doorways of residences and is an attempt to limit and prevent this type of littering on private premises.

It states that any papers, flyers or pamphlets soliciting business -- so they are commercial -- placed anywhere on private property where the owner has posted a sign stating that the placement of such papers, flyers or pamphlets shall be prohibited, shall be deemed to be litter and no person, his or her agent, employee or other person under his or her control shall cause such litter.

It provides for a civil penalty of not less than $250 nor more than $1,000 for such littering. It specifically indicates that the -- a newspaper does not fall under this category and would not be prohibited.

That's essentially the bill, and my Assembly sponsor is Assemblyman Stringer who

has advised me that, if it moves here it will move there.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Maltese, in addition to representing his area in Queens has obviously represented the interests of others. Just last week I was away for a few days and, until I read the newspapers, I thought that it was legal for me to be away. Apparently it's against the law, and one of the disturbing findings that was revealed to me when I came back is that anyone that leaves their property now, that lives in an apartment in New York City, is likely to be exposed by the fact that Chinese restaurants will leave pamphlets under the doors, and other restaurants actually as well, and it can become not only a nuisance but a safety hazard, so I am clear about what it is you're trying to address in this legislation.

When you specifically made reference to the fact that the business was commercial, I would assume that that would

exclude any kind of campaign literature or any kind of public service literature that would be placed?

SENATOR MALTESE: Yes, that's correct. That was the intent of the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Other than - other than -- other than the commercial enterprise, do you see any instances where the commercial enterprise would, in a sense, be related to elements of free speech?

SENATOR MALTESE: Mr. President, no. I'm advised by counsel that this bill was previously put forth and the change that has been made requires the property owner to post a notice. It has -- I've been advised by counsel that posting the notice, this action by the land owner, prevents it from entering within the constitutional realm as far as prevention of free speech since the property owner would be deemed to have a right to prevent persons utilizing his property for their own purposes.

SENATOR PATERSON: Thank you, Mr.

President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a couple questions?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Sponsor yields.

SENATOR DOLLINGER: Is it your intention in this bill to ban flyers that would be put out by the Girl Scouts selling Girl Scout cookies?

SENATOR MALTESE: Absolutely not.

SENATOR DOLLINGER: Aren't those a form of property that's delivered to solicit business?

SENATOR MALTESE: Well, the - Mr. President, the non-profit aspect of the Girl Scouts would seem to preclude it being categorized as a commercial business enterprise, as a commercial enterprise.

SENATOR DOLLINGER: Just for the record, could you tell me where in the bill the exception is for not-for-profit businesses?

ACTING PRESIDENT KUHL: Senator Maltese, you continue to yield?

SENATOR MALTESE: Yes.

SENATOR DOLLINGER: Excuse me, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR MALTESE: Yes.

SENATOR DOLLINGER: Thank you.

SENATOR MALTESE: Mr. President, it would seem that in the ordinary sense these -- these exceptions would be covered under other laws, tax laws, tax-exempt laws, non-profit laws. In other words, the ordinary -- I don't know if "commercial" as such is specifically defined in any of our statutes. I imagine that it is, but it would not seem to me that any enterprise carried out by the Girl Scouts, even if it involves peripherally some sale of cookies, would come under that cate gory.

Ordinarily, these -- these fund-raising drives and what have you are excluded because they're charitable, are excluded from taxation, and I believe that would

make them non-commercial. I guess the purpose makes them non-commercial.

SENATOR DOLLINGER: Again just - again through you, Mr. President.

ACTING PRESIDENT KUHL: Do you yield, Senator Maltese?

SENATOR MALTESE: Yes.

SENATOR DOLLINGER: Just so I can see, could you tell me where the phrase "commercial" is used in the statute?

SENATOR MALTESE: It's probably -- Mr. President, it's probably in the prior version. I see -

SENATOR DOLLINGER: I -- that's why, Senator, you mentioned the term "commercial".

SENATOR MALTESE: Yeah.

SENATOR DOLLINGER: And I don't see -

SENATOR MALTESE: The -- in response to the inquiry, I assume the sentence, "any papers, flyers or pamphlets soliciting business," and I imagine the terminology "soliciting business" has replaced "commercial," and would be applicable in that

circumstance.

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

ACTING PRESIDENT KUHL: Yes, Senator Maltese?

SENATOR DOLLINGER: What about a flyer dropped at the doorstep in a large apartment building or left in the lobby, that would solicit tenants to come to a meeting or to become members of a group that, for example, were involved in a rent control protest or to raise money for a rent control protest? Would those flyers be deemed litter and the rent organization, the tenants organization, be subject to the civil penalties that are described here?

SENATOR MALTESE: Mr. President, it would seem very clearly that they're not. I mean, even if we take the phrase "soliciting business" which obviously was preferable over "commercial", we would have to say that in no way, shape or form would the -- the circumstances enumerated by Senator Dollinger be included in that.

SENATOR DOLLINGER: Again through you, Mr. President, is it your position, then that a tenants organization seeking to increase its membership, which is in the business of representing tenants, that would seek tenants to join and seek them to become a part of a protest or for that matter raising money on a particular issue, that that wouldn't be the business of the tenants organization and, therefore, it wouldn't be covered by this?

SENATOR MALTESE: Mr. President, I think it's pretty plain that, when you're saying "soliciting business" you're trying to approach the very circumstances that Senator Paterson was talking about, menus. The largest amounts of complaints in this area have been against restaurants and menus, and other - other commercial enterprises, and soliciting business would seem to be not increasing membership or involving themselves in protests or tenants' groups or what have you. Those are the very things that most -- most persons would commend and encourage.

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

questions if the Senate would continue to yield.

ACTING PRESIDENT KUHL: Senator Maltese, you continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Would a flyer dropped in a building which solicited someone to join a collective bargaining organization -- as you know, unions are in the business of soliciting members as part of their business - would that type of flyer run afoul of the civil penalty and, if so, how would it be justified under federal law?

SENATOR MALTESE: Mr. President, it would seem to me that that again is not soliciting business. I think a jurist or a - any judge would seem to me to be able to clearly define what soliciting business is and I don't think under any frame of reference that that would be soliciting business.

SENATOR DOLLINGER: Again through you, one final question, Mr. President. Senator Paterson raised the issue of political campaign

materials. It would not be included in this because they're, of course, not soliciting business.

My question is, would news letters issued by public officials dropped at the doorstep of a tenants association or left in a public -- in a building which had a "posted" sign, would that be considered soliciting business as well, the newsletters that you send out to your constituents and I send out to mine?

SENATOR MALTESE: Mr. President, I think the -- those newsletters as such, I don't know that they fall under newspapers, because they wouldn't be -- they wouldn't be in that category but certainly the newsletters or any political flyers would not be soliciting business, and that, you know, the asking of the questions and the responses, it seems to me, would make a legislative record to that extent and definitely it is not the intent of either myself or Assemblyman Stringer to include any political flyer or pamphlet or any civic or community or non-profit group flyer or pamphlet.

SENATOR DOLLINGER: Thank you,

Mr. President.

Just briefly on the bill, if I could.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, I'm going to vote against this bill because I think the exceptions that I just talked about, whether it's for the Girl Scouts that solicit cookie sales, they're no different than the Chinese restaurant that stands there and solicits an order for Chinese food.

It seems to me, if you allow the Girl Scouts to do it and, you know, if the statute isn't clear that there's an exception for not-for-profit companies, then you're going to have a problem constitutionally of whether or not you can enforce it against Chinese restaurants.

In addition, I think there's a problem under collective bargaining because I wouldn't want flyers in which unions seek to add members or rally people to their cause would be considered litter and could be then fined for the distribution of that material. I think Boy

Scouts are in the same position when they ask you for your newspapers or your recyclables so that they can take money. I think that the tenants association that leaves flyers at the door asking for tenants to join in their business of the tenants organization would also violate this statute and, lastly, I think the newsletters that we leave at the door which say if you need any help with soliciting your business, call us on the phone, call us because we can do something to help you, would run afoul of this as well.

I think you've either got to increase the number of exceptions that you have in this bill. I understand the intent, but this bill doesn't do the job that the Senator would like it to do.

I'll be voting in the negative.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: I rise, Mr. President, because I think the concerns that have been expressed by Senator Dollinger just

fall in the general category of hogwash.

SENATOR DOLLINGER: Hogwash?

SENATOR PADAVAN: Hogwash. You know what hogwash is?

In the first place, my daughter was a Girl Scout, and they don't leave flyers on the door. They ring your doorbell and they want to sell you cookies, so I don't understand that particular objection.

Our mailings go in the mail box because there's postage on it. So I don't understand that.

I have never heard of unions soliciting members by leaving flyers on door steps. They usually do it at the work place or through the mail.

So all of these points you've made are just totally irrelevant. But I applaud Senator Maltese for putting this bill before us, because in my district both tenants and home owners have complained to me incessantly about this problem, and one of their primary concerns is security.

When these throw-away commercial pamphlets and supermarket flyers are left at the

doorstep, on the stoop, thrown on the lawn, as I find them -- when I go home tonight I'll find them there because I do every week -- it's a clear indication that no one is home and unless you make arrangements with a neighbor or someone to pick that up, anyone who's up to no good, to burglarize your home or your apartment, knows you're not there.

I had a particular situation of a lady in my district who is blind, and she had to make arrangements with neighbors to pick up these flyers, and I wrote to the several organizations that she sent me the -- in some cases they're wrapped in cellophane or whatever and I asked them, Please don't leave these commercial flyers on her lawn in front of her door. Obviously they're not doing you any value in this case, and they're causing a problem. They totally ignored her.

Now, I think the points that Senator Maltese has made and in this bill, that the owner of the property must take a positive overt action and put up a notice, covers all of the problems that anybody can conceivably see relevant to this issue, and I suggest to you,

Senator, that you are trying very, very hard to find problems where there are none, and the phrase "business", as a non-attorney it's very clear to me what business is. Someone is trying to sell me something, not join an association, not do anything else but sell me something or get me to go to their store and buy something, and I think this bill deals with a problem that is very real, and it's a quality of life issue and it's a security issue in my area.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. I -- I think this bill, in addition to having a "hogwash" problem, I think also has some infirmities that do concern me.

I think for instance the second provision, second section, holding the owner of any business listed without requiring that that owner, in fact, directed the pamphlets to be placed which in most instances you assume will be the case, but it may not be. Certainly it seems to me that it ought to state that it was placed there with or, under direction or at least the knowledge of the owner.

I want to say, Senator Maltese, I think the original provision which I gather from the debate which talks of "commercial" rather than "soliciting business", I think "soliciting business" is an unfortunate term because I think it is unclear. It may be clear to you and me and Senator Padavan, but I think the courts generally talk of commercial, and I think you'll have to admit that you're in an area which is very, very constitutionally difficult where there have been a lot of Supreme Court cases and even "commercial" speech to some extent is protected, but the court talks of commercial speech and not of soliciting business.

So I -- I think Senator Dollinger made some good points. I also think that there may be some forms of behavior in our society that are objectionable that we may not be able to reach by the criminal law. I don't know whether we can strictly prescribe every bit of behavior that we want people to engage in. Some of it really has to be -- has to depend upon how people act in their buildings and in their society, maybe people have got to go around their building and remove these pamphlets.

But having said this, Senator Maltese, I'm going to vote for it and I'll tell you why: Because about a year and a half ago I came home. There was this package outside my door, poorly wrapped. There was an address of some building in my district. I looked at it and I was about to pick it up and then this was the day of the Unibomber before he was caught. I said, Be careful. The more I thought about it, I said I better do something about it. I called the Postal Service, and they said, Don't touch that. We're going to come right over; we're going to X-ray it, and they did, they came the next day, two agents, and they X-rayed it, and they said, No bomb. You want us to open it? I have said, Yes, please do. They opened it. It was full of menus for Chinese restaurants and a note from tenants in my district, with a note saying, Senator, for God's sake, do something about this.

Senator Maltese, I'm going to support your bill.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: With all due

respect to my colleague, Senator Leichter, and his story about the Uniflyer episode outside of his door, I want to touch on something that Senator Leichter did say that I think makes the bill defective, and that is the notion that using the phrase "soliciting business". We take this phrase, we tuck it in a statute like this, it becomes law. Some day ten years from now a court says, Gee, are the Girl Scouts soliciting business when they put flyers in your building, which they do in Rochester. They must not do it in Queens, as Senator Padavan pointed out, when his daughter was a Girl Scout, and maybe they've moved up in modern marketing; they're starting to compete with the Chinese restaurants. But some court is going to be called on to determine whether that's soliciting business, and they're going to look at this Legislature and say, My gosh, we got to apply the standard tests to a legislative pronouncement. What are those standard tests? We'll have -- we realize the Legislature strictly intended that this be done for any time they solicit business, any time they solicit business -- very funny! Any time they solicit business, that must have meant the

Girl Scouts. It must have meant the Boy Scouts. It must have meant all those people that are out there asking people to do things.

I just think the statute needs work. I don't think that the magazine exception should include other exceptions for not-for-profit groups. I also think we're going to have a terribly difficult constitutional time sustaining this if you allow newspapers and don't allow other flyers, other information.

Mr. President, I raise those issues. I don't think they're hogwash. I think they're realistic. I think we're only going to give the courts another hot potato that they're not going to know what to do with and some day the Girl Scouts or the Boy Scouts or the local tenants groups are going to be fined under this, and say, How could they ever -- the state Legislature, ever have been allowed to interfere with that communication, and the answer is we did because we didn't draft it right.

I'll be voting in the negative, Mr. President.

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

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 593, Senators Dollinger and Kuhl. Ayes 52, nays 2.

ACTING PRESIDENT KUHL: The bill is passed. Secretary will continue to read.

THE SECRETARY: Calendar Number 599, by Senator Marcellino, Senate Print 2848, an act to amend the General Municipal Law, in relation to establishing a town of Huntington Industrial Development Agency.

ACTING PRESIDENT KUHL: Senator Marcellino, Senator Paterson has asked an explanation on Calendar Number 599.

SENATOR MARCELLINO: Mr. President, this bill amends the General Municipal Law by adding a new Section 907(d) to

establish the town of Huntington Industrial Development Agency in the county of Suffolk.

It has been introduced at the request of the Huntington Town Board and represents an effort by the town to provide effective economic planning.

ACTING PRESIDENT KUHL: Senator Paterson, did you have a question after the explanation?

SENATOR PATERSON: No, Mr. President. I just wanted to hear the explanation.

ACTING PRESIDENT KUHL: Thank you, Senator Paterson. Thank you, Senator Marcellino.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 53, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 605, by Senator Nozzolio, Senate Print Number 4039, an act authorizing the town board of the town of Sodus to exclude from the Sodus Water District Number 5 certain lands.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Nozzolio, an explanation of Calendar Number 605 has been requested by Senator Paterson.

SENATOR PATERSON: Mr. President, this home rule bill authorizes the town of Sodus, New York to exclude a parcel of land from its Water District Number 5. The owners of the lands to be excluded have been receiving their water from the neighboring town of Williamson since before the establishment -- prior to the establishment of the Sodus Water District Number 5.

The owners' property, as is often the case as you know, Mr. President, in rural areas is located on two towns. It crosses the

town line border. They continue -- the property owners continue to receive their water from the town of Williamson and pay for that use, but they're also paying an ad valorem tax to the town of Sodus.

Town law does not allow the avoidance of paying double water bills so that what we are doing here is permitting the town board of Sodus to exclude from its water district this certain property located in the town of Williamson.

ACTING PRESIDENT KUHL: Senator Paterson, did you have a further question?

SENATOR PATERSON: No, thank you, Mr. President.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the reading of the calendar.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There is none at this time, Senator Skelos.

SENATOR SKELOS: I'm not going to say, there being no, because there is more business to attend to. We'll stand at ease, Mr. President.

ACTING PRESIDENT KUHL: The Senate will stand at ease.

(Whereupon at 11:58 a.m., the Senate stood at ease until 12:19 p.m.)

ACTING PRESIDENT LARKIN: I'm sorry, Senator Bruno.

SENATOR BRUNO: Mr. President, thank you. Rather than have members just waiting, we have a printing difficulty at the moment and we were trying to get that resolved, and our expectation is that we will have everything that we have to have done so that we can do the emergency bill that keeps the budget

going for the next six weeks, but we won't have it ready much before quarter to two. So I am going to suggest that we at this time stand in recess until 2:00 p.m.

...At 12:20 p.m....

ACTING PRESIDENT LARKIN: The Senate will stand in recess until two.

(Whereupon at 12:20 p.m., the Senate recessed, reconvening at 2:21 p.m.)

ACTING PRESIDENT KUHL: Senate will come to order. Ask the members to come into the chamber, members who are here to find their places.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to motions and resolutions. I believe that there are two resolutions at the desk, by Senator Bruno. I ask that the titles be read and move for their immediate adoption.

ACTING PRESIDENT KUHL: We will return to the order of motions and resolutions. The Chair will direct the Secretary to read the titles of the two privileged resolutions which are at the desk.

THE SECRETARY: By Senator Bruno,

Senate Resolution, authorizing the Temporary President of the Senate to file an election to make certain officers or employees of the Senate eligible for the retirement incentive offered by Chapter 41 of the Laws of 1997.

By Senator Bruno, Concurrent Resolution of the Senate and Assembly author izing the Temporary President of the Senate and the Speaker of the Assembly to file an election to make certain officers and employees of joint legislative employers eligible for the retirement incentive offered by Chapter 41 of the Laws of 1997.

SENATOR SKELOS: I move we adopt the resolutions.

ACTING PRESIDENT KUHL: Question is on the two privileged resolutions at the desk. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

The resolutions are both in their entirety adopted.

Chair recognizes Senator Tully.

SENATOR TULLY: Thank you, Mr.

President.

On behalf of Senator Volker, I wish to call up his bill, Print Number 1466, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator Volker, Senate Print 1466, an act to amend the Civil Rights Law.

ACTING PRESIDENT KUHL: Senator Tully.

SENATOR TULLY: Mr. President, I now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator Tully.

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

ACTING PRESIDENT KUHL: The

amendments are received and adopted.

Senator Tully.

SENATOR TULLY: Mr. President, on behalf of Senator Velella, on page 41, I offer the following amendments to Calendar Number 232, Senate Number 18, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 232 are received and adopted and the bill will retain its place on the Third Reading Calendar.

Senator Skelos.

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

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

The Senate will stand at ease awaiting a report of the Finance Committee.

(The Senate stood at ease from 2:25 p.m. until 2:45 p.m.)

ACTING PRESIDENT KUHL: Senate will come to order. Ask the members to find their places.

Senator Skelos.

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

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

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following bills directly for third reading:

Senate Print 5274, by the Committee on Rules, an act making appropriations for the support of government;

5275, by the Committee on Rules, an act to amend Chapter 298 of the Laws of 1985, amending the Tax Law, relating to the franchise tax;

5273, by the Committee on Rules, an act making appropriations for the support of

government.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: Motion is to accept the report of the Finance Committee. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted. The bills are ordered directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time, if we could take up Calendar Number 1066, Senate Number 5274.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1066.

THE SECRETARY: Calendar Number 1066, by the Committee on Rules, Senate Print 5274, an act making appropriations for the support of government.

ACTING PRESIDENT KUHL: Senator

Skelos.

SENATOR SKELOS: Are there messages of necessity and appropriation at the desk?

ACTING PRESIDENT KUHL: There are.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity and appropriation on Calendar Number 1066 which is at the desk. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Just for the point of order, Mr. Chairman -- Mr. President. What bill is this?

ACTING PRESIDENT KUHL: This is Calendar Number 1066. It is Senate Print 5274,

5274.

SENATOR DOLLINGER: This is 5274, the bill. Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Those recorded in the negative on Calendar Number 1066, Senators Alesi, Dollinger, Maziarz, Nanula and Wright. Ayes 51, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please take up Calendar Number 1067, Senate 5275.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 1067.

THE SECRETARY: Calendar Number

1067, by the Committee on Rules, Senate Print 5275, an act to amend Chapter 298 of the Laws of 1995, amending the Tax Law, relating to the franchise tax.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

THE SECRETARY: Section 51. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Oppenheimer?

Senator Saland, are you in the negative on this bill, Calendar Number 5275? Secretary will record the negative votes by Senator Saland, Senator Leibell, Senator Larkin. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1067 are Senators Larkin, Leibell and Saland. Ayes 53, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I want unanimous consent to be recorded in the negative on 1066.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Oppenheimer will be recorded in the negative on Calendar Number 1056, Senate Print 5274.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please take up Calendar Number 1078, Senate 5273.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1068.

THE SECRETARY: Calendar Number 1068, by the Committee on Rules, Senate Print 5273, an act making appropriations for the support of government.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, are there messages of necessity and appropriation at the desk?

ACTING PRESIDENT KUHL: There are.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity and appropriation on Calendar Number 1068. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR DOLLINGER: Thank you, Mr. President.

I'm going to vote in the negative on this proposition. I think this whole process is, unfortunately, broken down and I'm going to vote in protest. I don't think we're anywhere near a budget. I think the people of this state gave us a power which we have failed to exercise. Frankly, I'm convinced that there are one too many Neros who are fiddling while the rest of New York smoulders, if not burns, and I think this is a bad idea. I think this house ought to pass a budget and get to a conference committee so we can work out the differences between the two houses, get a budget to the Governor's desk so that this thing can be done.

I think this is just an

unacceptable way to do this, and I would add, Mr. President, that when the people give us the power to do something and we don't do it, this feeds their desire for a Constitutional Convention so they can take back the power, restructure the Legislature and when they give us the power next time, we'll actually do what they sent us here to do.

I'll vote in the negative, Mr. President.

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

Senator Stafford, did you wish to explain your vote? Senator Stafford to explain his vote.

SENATOR STAFFORD: Mr. President, I, of course, don't stand up that often, but for some reason Senator Dollinger can press my button. Please let me just share with you this broad stroke of the conceptual brush.

I think the Governor and his good people, the Majority Leader and his good people and the members, the Minority Leader and his people and the members, the Speaker, his people and the members and the Minority Leader of the

Assembly and the good people and the members are to be complimented.

Now, there's no one who wants a budget, who gets more disgusted and more frustrated than our leader. He's been out front. He wants us to do business in a business like way through the governmental -- have the governmental process function in a businesslike way and we're working toward that end, and let me share this, and I'm not making any excuses. I'm just trying to lay out the facts.

You know, those of us in the Legislature, if we bellyache, put our tail between our legs and just try to make excuses, the people think just of us the way they should.

Now, this is a very complex state. You have people representing districts that have almost interests or interests that are almost 180 degrees when it comes to interests. This is not Illinois. This is not Michigan. This is not California. This is not any other state other than New York, the Empire State, which again I have to kind of plug the Governor and the Majority Leader for how well the state

is doing. They both can pay me a dollar later.

But let me share this with you. We are making sure that government functions, people are being paid, bills are being paid and I think maybe we've got to start looking at this in a bit more objective way and stop complaining and stop, in other words, being defensive and saying we're not doing our job. We are doing our job and we're doing it today. No one is going to suffer, and the state is going to function in an orderly fashion, thanks to the Governor, the Majority Leader and his members, the Minority Leader and his members in the Senate, the Speaker and his members in the Assembly and the Minority Leader and his members in the Assembly.

Of course, we want a budget. We will get a budget, but you know, it is difficult to hammer out these decisions on the anvil of reason, decency, compassion, understanding and sensitivity, and that is being done. Our government will function, thanks to this legislation. Government will go on, and I think we have to get that message out to our people.

Thank you.

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

Announce the results.

THE SECRETARY: Ayes 55, nays one, Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Cook.

SENATOR COOK: Mr. President, I ask unanimous consent to be recorded in the negative on Senate Bill 5275.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Cook will be recorded in the negative on Senate Print 5275.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk? There being no further business, I move we adjourn until Monday, May 12th, at 3:00 p.m., intervening days being legislative days.

SENATOR KUHL: Without objection, Senate stands adjourned until Monday, May 12th, at 3:00 p.m., intervening days to be legislative

days.

(Whereupon at 2:55 p.m., the Senate adjourned.)