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ALBANY, NEW YORK

May 20, 1997

10:05 a.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

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P R O C E E D I N G S

THE PRESIDENT: The Senate will
come to order.

Would you please rise and join
with me in the Pledge of Allegiance.

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

May we bow our heads in a moment
of silence.

(A moment of silence was
observed.)

The reading of the Journal,
please.

THE SECRETARY: In Senate, Monday,
May 19th. The Senate met pursuant to adjourn
ment. The Journal of Friday, May 16th, was read
and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

1 Communications and reports from
2 state officers.

3 Motions and Resolutions.

4 SENATOR BRUNO: Madam President,
5 can we move at this time to adopt the
6 resolutions.

7 THE PRESIDENT: All those in favor
8 of adopting the Resolution Calendar signify by
9 saying aye.

10 (Response of "Aye.")

11 Those opposed?

12 SENATOR DOLLINGER: Nay.

13 THE PRESIDENT: Recording in the
14 negative. The calendar is adopted.

15 Senator Bruno.

16 SENATOR BRUNO: Madam President,
17 we had called the session for 10:00 o'clock this
18 morning, which was a change from the regular
19 hour of 3:00, and we've called session for 10:00
20 because we have so many bills that we have to
21 deal with, and those that are in the chamber I
22 want to thank you, the members that are here
23 prepared to do business and take care of the
24 affairs that are before us today. Those that
25 are not in the chamber should get to the chamber

1 so that we can continue to do the work that they
2 are elected to do, and they belong in the
3 chamber and they belong here at 10:00 o'clock
4 and there was sufficient notice for those that
5 are here that they have to be here marking time
6 while other members are doing other things that
7 they feel have priority. So I'm asking, Madam
8 President, and the Sergeant-at-Arms, I know, are
9 reaching the offices of other members, that they
10 get to the chamber on time today, tomorrow and
11 from now until we finish this session.

12 Thank you, Madam President.

13 Can we at this time take up the
14 non-controversial calendar.

15 The Secretary will read. Senator
16 Bruno, we have one substitution.

17 SENATOR BRUNO: Make your
18 substitution, Madam President.

19 Senator Farley, are you the
20 Senate whip? Would you whip up the members?

21 THE PRESIDENT: The Secretary will
22 read.

23 THE SECRETARY: On page 11,
24 Senator Trunzo moves to discharge from the
25 Committee on Rules Assembly Bill Number 2997-A

1 and substitute it for the identical Third
2 Reading Calendar 337.

3 SENATOR DOLLINGER: Madam
4 President.

5 THE PRESIDENT: Substitution
6 ordered.

7 Senator Dollinger.

8 SENATOR DOLLINGER: Madam
9 President, is there a quorum present in order
10 for us to do business? Is there a quorum
11 present? I know the President of the Senate
12 advised the members to come. I agree with the
13 Senator that it's time to do business. I'm
14 simply raising a question as to whether there's
15 a quorum present in the chamber now.

16 THE PRESIDENT: We have 32,
17 Senator Dollinger.

18 The Secretary will read.

19 THE SECRETARY: Calendar Number
20 190, by Senator Volker, Senate Print 2336, an
21 act to amend the Vehicle and Traffic Law, in
22 relation to defining all-terrain type vehicles.

23 THE PRESIDENT: Read the last
24 section please.

25 SENATOR PATERSON: On the vote,

1 Madam President.

2 THE PRESIDENT: Senator Paterson,
3 I didn't hear you, please. Would you please
4 repeat that.

5 SENATOR PATERSON: On the vote,
6 party vote in the negative.

7 SENATOR BRUNO: Party vote in the
8 affirmative.

9 SENATOR GOLD: Madam President.
10 Good morning, Madam President.

11 THE PRESIDENT: Good morning.

12 SENATOR GOLD: Madam President,
13 it's just come to my attention, and I do this
14 with the greatest respect for Senator Bruno, who
15 I know is meticulous as far as our rules are
16 concerned, but a motion was made to pass the
17 Resolution Calendar and at the time that that
18 was made, I don't know whether there was a
19 quorum present.

20 THE PRESIDENT: Senator, let me
21 check. I was told there was a quorum present.
22 Is it true that there was a quorum present?
23 There were 32 members in the house when we
24 passed the Resolution Calendar.

25 SENATOR GOLD: Good. I feel

1 better about it. My blood pressure is suddenly
2 all right.

3 THE PRESIDENT: That's good to
4 hear.

5 Bill 190 was laid aside. The
6 Secretary will read.

7 THE SECRETARY: Calendar Number
8 232, by Senator Velella, Senate Print 18-A.

9 SENATOR GOLD: Madam President.

10 THE PRESIDENT: I'm sorry.
11 Senator Gold.

12 SENATOR GOLD: Yeah, a point of
13 order, Madam President. I don't understand what
14 just happened. They called the roll on 190, and
15 I heard some votes, but I didn't hear the
16 results.

17 THE PRESIDENT: Senator Gold, we
18 didn't call the roll.

19 SENATOR GOLD: Oh.

20 THE PRESIDENT: Senator Bruno laid
21 the bill aside.

22 SENATOR DOLLINGER: The roll call
23 was withdrawn?

24 THE PRESIDENT: Senator Bruno.

25 SENATOR BRUNO: Madam President,

1 can we at this time ask for an immediate meeting
2 of the Finance Committee in Room 332.

3 THE PRESIDENT: There will be an
4 immediate meeting of the Finance Committee in
5 Room 332.

6 SENATOR BRUNO: Thank you.

7 THE PRESIDENT: The Secretary will
8 read.

9 SENATOR GOLD: Madam President.

10 THE PRESIDENT: Senator Gold.

11 SENATOR GOLD: Yes, Madam
12 President. We have, I think, about 80 bills on
13 the calendar?

14 THE PRESIDENT: That's right.

15 SENATOR GOLD: And if Senator
16 Bruno were to be believed, and I do believe him,
17 this may be the first working day we've had this
18 year, and I would like to suggest that perhaps
19 the session stand at ease while we do Finance.
20 We did start early. Finance is a very light
21 calendar, and I don't think that I and the other
22 members of Finance should be prejudiced by being
23 out of the room while this calendar is called.
24 There are bills that I may want to be -- I want
25 to ask questions about, and I think -

1 THE PRESIDENT: Go ahead, Senator
2 Gold. I'd like to hear you.

3 SENATOR GOLD: -- and Tuesday is a
4 normal day for Finance. It is a committee with
5 great responsibility. I am honored to be the
6 ranking on the committee, and I would just,
7 without doing any formal motions or whatever, I
8 would urge that perhaps Senator Bruno might
9 consider having us stand at ease while other
10 members do come to the chamber as he has
11 indicated and while we take care of this rather
12 important committee.

13 THE PRESIDENT: Senator Bruno.

14 SENATOR BRUNO: Madam President, I
15 think that's a good suggestion, and I would
16 suggest that the chamber do stand at ease while
17 Finance meets, Madam President.

18 THE PRESIDENT: The Senate will
19 stand at ease.

20 SENATOR BRUNO: Thank you, Senator
21 Gold.

22 (Whereupon at 10:15 a.m., the
23 Senate stood at ease until 11:35 a.m.)

24 ACTING PRESIDENT KUHL: The
25 Senate will come to order. Ask the members to

1 find their chairs, the staff to find their
2 places.

3 Senator Skelos.

4 SENATOR SKELOS: Mr. President,
5 on behalf of Senator Padavan, there will be an
6 immediate meeting of the Cities Committee in the
7 Majority Conference Room. There will also be an
8 immediate meeting of the Transportation
9 Committee at 12:00 noon in the Majority
10 Conference Room.

11 ACTING PRESIDENT KUHL: Immediate
12 meeting of the Cities Committee in the Majority
13 Conference Room, Room 332, and the Transporta
14 tion Committee will be in the same room, Room
15 332, at noon.

16 Senator Trunzo, why do you rise?

17 SENATOR TRUNZO: Mr. President,
18 can I put a sponsor's star -- are we on motions
19 and resolutions -- on Calendar 492.

20 ACTING PRESIDENT KUHL: We'll
21 return to the order of motions and resolutions.
22 Calendar Number 492 will be starred at the
23 request of the sponsor.

24 Thank you, Senator Trunzo.

25 SENATOR TRUNZO: Thank you.

1 ACTING PRESIDENT KUHL: Senator
2 Skelos.

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

8 ACTING PRESIDENT KUHL: We'll -
9 we will return to the order of standing
10 committees.

11 I'll ask the Secretary to read
12 the report of the Finance Committee.

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

16 Superintendent of Insurance:
17 Neil D. Levin, of New York City.

18 ACTING PRESIDENT KUHL: The Chair
19 recognizes Senator Stafford.

20 SENATOR STAFFORD: Thank you, Mr.
21 President.

22 Once again today people are going
23 to think this is a broken record but,
24 unfortunately, we're able to have a broken
25 record because again today the Governor had a

1 number of nominees, two appearing, many who
2 didn't, excellent nominees, all were approved.
3 We compliment all of them who will be serving.

4 I can only say again, the
5 Governor is to be complimented on the caliber of
6 people that he is finding to serve here in our
7 government and, Mr. President, on a day when
8 we're not particularly rushing, sometimes I
9 wonder why people take the time to put their -
10 yes, their necks out, so to speak, but I guess
11 that's just evidence of the type of state and
12 nation we do live in and with that, I yield to
13 the Senator -- I have to make up my mind, either
14 Bronx or Schenectady and since "S" comes after
15 "B" -- oh, Senator Farley.

16 SENATOR FARLEY: Oh, I don't -

17 SENATOR VELELLA: Mr. President,
18 I recognize age or, as we say seniority, and I
19 yield to Senator Farley.

20 SENATOR FARLEY: I would be happy
21 to yield back there. When he said the Bronx,
22 you know, I originally came from there. I
23 thought that he was talking about me.

24 SENATOR VELELLA: There are those
25 who come from the Bronx and those who wish they

1 did. I'm sure you do.

2 SENATOR GOODMAN: Mr. President.

3 ACTING PRESIDENT KUHL: Senator
4 Goodman, you want to join the circus?

5 SENATOR GOODMAN: I would point
6 out that this nominee is from Manhattan and in
7 the fullness of time, Manhattan will have its
8 say in this matter.

9 SENATOR STAFFORD: Mr. President,
10 I am off the hook. I yield to the Senator from
11 Manhattan.

12 SENATOR PATERSON: Mr. President.

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

15 SENATOR PATERSON: This is
16 obviously a great occasion when we're going to
17 do some nominations and I have absolutely no
18 objection to that, but with all that's being
19 discussed and the opportunity to hear the
20 individuals who are being nominated, we've got a
21 committee meeting going on right now and I just
22 have to raise an objection. We have very few
23 members here and we would like to just perhaps
24 hold this off until we get our members back.

25 ACTING PRESIDENT KUHL: Senator

1 Skelos, do you wish to be heard on that?

2 SENATOR SKELOS: We accommodated
3 certainly Senator Gold's request when the
4 Finance Committee was meeting not to take up the
5 non-controversial calendar, but certainly to
6 move the day ahead and process I think taking up
7 nominations, especially that as the designated
8 Superintendent of Insurance which came out of
9 the Finance Committee unanimously, I think we
10 can move ahead rather than delay the functioning
11 of the day as requested by the Deputy Minority
12 Leader.

13 SENATOR PATERSON: Mr. President.

14 ACTING PRESIDENT KUHL: Senator
15 Paterson.

16 SENATOR PATERSON: I understand
17 the time element and the number of issues that
18 we're trying to address, and I thought it was
19 explained earlier by the Majority Leader that
20 that's why we took the occasion to move the
21 session up to 10:00 a.m. So with the added five
22 hours, I think that we can accommodate all of
23 our wishes since this session normally would not
24 have started until 3:00 o'clock this afternoon.
25 There is ample time for us to have our committee

1 meetings, perform our functions and have
2 nominations and also to do our calendar today.
3 There's absolutely no reason that we need to
4 rush this while we have members outside of the
5 chamber. We had a big controversy a few weeks
6 ago.

7 SENATOR SKELOS: Mr. President,
8 I'm informed that the committee meeting is
9 over. If you would recognize Senator Velella at
10 this time.

11 SENATOR PATERSON: Mr. President,
12 the members are not in the room. I'm going to
13 have to ask for a quorum call. We don't have
14 the members in the room.

15 ACTING PRESIDENT KUHL: Senator
16 Paterson is asking for a quorum call. The
17 Secretary will call the roll on the quorum
18 call.

19 THE SECRETARY: Senator Abate.
20 (There was no response.)
21 Senator Alesi.

22 SENATOR ALESI: Yes.

23 THE SECRETARY: Senator Breslin.
24 (There was no audible response.)
25 Senator Bruno.

1 (There was no audible response.)
2 Senator Connor.
3 (There was no audible response.)
4 Senator Cook.
5 SENATOR COOK: Here.
6 THE SECRETARY: Senator
7 DeFrancisco.
8 SENATOR DeFRANCISCO: Here.
9 THE SECRETARY: Senator
10 Dollinger.
11 (There was no response.)
12 Senator Farley.
13 SENATOR FARLEY: Here.
14 THE SECRETARY: Senator Gentile.
15 (There was no response.)
16 Senator Gold.
17 SENATOR GOLD: Here.
18 THE SECRETARY: Senator Gonzalez.
19 (There was no response.)
20 Senator Goodman.
21 SENATOR GOODMAN: Here.
22 THE SECRETARY: Senator Hannon.
23 (There was no response.)
24 Senator Hoffmann.
25 (There was no response.)

1 Senator Holland.
2 (There was no response.)
3 Senator Johnson.
4 SENATOR JOHNSON: Here.
5 THE SECRETARY: Senator Kruger.
6 (There was no response.)
7 Senator Kuhl.
8 SENATOR KUHL: Here.
9 THE SECRETARY: Senator Lachman.
10 (There was no response.)
11 Senator Lack.
12 SENATOR LACK: Here.
13 THE SECRETARY: Senator Larkin.
14 SENATOR LARKIN: Aye.
15 THE SECRETARY: Senator LaValle.
16 (There was no response.)
17 Senator Leibell.
18 SENATOR LEIBELL: Here.
19 THE SECRETARY: Senator Leichter.
20 (There was no response.)
21 Senator Levy.
22 (There was no response.)
23 Senator Libous.
24 (There was no response.)
25 Senator Maltese.

1 SENATOR MALTESE: Present.
2 THE SECRETARY: Senator
3 Marcellino.
4 SENATOR MARCELLINO: Here.
5 THE SECRETARY: Senator Marchi.
6 SENATOR MARCHI: Present.
7 THE SECRETARY: Senator
8 Markowitz.
9 (There was no response.)
10 Senator Maziarz.
11 (There was no response.)
12 Senator Meier.
13 SENATOR MEIER: Here.
14 THE SECRETARY: Senator Mendez.
15 (There was no response.)
16 Senator Montgomery.
17 (There was no response.)
18 Senator Nanula.
19 SENATOR NANULA: Here.
20 THE SECRETARY: Senator Nozzolio.
21 SENATOR NOZZOLIO: Present.
22 THE SECRETARY: Senator Onorato.
23 (There was no response.)
24 Senator Oppenheimer.
25 SENATOR OPPENHEIMER: Here.

1 THE SECRETARY: Senator Padavan.
2 SENATOR PADAVAN: Here.
3 THE SECRETARY: Senator Paterson.
4 SENATOR PATERSON: Here.
5 THE SECRETARY: Senator Present.
6 SENATOR PRESENT: Here.
7 THE SECRETARY: Senator Rath.
8 (There was no response.)
9 Senator Rosado.
10 (There was no response.)
11 Senator Saland.
12 SENATOR SALAND: Here.
13 THE SECRETARY: Senator Sampson.
14 (There was no response.)
15 Senator Santiago.
16 SENATOR SANTIAGO: Present.
17 THE SECRETARY: Senator Seabrook.
18 (There was no response.)
19 Senator Seward.
20 SENATOR SEWARD: Here.
21 THE SECRETARY: Senator Skelos.
22 SENATOR SKELOS: Here.
23 ACTING PRESIDENT KUHL: Senator
24 Paterson, I'm informed by the Secretary that
25 there is a quorum present.

1 SENATOR PATERSON: Thank you, Mr.
2 President.

3 ACTING PRESIDENT KUHL: The Chair
4 recognizes Senator Velella, on the nomination.

5 SENATOR VELELLA: Mr. President,
6 the candidate that's been submitted to us for
7 Superintendent of Insurance is no stranger to
8 the chamber.

9 In January of 1995 he was
10 confirmed as the Superintendent of Banks and in
11 a changing financial world today, the issues of
12 banking, insurance, securities are certainly one
13 that we're looking at Washington for direction.
14 We're looking to Washington and to the state to
15 try and resolve some major issues.

16 This candidate has an excellent
17 background in all of these areas, having been
18 the banking superintendent, having served on
19 many, many banking boards, having the experience
20 of working within the private industry for the
21 securities businesses. I think that he brings
22 to the Insurance Department an in-depth
23 understanding of the financial needs and the
24 financial responsibilities of New York State in
25 trying to address this changing market.

1 In the short time he has been
2 acting superintendent, he has taken a very
3 strong role in command of the issues that are
4 facing us and, as I say, over the next several
5 years, this is going to be a changing area of
6 the law, whether it be with banks, whether it be
7 with insurance, whether it be in the securities
8 area.

9 We are fortunate that the
10 Governor has seen fit to select an individual
11 like Neil Levin who has the experience in all of
12 these areas and will add a dimension to the
13 Insurance Department that's been needed for a
14 long time.

15 I recommend and support his
16 nomination.

17 ACTING PRESIDENT KUHL: The Chair
18 recognizes Senator Goodman, on the nomination.

19 SENATOR GOODMAN: Mr. President,
20 it's with special pride that I rise to second
21 the nomination of Neil Levin.

22 I'd like to point out to this
23 chamber that his experiences are really quite
24 extraordinary. He has had legislative
25 experience in the United States Senate. He has

1 been a vice-president of one of the, if not the
2 preeminent investment banking firms in the
3 United States, Goldman Sachs & Company, where he
4 was in charge of a number of areas, including
5 responsibility for its business in the state of
6 Israel and at a moment of great sensitivity when
7 there was deep concern about problems relating
8 to the handling of holocaust survivors'
9 possessions and bank accounts, Neil Levin was
10 assigned by the Governor to journey to
11 Switzerland where he accomplished an
12 extraordinary amount of procedural forward
13 progress in this very difficult area.

14 Neil Levin obviously possesses a
15 keen intellect, a great sense of proportion in
16 terms of the very difficult issues with which he
17 must grapple in his job, and I think there could
18 be no one better qualified to handle the highly
19 sensitive post as Superintendent of Insurance
20 than this outstanding public servant.

21 ACTING PRESIDENT KUHL: The Chair
22 recognizes Senator Farley.

23 SENATOR FARLEY: Neil Levin, I
24 haven't seen three guys fighting to nominate you
25 in a number of years, but let me just say this.

1 Superintendent Levin, who I have
2 had the pleasure of working with for the past
3 year and a half, if not longer, when he was
4 appointed Superintendent of Banks, he came in in
5 a crisis situation, handled it admirably with
6 the dire situation of -- involving criminal
7 activity and quite a few other things.

8 Superintendent Levin has served
9 with distinction in the banking area. As has
10 been said earlier by my two colleagues, Senator
11 Velella and Senator Goodman, he's had experience
12 in all three areas of the -- of the financial
13 services industry which is a dynamic and
14 changing area and one that requires somebody
15 that is really up to speed with all of the
16 changes.

17 I think perhaps the most
18 important thing -- and we'll hear it, I think
19 from some of the members, particularly from the
20 other side of the aisle -- he's been
21 complimented for working with legislators, being
22 sensitive to people that are -- that work in the
23 Legislature. Why? Because he's had experience
24 as a staffer working for Congress, working with
25 the Senate and consequently, I think you'll find

1 that he'll not only be an outstanding
2 Superintendent of Insurance as he has been with
3 banking, and I'm very pleased to support your
4 nomination, Neil, and I wish you well.

5 ACTING PRESIDENT KUHL: The Chair
6 recognizes Senator Santiago, on the nomination.

7 SENATOR SANTIAGO: Thank you, Mr.
8 President.

9 On the nomination, it's an honor
10 today to rise to support the nomination of Neil
11 Levin as the Commissioner of Insurance. I have
12 had the pleasure of working with Mr. Levin since
13 his appointment as Superintendent of Banks.

14 Neil Levin came to the Banking
15 Department with a mission and that mission was
16 to strengthen the integrity of the state Banking
17 Charter.

18 During the years he was
19 Superintendent, he worked aggressively to ensure
20 that all of New York's banks remained on an
21 equal competitive level with the national
22 counterparts. During his final months at the
23 Banking Department, Mr. Levin worked hard to
24 provide state banks with the same authority to
25 compete in the insurance and securities industry

1 with which national banks are receiving.

2 While I do not completely agree
3 with some of the particulars of the proposal, I
4 feel that he has done a superb job in pushing
5 New York's banking policy in the direction which
6 ensures that we remain the nation's financial
7 capital.

8 On a personal level, I have
9 always found Neil Levin to be a fair and honest
10 man who brought a strong sense of integrity to
11 his position. What has most impressed me was
12 his genuine concern for the financial needs of
13 our state's poor communities.

14 Earlier this year, which is
15 unprecedented for me, Superintendent Levin
16 invited me to his Manhattan office, where we had
17 a two-hour discussion where he remained during
18 that discussion with his key staff where we
19 discussed the financial needs of New York's poor
20 community, economically poor communities, the
21 likes of which I represent. It was amazing to
22 me, and I was proud to say, that he was
23 extraordinarily sensitive to the needs of my
24 community and the poor people in the state of
25 New York.

1 I'm grateful to him for his
2 concern. I'm grateful to him for his interest
3 in my community and the poor people that I
4 represent and the poor people of the state of
5 New York and I'm sure that he will bring these
6 qualities to the Insurance Department.

7 I'm very honored to call him a
8 friend. I will be at his service as I always
9 have been and I'm proud to support the
10 nomination.

11 ACTING PRESIDENT KUHL: The Chair
12 recognizes Senator Maltese, on the nomination.

13 SENATOR MALTESE: Mr. President,
14 I can only add to the words of my colleagues and
15 the words that were previously uttered on this
16 floor in lauding Mr. Levin for his previous post
17 that he has served with such distinction.

18 I think the fact that he had come
19 up through the ranks, so to speak, both on the
20 federal and state level, working with federal
21 authorities, state authorities at the very
22 highest levels, exercising leadership and
23 dedication in those roles, we could almost say
24 that he's out of central casting for this
25 position, having received a Bachelor's degree in

1 economics, a Master's degree in finance and a
2 Doctorate of laws.

3 He is extremely well suited for
4 this position, exemplary in integrity and
5 qualifications. The past posts where he has
6 rendered service so excellently to the state and
7 nation well qualify him for this post.

8 I am pleased to join in seconding
9 this very important nomination, this continuing
10 nomination for his continuing service to the
11 state and continuing evidence that Governor
12 George Pataki is making appointments of the
13 highest quality.

14 ACTING PRESIDENT KUHL: The Chair
15 recognizes Senator Gold, on the nomination.

16 SENATOR GOLD: Hello, Mr.
17 President. Governor, hold on a minute.

18 Mr. President, I just wanted to
19 throw my two cents in without repeating what's
20 been said, to say that this nominee, without my
21 reaching out, reached out to me as the ranking
22 member of Finance and urged himself upon me,
23 forced himself upon me, and it was a delight.
24 This is a man who is not afraid to talk, not
25 afraid to tell you what's on his mind and it

1 really is a refreshing situation.

2 So I am particularly delighted to
3 again join with my colleagues on this
4 nomination. I think that history will repeat
5 itself and he will do a job that we will all be
6 proud of.

7 ACTING PRESIDENT KUHL: Senator
8 Marchi, on the nomination.

9 SENATOR MARCHI: Mr. President,
10 someone walking into the chamber might be amazed
11 at the superlatives that have been applied to
12 the nominee.

13 I have been a member of the
14 Finance Committee for 41 years and I have seen
15 thousands of candidates. There may have been
16 one or two -- and I cannot remember when, if
17 indeed there were any -- that brought the very
18 strong credentials in various aspects of the
19 subjects that he has centered himself around at
20 very high levels. These aren't just build-ups
21 to something but holding major responsibilities
22 in compatible and comparable areas certainly
23 inures to -- and enriches the confidence that
24 this membership can have in sanctioning this
25 nomination.

1 The past is prologue, Mr.
2 Nominee, and I look forward because I think he's
3 going to serve the institutional needs of this
4 state which may be in for some troubled periods
5 yet and also the public needs of the people of
6 the state of New York.

7 So it's inevitable, Mr.
8 President, that we have some -- we speak in
9 terms of superlatives because exactly this is
10 what he represents in a way that I have not seen
11 during my entire career in the Senate.

12 ACTING PRESIDENT KUHL: Senator
13 Stafford.

14 SENATOR STAFFORD: Mr. President,
15 I yielded immediately, but I would just conclude
16 on this very fine nomination by saying, Neil,
17 that on some questions which were difficult, he
18 gave some very good answers and I wrote them
19 down because I'm going to use that in the
20 future, on a serious note.

21 Also, I would point out that it's
22 just a great, great day when you can say that a
23 person who's proven themselves in the private
24 sector, proven themselves in government and
25 they're willing to stay when they could be doing

1 a lot of other things, we're all a lot better
2 off. I compliment the Governor and the nominee
3 and join in these very fine seconds.

4 ACTING PRESIDENT KUHL: Senator
5 Larkin.

6 SENATOR LARKIN: Mr. President,
7 it's an honor and a privilege to stand here and
8 endorse the nomination of Neil Levin for
9 Superintendent of Insurance.

10 You know, from the very first
11 time I had the opportunity to meet him, it was
12 quite obvious to me that he was well endowed
13 with knowledge of the financial community. His
14 previous background was an excellent training
15 ground for his assignment in the Banks and
16 during his tenure in the Banks, I found him to
17 be most open to everyone regardless of what
18 level they were at in dealing with issues
19 pertaining to banks, and now it's more important
20 that he's moving into the new area of insurance
21 with all of the federal regulations that will
22 impact on us, the Barnett decision, the office
23 of Comptroller of the Currency, and I find that
24 in the insurance industry, Mr. Levin has reached
25 out to the industry himself, not waiting for

1 them to come to him but he reached out to them
2 and explored the ideas of the cooperative
3 attitude, what will be best for the people in
4 the state of New York.

5 I think it's a tremendous thing
6 that we have had a governor that thought enough
7 of moving a man into an area that is deep in
8 areas of concern, how we handle it, how we do
9 it, how we pay for it, how we interact with the
10 federal government and our other states.

11 We're very fortunate to have Mr.
12 Levin as the Superintendent of Insurance.

13 ACTING PRESIDENT KUHL: The Chair
14 recognizes Senator Skelos, on the nomination.

15 SENATOR SKELOS: It's my pleasure
16 to rise as I did not too long ago to second the
17 nomination of my good friend, Neil Levin, to be
18 Superintendent of Insurance.

19 When he was confirmed as
20 Superintendent of Banks, I know how proud your
21 father Marty was, who was just such a dear
22 friend to me. He was more proud of the job that
23 you were doing as the Superintendent, not just
24 the fact that you were confirmed and today,
25 although he's not with us, Neil, I know how

1 proud he would be of the job you did as
2 Superintendent of Banks and also that our
3 governor has placed his trust in you to take
4 over as Superintendent of Insurance.

5 It's my pleasure to stand and
6 support your nomination today, Neil.

7 ACTING PRESIDENT KUHL: The Chair
8 recognizes Senator Leichter, on the nomination.

9 SENATOR LEICHTER: Mr. President,
10 I certainly want to rise and express my appreci
11 ation to Superintendent Levin for the courtesy
12 he's shown me while he was Superintendent of
13 Banks. He was always accessible. He was open.
14 When I and others asked that he hold a public
15 hearing on the Chase-Chemical merger, he did,
16 and I think that was unprecedented. He brought
17 a great deal of vigor, intelligence to the
18 position and I'm convinced that he will do a
19 superb job as Superintendent of Insurance.

20 I just want to for a moment just
21 address some of the policy issues. It says
22 something, I think, that we find somebody moving
23 from Superintendent of Banks to Superintendent
24 of Insurance -- that too, I'm sure is
25 unprecedented in the annals of New York State,

1 and I think it does show how the whole financial
2 service area is changing and that maybe the
3 distinctions between banking and insurance and
4 the companies that perform in those fields is
5 going to be changed and, indeed, eliminated in
6 many respects, but I would hope that before we
7 see any wholesale change in New York State, that
8 this Legislature will be involved, that we don't
9 find a merger of departments without the
10 Legislature being actively involved.

11 I'm not suggesting that we got to
12 keep all of the functions and all of the
13 differentiations and all of the institutions as
14 they exist presently. Obviously the winds of
15 change are upon us and we have to respond and
16 react to it, but I would hope that it is done in
17 a collective fashion with the Executive together
18 with the Legislature.

19 Finally, I just want to say I
20 raised some questions with the Superintendent
21 about the protection of consumers in the
22 insurance field, and I was very pleased to have
23 him respond that this is one of his real
24 concerns, one of his real interests and
25 something that he will address.

1 I think it's an excellent
2 appointment, and I look forward with both
3 interest and enthusiasm to the job that he's
4 going to do.

5 Thank you.

6 ACTING PRESIDENT KUHL: The Chair
7 recognizes Senator Dollinger, on the nomination.

8 SENATOR DOLLINGER: Thank you,
9 Mr. President.

10 I have not known Mr. Levin prior
11 to today, I don't think, but I raised a couple
12 of questions in the Finance Committee about
13 issues that I thought were important about the
14 integrity of this department.

15 I can report to my colleagues,
16 those who were not present, that Mr. Levin
17 answered those questions, not only in a
18 satisfactory manner but in a reassuring manner,
19 giving me the sense that he will bring a sense
20 of integrity to this department.

21 I want everyone to know,
22 including the Chairman of Finance, that I was
23 not suggesting or, for that matter, in any way
24 impugning the integrity of this nominee by that
25 line of inquiry, but I still believe that these

1 are not laughable subjects. These are subjects
2 that go to the heart of the public's confidence
3 in their government, that the notion, the
4 correlation between what we do in our political
5 lives to raise political campaign funds has
6 nothing to do with what should happen in the
7 halls of this building, on the second floor, in
8 the Insurance Department or in any other branch
9 of government.

10 Mr. Levin has given me that
11 assurance. I'm confident that his assurance is
12 golden. I think his experience in the other
13 departments should give everyone in this chamber
14 a strong sense that integrity will be the
15 watchword at the New York State Insurance
16 Department.

17 Combine that integrity with his
18 proven credentials and the skill in the Banking
19 Department as someone remote -- remarked
20 somewhat perhaps in a lighter vein, that anyone
21 who Senator Franz Leichter endorses from the
22 Banking Department has got to be a good man.
23 This candidate clearly meets that test, and I'm
24 going to continue to ask those kinds of
25 questions about nominees. I'm going to continue

1 to ask those kinds of questions about the
2 process because I believe that our fundamental
3 job here is to continue the public's confidence
4 in their government and the way to do it is to
5 get just the kinds of assurance that Mr. Levin
6 gave in the Finance Committee.

7 So I applaud this nominee, Mr.
8 President. I will be voting in the
9 affirmative. I thank the Chairman of Finance
10 for allowing me to ask those questions. I will
11 continue to do it because of my belief that this
12 is the cornerstone of what the people expect
13 from us.

14 ACTING PRESIDENT KUHL: The Chair
15 recognizes Senator Levy, on the nomination.

16 SENATOR LEVY: Thank you very
17 much, Mr. President.

18 I'm delighted to rise and join my
19 colleagues in supporting the nomination of Neil
20 Levin.

21 If somebody had walked into this
22 chamber and they didn't know what was going on,
23 they would have thought this is a love-in for
24 Superintendent Neil Levin.

25 With all of the comments that

1 have been made here today, one dimension has
2 been missed, and that is that the Superintendent
3 lived in Nassau County on Long Island. I
4 congratulate the Governor on a five-star quality
5 nomination, and that's the kind of job he's
6 going to do. All the best.

7 Thank you very much.

8 ACTING PRESIDENT KUHL: Is there
9 any other Senator wishing to speak on the
10 nomination?

11 (There was no response.)

12 Hearing none, the question is on
13 the nomination of Neil D. Levin, of New York
14 City, to be the Superintendent of Insurance.
15 All those in favor of the nomination signify by
16 saying aye.

17 (Response of "Aye".)

18 Opposed, nay.

19 (There was no response.)

20 The nominee is unanimously
21 confirmed.

22 We're very, very pleased to have
23 Mr. Levin in the chamber with us to your left.
24 Congratulations, Neil. Good luck. We're all
25 with you in wishing the best. (Applause)

1 The Secretary will continue to
2 read.

3 ACTING PRESIDENT KUHL: Senator
4 Stafford, from the Committee on Finance, reports
5 the following nomination:

6 Member of the Public Service
7 Commission: Maureen Helmer, Esq., of
8 Schenectady.

9 ACTING PRESIDENT KUHL: The Chair
10 recognizes Senator Stafford, on the nomination.

11 SENATOR STAFFORD: Thank you, Mr.
12 President.

13 Once again, I'm torn. This time,
14 again, Senator Farley -

15 SENATOR FARLEY: I'm going to
16 yield.

17 SENATOR STAFFORD: -- and Senator
18 Seward. With that, it's a pleasure to yield to
19 Senator Seward.

20 ACTING PRESIDENT KUHL: The Chair
21 recognizes Senator Seward, on the nomination.

22 SENATOR SEWARD: Thank you,
23 Senator Stafford, Mr. President.

24 I'm particularly pleased and
25 proud today to stand to move the nomination of

1 Maureen Helmer to be a member of the Public
2 Service Commission.

3 Certainly Maureen Helmer is no
4 stranger to this chamber. However, I've got to
5 tell you, Maureen, it's much more natural to
6 have you down here on the floor advising me and
7 the other members in terms of some of the
8 intricate energy and telecommunications
9 legislation, but I'm delighted that you are in
10 the gallery today to receive the confirmation of
11 this body to be a member of the Public Service
12 Commission.

13 Maureen Helmer is a product of
14 the State University of New York here at Albany,
15 her undergraduate work, and the law school out
16 at Buffalo and following law school, she had a
17 career as a legislative intern with the Senate
18 Committee on Corporations, Authority and Public
19 Utilities, also a legal intern with the Senate
20 Subcommittee on Gasoline Allocation Abuse, was
21 an intern with the PSC and assistant counsel to
22 the New York State Temporary Commission on
23 Investigations and following that stint, she
24 moved back over to the Legislature to be a
25 counsel to the Minority Leader, "Rap" Rappleyea,

1 advising the members of that house on energy and
2 related legislation.

3 In 1989 to 1994, she was counsel
4 to the Senate Energy Committee. In 1995 and to
5 the present, she has been a general counsel to
6 the Public Service Commission, supervising a
7 staff of over 30 attorneys, a member of the
8 management committee for the agency and
9 participated in the recommendations regarding
10 all policy decisions at the PSC.

11 The PSC is at a time of great
12 change, of transition, restructuring of the
13 utility industry, and we need members of the PSC
14 who have the experience, the intellect, the hard
15 work ethic, integrity, and Maureen Helmer has
16 all of these qualities, and I'm delighted to
17 stand to move her confirmation.

18 You know, if anyone had any doubt
19 that Maureen Helmer could juggle the responsi-
20 bilities and challenges that confront her as a
21 member of the PSC, let me tell you, she has the
22 qualities to meet the challenge.

23 My thoughts go back to June of
24 1992 when, in that month alone, Maureen not only
25 assisted me in negotiating a huge omnibus energy

1 legislation which passed during that month, but
2 she also had her third child. So she certainly
3 has what it takes to meet challenges, and I know
4 that personally and so, Maureen, this is a very
5 proud moment for me to wish you well, congrat
6 ulate you and your family, your husband Bill and
7 your children are with you in the gallery and
8 also to congratulate the Governor on making an
9 outstanding choice to be a member of the PSC.

10 Maureen, congratulations and
11 Godspeed.

12 ACTING PRESIDENT KUHL: The Chair
13 recognizes Senator Farley, on the nomination.

14 SENATOR FARLEY: It's with
15 pleasure that I rise to second the nomination of
16 Maureen.

17 Let me just say, it's so exciting
18 to see a working mother who has had such a
19 sparkling career as you have, in the Assembly,
20 for Senator Seward, so many committees in this
21 Legislature, and each and every one of them, you
22 served with distinction and it's so evident that
23 your son and children there are so proud. He's
24 waved to all of us and we're supporting your
25 mom, I'll tell you that; but let me just say

1 that Maureen Helmer is really a credit to the
2 Governor. To choose somebody with this kind of
3 a background -- I've served here for a lot of
4 years, and I haven't seen anybody go on that
5 Public Service Commission that is better
6 prepared. My heavens, I mean, having been
7 counsel to the Public Service Commission,
8 counsel to Senator Seward's Energy committee,
9 having worked with energy in the Assembly, your
10 whole life has been energy, and certainly we're
11 very, very pleased to support you. Having come
12 from Rotterdam, which is part of Schenectady
13 County and being a graduate of the State
14 University of New York at Albany, we're very,
15 very proud of you. We wish you well and,
16 Maureen, I know that you're going to be a credit
17 to the Governor and to this Legislature which
18 will confirm you.

19 ACTING PRESIDENT KUHL: Senator
20 Hannon, on the nomination.

21 SENATOR HANNON: Yes, Mr.
22 President. I rise in support of this
23 nomination. I think there's no other policy
24 area that's changing as rapidly as both
25 telecommunications and utility deregulation and

1 that this state is, indeed, fortunate to have
2 somebody with the analytical talents and the
3 legal skills as Ms. Helmer.

4 Having worked with her in the
5 Assembly, in the Senate Energy Committee along
6 with the transition committee on LILCO, I think
7 she brings great talent to the job. It's sorely
8 needed as we are guided through the next
9 decade. It's something that affects every
10 household and every consumer in this state with
11 regard to energy and regard to
12 telecommunications. So I utterly commend her
13 nomination to this body.

14 Thank you, Mr. President.

15 ACTING PRESIDENT KUHL: Senator
16 Saland, on the nomination.

17 SENATOR SALAND: Thank you, Mr.
18 President.

19 I too rise in support of the
20 nomination of Maureen Helmer, and much like
21 Senator Hannon, my days go back to the Assembly
22 when Maureen served as counsel to the former
23 Minority Leader, "Rap" Rappleyea, and while
24 everybody has extolled her marvelous resume and
25 her ability dealing with energy issues, by which

1 she certainly is entitled to all the acclaim,
2 let me say that she certainly was more than one
3 dimensional.

4 I had the opportunity to work
5 with her when I was the ranker on the Codes
6 Committee and she was superbly talented as a
7 counsel dealing with criminal justice issues as
8 all of us know she has been dealing with energy
9 issues.

10 I think the Governor has made an
11 exceptional appointment. It is my pleasure in
12 Maureen's presence and the presence of her
13 family and loved ones, to say without any
14 equivocation, that she is not only an
15 exceptional attorney but she is just a
16 marvelous, wonderful human being who would
17 probably excel wherever she would be placed, but
18 I take great comfort knowing her background in
19 the realm of energy, that she will be an
20 exceptional performer on the PSC, and I wish her
21 nothing but the best, and be well and do well.

22 ACTING PRESIDENT KUHL: Senator
23 Gold, on the nomination.

24 SENATOR GOLD: Thank you, Mr.
25 President.

1 Mr. President, I think this
2 particular nominee is of special significance,
3 particularly to us in the Legislature. There's
4 that old expression -- not a great one but an
5 old expression -- what goes around comes around,
6 and we have from time to time, as members of the
7 Senate, had the opportunity to vote on
8 confirmations for people who had worked in the
9 Legislature either as members or as staff, and I
10 would be less than candid if I said that there
11 have been people, particularly at the staff
12 level, who many of us have had to gulp about
13 because they, for one reason or another, did not
14 know how to handle their power, if you can use
15 the word "power", as staff members.

16 As I said in the Committee today,
17 the PSC is a serious job and there have been
18 people who had prepared questions for me to ask
19 the nominee and one of the staff people on this
20 side of the aisle heard that we were going to
21 ask these questions and said, Well, we can
22 always get that information. It's important
23 information but ripped up the questions and
24 said, This is a good person. We have dealt with
25 this person for years and this is not a person

1 who you want to give any difficulty to in the
2 committee system, and I thought that that praise
3 coming from a counsel in the Minority to someone
4 who they have had to deal with on the other side
5 of the aisle is the highest level of praise
6 because, while we meet with these people and
7 deal with them on some occasional basis, our
8 counsels are "subjected" -- and I use that word
9 in quotation marks -- to dealing with counsels
10 on the other side on a continuing basis.

11 So aside from the fact that she's
12 experienced, aside from the fact that she is
13 knowledgeable and bright, I think her personal
14 skills are what impressed me so much and the
15 fact that those who have had to deal with her in
16 a peer situation feel so strongly about her and
17 talk so highly of her.

18 So I'm delighted to vote for this
19 nominee and I would urge that there are hundreds
20 of people in this Capitol who work as counsels
21 and they should look at this delightful lady as
22 an example of the fact that you can do your job,
23 you can be a partisan and you can still be a
24 mensch -- I'll give you the spelling later -
25 and I congratulate the Governor also. I

1 congratulate the Republican Party also for
2 sending out a message that there are growth
3 possibilities for people who are nice.

4 ACTING PRESIDENT KUHL: Is there
5 any other Senator wishing to speak on the
6 nomination?

7 (There was no response.)

8 Hearing none, the question is on
9 the nomination of Maureen Helmer, of
10 Schenectady, to become a member of the Public
11 Service Commission. All those in favor signify
12 by saying aye.

13 (Response of "Aye".)

14 Opposed, nay.

15 (There was no response.)

16 The nominee is unanimously
17 confirmed.

18 We're very pleased not only to
19 have Maureen with us today but her husband Bill,
20 her children Billy, Katie and Elizabeth, her
21 sister-in-law, Mary Helmer, and her parents, Mr.
22 and Mrs. John O'Donnell.

23 Maureen, congratulations. Good
24 luck. (Applause)

25 The Secretary will continue to

1 read.

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

5 Member of the New York State
6 Financial Control Board: John A. Levin, Esq.,
7 of New York City.

8 ACTING PRESIDENT KUHL: The Chair
9 recognizes Senator Goodman, on the nomination.

10 SENATOR GOODMAN: Mr. President,
11 it gives me special pleasure to nominate Mr.
12 John A. Levin, of New York City and, indeed,
13 Manhattan, who is a very distinguished member of
14 the financial community and who is being
15 proposed for one of the most sensitive jobs that
16 are available to financial leaders in the city
17 and state. This is the job of the Financial
18 Control Board which oversees the financial
19 condition of the city of New York and assures
20 that it continues to observe the care and
21 meticulous administration of its financial
22 affairs that will lead to its continued
23 solvency.

24 Mr. John Levin is married with
25 four children, is a graduate of Yale Law School,

1 the Yale University School of Engineering and
2 was for some time in a very highly and has been
3 for a number of years, actually, in leading
4 positions in the financial community, first as a
5 partner of Loeb Rhoades & Company, then as a
6 Steinhardt partner, then as a president and
7 chief executive officer of Baker Fentress &
8 Company and finally running his own firm as
9 president and founder of the John A. Levin
10 Company, Incorporated which manages \$6.4 billion
11 of pension funds for universities, endowments,
12 corporations and international and U.S. private
13 investors and their related trust and charitable
14 entities. This firm employs 52 people.

15 Mr. Levin is -- has a number of
16 other important activities. He's a trustee of
17 the Mt. Sinai Medical Center, where he is
18 chairman of their investment committee, on the
19 Board of Trustees of the Whitney Museum of
20 American Folk Art, on the investment committee
21 of Lincoln Center and having acted as
22 co-chairman of the Class of 1960's "Fun for Yale
23 University."

24 Mr. President, John Levin is well
25 known to me and has been for a number of years.

1 He's a person of the highest integrity and
2 enormous ability. He's without question one of
3 the keenest financial minds in the state, and I
4 think it's a credit to the Governor and the
5 people of the state that his name comes before
6 us for this extremely important post, which will
7 assure the continued health and well-being of
8 the city of New York.

9 ACTING PRESIDENT KUHL: Is there
10 any other Senator wishing to speak on the
11 nomination?

12 (There was no response.)

13 Hearing none, the question is on
14 the nomination of John A. Levin, Esq., of New
15 York City to become a member of the New York
16 State Financial Control Board. All those in
17 favor of the nomination signify by saying aye.

18 (Response of "Aye".)

19 Opposed, nay.

20 (There was no response.)

21 The nominee is confirmed.

22 The Secretary will continue to
23 read.

24 THE SECRETARY: Senator Stafford,
25 from the Committee on Finance, reports the

1 following nomination:

2 Member of the state Board of Real
3 Property Services: Frank B. Cernese, of
4 Montrose.

5 SENATOR SKELOS: Move the
6 nomination.

7 ACTING PRESIDENT KUHL: The
8 question is on the nomination of Frank B.
9 Cernese, of Montrose, to become a member of the
10 state Board of Real Property Services. All
11 those in favor of the nomination signify by
12 saying aye.

13 (Response of "Aye".)

14 Opposed, nay.

15 (There was no response.)

16 The nominee is confirmed.

17 The Secretary will continue to
18 read.

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

22 Member of the Board of Trustees
23 of the City University Construction Fund: David
24 B. Brand, of New York City.

25 ACTING PRESIDENT KUHL: The Chair

1 recognizes Senator Maltese, on the nomination.

2 SENATOR MALTESE: Mr. President,
3 I've known Mr. Brand for a number of years. He
4 has been nominated by Mayor Giuliani for this
5 position. He has been responsible for operating
6 and running businesses, working with economic
7 development and the economic development
8 agencies, working with Mr. Gargano and other
9 state and city officials. He has adequate
10 preparation for his -- for this position. He
11 has worked extensively not only in finance and
12 business but working with minority groups and
13 working with children, assisting them in
14 education and business activities. He has been
15 an assistant -- special assistant to the
16 commissioner. He holds adequate and exemplary
17 educational qualifications, and I would
18 wholeheartedly second -- join in the nomination
19 of Mr. Brand.

20 ACTING PRESIDENT KUHL: Is there
21 any other Senator wishing to speak on the
22 nomination?

23 (There was no response.)

24 Hearing none, the question is on
25 the nomination of David B. Brand, of New York

1 City, to become a member of the Board of
2 Trustees of the City University Construction
3 Fund. All those in favor of the nomination
4 signify by saying aye.

5 (Response of "Aye".)

6 Opposed, nay.

7 (There was no response.)

8 The nominee is confirmed.

9 The Secretary will continue to
10 read.

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

14 Member of the Board of Trustees
15 of the New York State Higher Education Services
16 Corporation: Frank Macchiarola, of Brooklyn.

17 ACTING PRESIDENT KUHL: The Chair
18 recognizes Senator Marchi, on the nomination.

19 SENATOR MARCHI: Mr. President,
20 Dr. Macchiarola has played so many significant
21 roles in the -- mainly in the city of New York
22 but also in activities that involved statewide
23 considerations, chairman of the school system of
24 the city of New York, and he's -- with Columbia
25 University, with a plethora of organizations.

1 He's now president of St. Francis College, a
2 simply credible performing -- one who has proven
3 himself in the test of battle.

4 I remember very well how much we
5 interacted during the problems that beset the
6 city of New York in its financial crisis. So it
7 was just one issue after the other, one
8 challenge after the other and in all of them, I
9 had the pleasure and the comfort and support of
10 someone who exercised great leadership in the
11 city of New York in its enlightened best
12 interests, and it's a pleasure to move this
13 nomination.

14 ACTING PRESIDENT KUHL: The Chair
15 recognizes Senator Maltese, on the nomination.

16 SENATOR MALTESE: Mr. President,
17 like so many members of the chamber, I have
18 known Mr. Macchiarola for many, many years. His
19 reputation for integrity is second to none, but
20 more than that, his dedication to the public
21 weal has been amply demonstrated over the years
22 by the many positions that he has assumed,
23 performed so well, and many without remuneration
24 of any kind.

25 Senator Marchi, my colleague, has

1 indicated some of the roles that he has stepped
2 forward to take and perform so well in. His
3 positions with respect to public and private
4 education well qualify him for this post and, in
5 addition, he appeared before the Higher
6 Education Committee, where I have the honor to
7 serve, and after a thorough review of his
8 qualifications and background, was unanimously
9 endorsed by all members of the Committee,
10 Democrat and Republican.

11 I'm proud and pleased to join in
12 the nomination of Mr. Macchiarola and commend
13 Governor Pataki for reaching into a different
14 party and recognizing Mr. Macchiarola for his
15 years of service to the state.

16 ACTING PRESIDENT KUHL: Is there
17 any other Senator wishing to speak on the
18 nomination?

19 (There was no response.)

20 Hearing none, the question is on
21 the nomination of Frank Macchiarola, of
22 Brooklyn, to become a member of the Board of
23 Trustees of the New York State Higher Education
24 Services Corporation. All those in favor of the
25 nomination signify by saying aye.

1 (Response of "Aye".)

2 Opposed, nay.

3 (There was no response.)

4 The nominee is confirmed.

5 The Secretary will continue to
6 read.

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

10 Member of the Board of Trustees
11 of the State University of New York: Louis
12 Thomas Howard, of Amityville.

13 ACTING PRESIDENT KUHL: The Chair
14 recognizes Senator Johnson, on the nomination.

15 SENATOR JOHNSON: Mr. President,
16 I would like to move the nomination of Louis
17 Howard for this position.

18 Lou Howard has spent his entire
19 career in education. He was a football coach in
20 high school. He had the most winning team in
21 the state of New York. Their record has never
22 been surpassed, nine seasons without a loss. He
23 was also a professor for many years at the State
24 University at Farmingdale and chairman of the
25 Aerospace Technology Department.

1 He's also got a very good
2 background in government, a former mayor, former
3 county legislator, former presiding officer of
4 the Legislature, former Assemblyman. He's a
5 perfect man for this job. I think he
6 understands education. He's an advocate for
7 education, an advocate for good government, and
8 I think the Governor is well -- should be
9 thanked for advancing this very qualified
10 nominee, and we appreciate your support.

11 Thank you.

12 ACTING PRESIDENT KUHL: Is there
13 any other Senator wishing to speak on this
14 nomination?

15 (There was no response.)

16 Hearing none, the question is on
17 the nomination of Louis Thomas Howard, of
18 Amityville, to become a member of the Board of
19 Trustees of the State University of New York.
20 All those in favor of the nomination signify by
21 saying aye.

22 (Response of "Aye".)

23 All those opposed -- Senator
24 Dollinger, to explain his vote.

25 SENATOR DOLLINGER: Mr.

1 President, I'm going to vote in the negative on
2 this appointee. I did not have the opportunity
3 to participate in the Higher Education
4 Committee's review of this nominee.

5 I'm very concerned about the
6 future course of the Board of Trustees of our
7 State University system. In my judgment, they
8 have abandoned the State University system.
9 They have consented to substantial and, in my
10 judgment, unwarranted tuition increases.

11 They have also talked about a
12 decentralization of the SUNY organization that I
13 believe is not in the best interests of the
14 system and I'm not convinced, at least based on
15 the brief conversations that I have had with
16 those who were or did have a chance to discuss
17 this nominee, that this nominee will show the
18 kind of political independence that we should
19 have on the SUNY Board of Trustees, and I'm
20 concerned about the direction that the SUNY
21 board has taken. It doesn't seem to me to
22 represent the best interests of students, the
23 best interests of educators or the best
24 interests of the people of the state of New York
25 and, therefore, although I don't know this man

1 and I'm not going to talk about his
2 qualifications, my vote is a vote against this
3 nominee as a protest against the direction of
4 the SUNY Board of Trustees and the governance of
5 our system.

6 I'll be voting in the negative.

7 ACTING PRESIDENT KUHL: The
8 record will reflect that Senator Dollinger is
9 recorded in the negative.

10 The nominee is confirmed.

11 The Chair recognizes Senator
12 Skelos.

13 SENATOR SKELOS: Mr. President,
14 there will be an immediate meeting of the
15 Education Committee in the Majority Conference
16 Room.

17 ACTING PRESIDENT KUHL: Immediate
18 meeting of the Education Committee, immediate
19 meeting of the Education Committee, Room 332,
20 the Majority Conference Room.

21 Senator Lachman, why do you
22 rise?

23 SENATOR LACHMAN: Inadvertently I
24 was out of the chamber, Mr. President, when
25 Frank Macchiarola's nomination came up. I would

1 like to say a few words.

2 I've known Dr. Macchiarola for
3 almost a quarter of a century. Some people are
4 blessed with having two or three professional
5 lives. Frank has been blessed with having about
6 six, as a professor at CUNY and at Columbia as
7 an administrator at CUNY and at Columbia, as an
8 outstanding chancellor of the New York City
9 public school system, president of the New York
10 City Partnership, dean of the Cardozo Law School
11 and now president of his alma mater, St. Francis
12 College.

13 Others have spoken on his behalf,
14 I know. He is an outstanding quality person and
15 I want to commend the Governor for appointing
16 Dr. Frank Macchiarola to be a member of the
17 Board of Trustees of the New York State Higher
18 Education Services Corporation.

19 Thank you.

20 ACTING PRESIDENT KUHL: The
21 Secretary will continue to read the report of
22 the Finance Committee.

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

1 Member of the Board of Trustees
2 of the State University of New York College of
3 Environmental Science and Forestry: William L.
4 McGarry, of Fayetteville.

5 SENATOR SKELOS: Move the
6 nomination.

7 ACTING PRESIDENT KUHL: The
8 question is on the nomination of William L.
9 McGarry, Jr., of Fayetteville, to become a
10 member of the Board of Trustees of the State
11 University of New York College of Environmental
12 Science and Forestry. All those in favor of the
13 nomination signify by saying aye.

14 (Response of "Aye".)

15 Opposed, nay.

16 (There was no response.)

17 The nominee is confirmed.

18 The Secretary will continue to
19 read.

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

23 Member of the New York State
24 Energy Research & Development Authority:
25 Elizabeth Thorndike, of Pittsford.

1 ACTING PRESIDENT KUHL: The
2 question is on the nomination of Elizabeth
3 Thorndike, of Pittsford, to become a member of
4 the New York State Energy Research & Development
5 Authority. All those in favor of the nomination
6 signify by saying aye.

7 (Response of "Aye".)

8 Opposed, nay.

9 (There was no response.)

10 The nominee is confirmed.

11 The Secretary will continue to
12 read.

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

16 Member of the Long Island State
17 Park Recreation and Historic Preservation
18 Commission: Frank P. Naudus, of Lido Beach.

19 SENATOR SKELOS: Move the
20 nomination.

21 ACTING PRESIDENT KUHL: The
22 question is on the nomination of Frank P.
23 Naudus, of Lido Beach, to become a member of the
24 Long Island State Park Recreation and Historic
25 Preservation Commission. All those in favor of

1 the nomination signify by saying aye.

2 (Response of "Aye".)

3 Opposed, nay.

4 (There was no response.)

5 The nominee is confirmed.

6 The Secretary will continue to
7 read.

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

11 Member of the Niagara Frontier
12 State Park Recreation and Historic Preservation
13 Commission: Minot H. Ortolani, of
14 Williamsville.

15 ACTING PRESIDENT KUHL: The
16 question is on the nomination of Minot Ortolani,
17 of Williamsville, to become a member of the
18 Niagara Frontier State Park Recreation and
19 Historic Preservation Commission. All those in
20 favor of the nomination signify by saying aye.

21 (Response of "Aye".)

22 Opposed, nay.

23 (There was no response.)

24 The nominee is confirmed.

25 The Secretary will continue to

1 read.

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

5 Members of the Saratoga Capital
6 District State Park Recreation and Historic
7 Preservation Commission: Jeffrey S. Perlee, of
8 Altamont; Paul A. Truax, of Amsterdam; Raymond
9 Waldron, of Saratoga Springs and Barbara K.
10 Wilson, of Cobleskill.

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

13 (There was no response.)

14 The question is on the nomination
15 of the various members to become members of the
16 Saratoga Capital District State Park Recreation
17 and Historic Preservation Commission. All those
18 in favor signify by saying aye.

19 (Response of "Aye".)

20 Opposed? The Chair recognizes
21 Senator Stachowski, to explain his vote.

22 SENATOR STACHOWSKI: Mr.
23 President, I would like to vote in the negative
24 on Jeff Perlee and his appointment. Mr. Perlee
25 has shown some poor judgment in some areas of

1 government, and I'd hate to see that judgment
2 extend to any other part, even in an advisory
3 capacity. So I would like to be recorded in the
4 negative on Mr. Perlee.

5 Thank you.

6 ACTING PRESIDENT KUHL: Senator
7 Stachowski will be recorded in the negative on
8 the nomination of Jeffrey S. Perlee.

9 The nominees are confirmed.

10 The Secretary will continue to
11 read.

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

15 Member of the State Fire
16 Prevention and Building Code Council: Richard
17 Kleinman, of Roslyn.

18 SENATOR SKELOS: Move the
19 nomination.

20 ACTING PRESIDENT KUHL: The
21 question is on the nomination of Richard
22 Kleinman, of Roslyn, to become a member of the
23 State Fire Prevention and Building Code
24 Council. All those in favor of the nomination
25 signify by saying aye.

1 (Response of "Aye".)

2 Opposed, nay.

3 (There was no response.)

4 The nominee is confirmed.

5 The Secretary will continue to
6 read.

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

10 Member of the Advisory Council on
11 Alcoholism and Substance Abuse Services: Father
12 Coleman Costello, of Bayside.

13 SENATOR SKELOS: Move the
14 nomination.

15 ACTING PRESIDENT KUHL: The Chair
16 recognizes Senator Maltese, on the nomination.

17 SENATOR MALTESE: Mr. President,
18 I rise to move the nomination of Father Coleman
19 Costello.

20 Father Costello has a reputation
21 that goes far beyond Queens County or New York
22 City or even New York State boundaries. He has
23 worked extensively with youngsters and young
24 people, assisting them in the very rocky road
25 out of drugs and into rehabilitation. He can

1 point with pride to literally hundreds and
2 perhaps even thousands of youngsters that have
3 been helped over the years, principally by his
4 efforts. Working as a prominent theologian, a
5 prominent Catholic, a member of the ministry,
6 working with the Cardinal, working with
7 successive bishops, he has put to the fore the
8 very essence of Catholicism, Christianity and
9 all that is right and good in every religion.

10 I commend the Governor on this
11 very fine nomination that can permit Father
12 Costello to enhance his already prestigious role
13 in the fight against drugs, especially with
14 regard to our young people, and I'm very pleased
15 to second the nomination.

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

18 (There was no response.)

19 Hearing none, the question is on
20 the nomination of Father Coleman Costello, of
21 Bayside, to become a member of the Advisory
22 council on Alcoholism and Substance Abuse
23 Services. All those in favor of the nomination
24 signify by saying aye.

25 (Response of "Aye".)

1 Opposed, nay.

2 (There was no response.)

3 The nominee is confirmed.

4 The Secretary will continue to
5 read.

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

9 Member of the Board of Visitors
10 of the Agriculture and Industrial School at
11 Industry: Pinny Cooke, of Rochester.

12 ACTING PRESIDENT KUHL: The
13 question is on the nomination of Pinny Cooke, of
14 Rochester, to become a member of the Board of
15 Visitors of the Agriculture and Industrial
16 School at Industry, New York.

17 Senator Dollinger, on the
18 nomination.

19 SENATOR DOLLINGER: Yes, Mr.
20 President. I just rise -- this is also a good
21 nominee. Pinny -- Audrey "Pinny" Cooke was the
22 state Assemblyman from my district for the
23 better part of a decade. She has a long history
24 of community service throughout Monroe County,
25 including substantial work on behalf of the Al

1 Segal Center and its work there. She's a
2 community-minded person, and I think she would
3 be an excellent addition to this board.

4 I would simply point out that one
5 of the debates we may have later today if we get
6 there is there's at least a bill that's proposed
7 to outlaw, to abolish this board which seems to
8 me to have continuing vitality in this time when
9 we're looking at issues relating to juvenile
10 justice. Pinny Cooke will be a wonderful
11 addition to this board.

12 ACTING PRESIDENT KUHL: The
13 question is on the nomination. All those in
14 favor of the nomination signify by saying aye.

15 (Response of "Aye".)

16 Opposed, nay.

17 (There was no response.)

18 The nominee is confirmed.

19 Senator Skelos.

20 SENATOR SKELOS: Mr. President, I
21 believe there's some housekeeping at the desk,
22 if we could return to motions and resolutions.

23 ACTING PRESIDENT KUHL: We'll
24 return to the order of motions and resolutions.

25 The Chair recognizes Senator

1 Alesi.

2 SENATOR ALESI: Thank you, Mr.
3 President.

4 On behalf of Senator Velella, on
5 page 8, I offer the following amendments to
6 Calendar Number 233, Senate Print Number 95. I
7 ask that said bill retain its place on the order
8 of third reading.

9 ACTING PRESIDENT KUHL: The
10 amendments to Calendar Number 233 are received
11 and adopted, and the bill will retain its place
12 on the Third Reading Calendar.

13 Senator Alesi.

14 SENATOR ALESI: Again, on behalf
15 of Senator Velella, on page 11, I offer the
16 following amendments to Calendar Number 340,
17 Senate Print Number 2024 and ask that said bill
18 retain its place on the Third Reading Calendar.

19 ACTING PRESIDENT KUHL: The
20 amendments to Calendar Number 340 are received
21 and adopted and the bill will retain its place
22 on the Third Reading Calendar.

23 Senator Skelos, that brings us to
24 the calendar.

25 SENATOR SKELOS: If we could take

1 up the non-controversial calendar.

2 ACTING PRESIDENT KUHL: The
3 Secretary will read the non-controversial
4 calendar, beginning with Calendar Number 190 on
5 page 7.

6 THE SECRETARY: Calendar Number
7 190, by Senator Volker, Senate Print 2336, an
8 act to amend the Vehicle and Traffic Law, in
9 relation to defining all terrain-type vehicles.

10 SENATOR STACHOWSKI: Lay it
11 aside.

12 ACTING PRESIDENT KUHL: Lay the
13 bill aside.

14 THE SECRETARY: Calendar Number
15 232, by Senator Velella, Senate Print 18-A, an
16 act to amend the Insurance Law, in relation to
17 binding authority.

18 SENATOR STACHOWSKI: Lay it
19 aside.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside.

22 THE SECRETARY: Calendar Number
23 257, by Senator Marchi, Senate Print 2581-B, an
24 act to amend the Real Property Law, in relation
25 to designation.

1 SENATOR STACHOWSKI: Lay it
2 aside.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar Number
6 310, by Senator Holland, Senate Print 322-B, an
7 act to repeal Section 147 -

8 SENATOR STACHOWSKI: Lay it
9 aside.

10 ACTING PRESIDENT KUHL: Lay the
11 bill aside.

12 THE SECRETARY: Calendar Number
13 375, by Senator LaValle, Senate Print 2231, an
14 act to amend the Vehicle and Traffic Law, in
15 relation to the use of head lamps.

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

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

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 60.

24 ACTING PRESIDENT KUHL: The bill
25 is passed.

1 THE SECRETARY: Calendar Number
2 376, by Senator Levy, Senate Print 3481-B -

3 SENATOR STACHOWSKI: Lay it
4 aside.

5 SENATOR SKELOS: Please place a
6 sponsor's star on that bill.

7 ACTING PRESIDENT KUHL: Calendar
8 Number 376 will be starred at the request of the
9 sponsor.

10 THE SECRETARY: Calendar Number
11 385, by Senator Marcellino, Senate Print 3030,
12 an act to amend the Public Authorities Law, in
13 relation to exempting.

14 SENATOR SKELOS: Lay it aside for
15 the day at the request of the sponsor.

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

18 THE SECRETARY: Calendar Number
19 451, by Senator Maltese, Senate Print 1560, an
20 act to amend the Labor Law and the Penal Law, in
21 relation to certain employment.

22 SENATOR GOLD: Lay it aside.

23 ACTING PRESIDENT KUHL: Lay the
24 bill aside.

25 THE SECRETARY: Calendar Number

1 493, by Senator Hannon, Senate Print 1736, an
2 act to amend the Public Health Law, in relation
3 to unfair practices.

4 SENATOR SKELOS: Lay it aside at
5 the request of the sponsor.

6 ACTING PRESIDENT KUHL: For the
7 day?

8 SENATOR SKELOS: Yes.

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

11 THE SECRETARY: Calendar Number
12 561, by Senator Cook, Senate Print 955, an act
13 to amend the Education Law and the Family Court
14 Act, in relation to reducing school violence.

15 SENATOR GOLD: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside.

18 THE SECRETARY: Calendar Number
19 562, by Senator Johnson, Senate Print 2884, an
20 act to amend the Education Law, in relation to
21 authorizing.

22 SENATOR STACHOWSKI: Lay it
23 aside.

24 ACTING PRESIDENT KUHL: Lay the
25 bill aside.

1 THE SECRETARY: Calendar Number
2 569, by Senator Wright, Senate Print 2842, an
3 act to amend the Workers' Compensation Law, in
4 relation to granting.

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

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 60.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 571, by Senator Wright, Senate Print 3560-A, an
17 act to amend the Environmental Conservation Law,
18 in relation to muzzle-loading firearms.

19 SENATOR STACHOWSKI: Lay it
20 aside.

21 ACTING PRESIDENT KUHL: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number
24 580, by Senator Volker, Senate Print 274-A, an
25 act to amend Chapter 675 of the Laws of 1984.

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

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

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 60.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 586, by Senator Velella, Senate Print 20, an act
13 to amend the Insurance Law, in relation to agent
14 termination.

15 SENATOR GOLD: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside.

18 THE SECRETARY: Calendar Number
19 591, by Senator Saland, Senate Print 4181, an
20 act to amend the Insurance Law, in relation to
21 provisions concerning.

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

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 60.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 606, by Senator Libous, Senate Print 1931, an
9 act to amend the General Business Law, in
10 relation to unlawful possession of tobacco.

11 SENATOR STACHOWSKI: Lay it
12 aside.

13 ACTING PRESIDENT KUHL: Lay the
14 bill side.

15 THE SECRETARY: Calendar Number
16 620, by Senator Stafford, Senate Print 3765 -

17 SENATOR STACHOWSKI: Lay it
18 aside.

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside.

21 THE SECRETARY: Calendar Number
22 626, by Senator Lack, Senate Print 1100, an act
23 to amend the Public -

24 SENATOR SKELOS: Lay the bill
25 aside for the day.

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

4 THE SECRETARY: Calendar Number
5 629, by Senator Tully, Senate Print 1904, an act
6 to amend the Public Health Law, in relation to
7 penalties for misrepresentation.

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

10 THE SECRETARY: Section 5. This
11 act shall take effect in 60 days.

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 60.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 632, by Senator Spano, Senate -

20 SENATOR STACHOWSKI: Lay it
21 aside.

22 ACTING PRESIDENT KUHL: There is
23 a home rule message at the desk. The Secretary
24 will lay the bill aside.

25 THE SECRETARY: Calendar Number

1 647, by Senator Seward, Senate Print 4279, an
2 act to amend the Public Service Law, in relation
3 to the elimination of the mandate.

4 ACTING PRESIDENT KUHL: The
5 Secretary -

6 SENATOR LEICHTER: Lay the bill
7 aside.

8 ACTING PRESIDENT KUHL: Lay the
9 bill aside.

10 THE SECRETARY: Calendar Number
11 655, by Senator Volker, Senate Print 3614, an
12 act to amend the Civil Practice Law and Rules,
13 in relation to unsworn affirmation.

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

16 THE SECRETARY: Section 3. This
17 act shall take effect on the first day of
18 January.

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 60.

23 ACTING PRESIDENT KUHL: The bill
24 is passed.

25 THE SECRETARY: Calendar Number

1 657, by Senator Volker, Senate Print 3617 -

2 SENATOR STACHOWSKI: Lay it

3 aside.

4 ACTING PRESIDENT KUHL: Lay the

5 bill aside.

6 THE SECRETARY: Calendar Number

7 661, by Senator Volker, Senate Print 3792, an

8 act to amend the Penal Law, in relation to

9 determining whether a prior conviction.

10 ACTING PRESIDENT KUHL: The

11 Secretary will read the last section.

12 THE SECRETARY: Section 3. This

13 act shall take effect immediately.

14 ACTING PRESIDENT KUHL: Call the

15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 60.

18 ACTING PRESIDENT KUHL: The bill

19 is passed.

20 THE SECRETARY: Calendar Number

21 673, by Senator Levy, Senate Print 4178-A, an

22 act to amend the Vehicle and Traffic Law, in

23 relation to civil penalties.

24 ACTING PRESIDENT KUHL: The

25 Secretary will read the last section.

1 THE SECRETARY: Section 2. This
2 act shall take effect on the first day of
3 September.

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 60.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 678, by Senator Maltese, Senate Print 2469, an
12 act to amend the Social Services Law, in
13 relation to access to criminal history records.

14 SENATOR STACHOWSKI: Lay it
15 aside.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside.

18 THE SECRETARY: Calendar Number
19 688, by member of the Assembly Greene, Assembly
20 Print 5470, an act to amend the Banking Law, in
21 relation to junior mortgages.

22 ACTING PRESIDENT KUHL: The
23 Sec...

24 SENATOR LEICHTER: Lay it aside.

25 ACTING PRESIDENT KUHL: Lay the

1 bill aside.

2 THE SECRETARY: Calendar Number
3 701, by Senator Maziarz, Senate Print 2805 -

4 SENATOR STACHOWSKI: Lay it
5 aside.

6 ACTING PRESIDENT KUHL: There is
7 a home rule message at the desk. The Secretary
8 will lay the bill aside.

9 THE SECRETARY: Calendar Number
10 715, by Senator Velella, Senate Print 4447, an
11 act authorizing the city of New Rochelle to
12 accept an application.

13 SENATOR STACHOWSKI: Lay it
14 aside.

15 ACTING PRESIDENT KUHL: Lay the
16 bill aside.

17 THE SECRETARY: Calendar Number
18 723, by Senator Levy, Senate Print 40, an act to
19 amend the Vehicle and Traffic Law, in relation
20 to imposing.

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

23 THE SECRETARY: Section 2. This
24 act shall take effect on the first day of
25 November.

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 59, nays 1,
5 Senator Kuhl recorded in the negative.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 Senator Saland.

9 SENATOR SALAND: Mr. President, I
10 would like to be recorded in the negative on 723
11 as well.

12 ACTING PRESIDENT KUHL: Without
13 objection, hearing no objection, Senator Saland
14 will be recorded in the negative on Calendar
15 Number 723.

16 Senator Leichter also in the
17 negative on Calendar Number 723?

18 (Senator Leichter nods head.)
19 Without objection, hearing no objection, Senator
20 Leichter will be recorded in the negative on
21 Calendar Number 723.

22 Senator Holland, without
23 objection, hearing no objection, Senator Holland
24 will be recorded in the negative on Calendar
25 Number 723. Announce the results -- Senator

1 Johnson in the negative on Calendar Number 723.

2 THE SECRETARY: Ayes 55, nays 5,
3 Senators Holland, Johnson, Kuhl, Leichter and
4 Saland voting in the negative.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 The Secretary will continue to
8 read the non-controversial calendar.

9 THE SECRETARY: Calendar Number
10 724, by Senator Levy, Senate Print 46, an act to
11 amend the Vehicle and Traffic Law, in relation
12 to limiting options.

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

15 THE SECRETARY: Section 2. This
16 act shall take effect on the first day of
17 November.

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT KUHL: Announce
22 the results.

23 THE SECRETARY: Ayes 58, nays 2,
24 Senators DeFrancisco and Kuhl recorded in the
25 negative.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 THE SECRETARY: Calendar Number
4 728, by Senator Skelos, Senate Print 308, an act
5 to amend the Vehicle and Traffic Law, in
6 relation to out of state convictions.

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

9 THE SECRETARY: Section 2. This
10 act shall take effect on the first day of
11 November.

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 60.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 730, by Senator Maziarz, Senate Print 405, an
20 act to amend the Vehicle and Traffic Law, in
21 relation to increasing penalties.

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

24 THE SECRETARY: Section 3. This
25 act shall take effect on the first day of

1 November.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 60.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 731, by Senator Velella, Senate Print 699 -

10 SENATOR GOLD: Mr. President.

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

13 SENATOR GOLD: I'm sorry, sir. I
14 was going to ask to lay aside 730. If we could
15 reconsider the vote. I'm sorry.

16 ACTING PRESIDENT KUHL: Let's
17 take care of 731 first.

18 SENATOR GOLD: Yes, sir.

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

21 THE SECRETARY: Section 5. This
22 act shall take effect on the first day of
23 November.

24 ACTING PRESIDENT KUHL: Call the
25 roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 60.

3 ACTING PRESIDENT KUHL: The bill
4 is passed.

5 Senator Gold, a motion to
6 reconsider the bill -- Calendar Number 730. The
7 Secretary will call the roll on reconsideration.

8 (The Secretary called the roll on
9 reconsideration.)

10 THE SECRETARY: Ayes 60.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 732, by Senator DeFrancisco, Senate Print 2969,
15 an act to amend the Navigation Law, in relation
16 to the operation of a vessel.

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

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes 60.

25 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 735, by Senator Wright, Senate Print 4533, an
4 act to amend the Navigation Law, in relation to
5 the operation of a vessel.

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

8 THE SECRETARY: Section 3. This
9 act shall take effect on the first day of
10 January.

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 60.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 742, by Senator Trunzo, Senate -

19 SENATOR LEICHTER: Lay it aside.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside.

22 THE SECRETARY: Calendar Number
23 753, by member of the Assembly Pretlow, Assembly
24 Print 6489, concurrent resolution of the Senate
25 and the Assembly, proposing an amendment to

1 Section 6 of Article V.

2 SENATOR SKELOS: Lay it aside for
3 the day.

4 ACTING PRESIDENT KUHL: Lay the
5 bill aside for the day -- the resolution aside
6 for the day at the request of the sponsor.

7 THE SECRETARY: Calendar Number
8 754, by Senator Lack, Senate Print 4223, an act
9 to amend the Estates, Powers and Trusts Law, in
10 relation to lifetime trusts.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 60.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 762, by Senator Lack, Senate Print 5162-A, an
23 act to amend the Estates, Powers and Trusts Law
24 and the General Obligations Law.

25 ACTING PRESIDENT KUHL: The

1 Secretary will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 60.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 763, by Senator Lack, Senate Print 5192-A, an
12 act to amend the Judiciary Law and the County
13 Law, in relation to the compensation of assigned
14 counsel.

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

17 THE SECRETARY: Section 4. This
18 act shall take effect on the first day of
19 October.

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 60.

24 ACTING PRESIDENT KUHL: The bill
25 is passed.

1 THE SECRETARY: Calendar Number
2 785, by member of the Assembly Eve, Assembly
3 Print 4536, an act to amend the State Finance
4 Law, in relation to payment.

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

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT KUHL: Announce
13 the results when tabulated.

14 THE SECRETARY: Ayes 59, nays 1,
15 Senator Kuhl recorded in the negative.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 788, by Senator Levy, Senate Print 4426 -

20 SENATOR SKELOS: Star it at the
21 request of the sponsor.

22 ACTING PRESIDENT KUHL: Calendar
23 Number 788 is starred at the request of the
24 sponsor.

25 THE SECRETARY: Calendar Number

1 806, by Senator Velella, Senate Print 3494, an
2 act to amend the General Business Law, in
3 relation to permitting the sale of pawned
4 articles.

5 SENATOR LEICHTER: Lay it aside.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 809, by Senator Alesi, Senate Print 4371, an act
10 to amend the Agriculture and Markets Law.

11 SENATOR STACHOWSKI: Lay it
12 aside.

13 ACTING PRESIDENT KUHL: Lay the
14 bill aside.

15 THE SECRETARY: Calendar Number
16 829, by Senator Rath, Senate Print 4357, an act
17 to amend the Real Property Tax Law and the
18 Agriculture and Markets Law.

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

21 SENATOR LEICHTER: Lay it aside.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside.

24 SENATOR SKELOS: Lay it aside for
25 the day.

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

4 THE SECRETARY: Calendar Number
5 833, by Senator Larkin, Senate Print 4581, an
6 act to amend the Real Property Tax Law, in
7 relation to reimbursement.

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

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 60.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 852, by Senator Present, Senate Print 4005, an
20 act to amend the Executive Law and the Military
21 Law, in relation to providing authority.

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

24 THE SECRETARY: Section 3. This
25 act shall take effect on the 90th day.

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 60.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 856, by Senator Skelos, Senate Print 3504, an
9 act to amend the Civil Practice Law and Rules,
10 in relation to privileged communications.

11 ACTING PRESIDENT KUHL: The
12 Secretary will -

13 SENATOR LEICHTER: Lay the bill
14 aside.

15 ACTING PRESIDENT KUHL: Lay the
16 bill aside.

17 THE SECRETARY: Calendar Number
18 859, by Senator Volker, Senate Print 4306, an
19 act to amend the Penal Law, in relation to
20 criminal possession of criminally diverted
21 prescription medication.

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

24 THE SECRETARY: Section 7. This
25 act shall take effect on the first day of

1 November.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 60.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 860, by Senator Volker, Senate Print 4307, an
10 act to amend the Penal Law and the Criminal
11 Procedure Law, in relation to criminal
12 diversion.

13 SENATOR LEICHTER: Lay it aside.

14 ACTING PRESIDENT KUHL: Lay the
15 bill aside.

16 THE SECRETARY: Calendar Number
17 862, by Senator Volker, Senate Print 4478, an
18 act to amend the Criminal Procedure Law, in
19 relation to permitting certain electronically
20 transmitted statements.

21 SENATOR LEICHTER: Lay it aside.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside.

24 THE SECRETARY: Calendar Number
25 863, by Senator Volker, Senate Print 4531, an

1 act to amend the Civil Practice Law and Rules,
2 in relation to eliminating the need for a court
3 order sending.

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

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 60.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 868, by Senator Marcellino, Senate Print 5137,
16 an act to amend the Criminal Procedure Law, in
17 relation to designation.

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

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

22 ACTING PRESIDENT KUHL: Call the
23 roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes 60.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 THE SECRETARY: Calendar Number
4 869, by Senator Tully, Senate Print -

5 SENATOR LEICHTER: Lay it aside.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 870, by Senator Volker, Senate Print 5180, an
10 act to amend the Penal Law, in relation to
11 establishing the crime of absconding.

12 SENATOR LEICHTER: Lay it aside.

13 ACTING PRESIDENT KUHL: Lay the
14 bill aside.

15 THE SECRETARY: Calendar Number
16 884, by Senator Goodman, Senate Print 3541 -

17 SENATOR SKELOS: Lay it aside for
18 the day at the request of the sponsor.

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

22 THE SECRETARY: Calendar Number
23 886, by Senator Goodman, Senate Print 3651, an
24 act to amend the Alcoholic Beverage Control Law,
25 in relation to permitting.

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

3 SENATOR DOLLINGER: Lay it aside.

4 ACTING PRESIDENT KUHL: Lay the
5 bill aside.

6 THE SECRETARY: Calendar Number
7 888, by Senator Goodman, Senate Print 3673, an
8 act to amend the Alcoholic Beverage Control Law,
9 in relation to consolidating the number of
10 permits.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 60.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 889, by Senator Goodman, Senate Print 3682, an
23 act to amend the Alcoholic Beverage Control Law,
24 in relation to entering.

25 SENATOR GOLD: Lay it aside.

1 ACTING PRESIDENT KUHL: Lay the
2 bill aside.

3 THE SECRETARY: Calendar Number
4 914, by Senator Maziarz, Senate Print 2558, an
5 act to amend the Correction Law, in relation to
6 co-payment of fees.

7 SENATOR LEICHTER: Lay it aside.

8 ACTING PRESIDENT KUHL: Lay the
9 bill aside.

10 THE SECRETARY: Calendar Number
11 918, by Senator Skelos, Senate Print 3408-A, an
12 act to amend the Executive Law and the Penal
13 Law, in relation to payment.

14 SENATOR LEICHTER: Lay it aside.

15 ACTING PRESIDENT KUHL: Lay the
16 bill aside.

17 THE SECRETARY: Calendar Number
18 919, by Senator Skelos, Senate Print 3410-A, an
19 act to amend the Correction Law and the County
20 Law, in relation to maintenance.

21 SENATOR LEICHTER: Lay it aside.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside.

24 THE SECRETARY: Calendar Number
25 921, by Senator Nozzolio, Senate Print 5181 -

1 SENATOR SKELOS: Lay it aside for
2 the day at the request of the sponsor.

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

6 THE SECRETARY: Calendar Number
7 922, by Senator Nozzolio, Senate Print 5184, an
8 act to amend the Correction Law, in relation to
9 the temporary release of inmates.

10 SENATOR LEICHTER: Lay it aside.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 927, by Senator Present, Senate Print 4003, an
15 act to amend the Environmental Conservation Law,
16 in relation to the removal of trees.

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

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes 60.

25 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 929, by Senator Marcellino, Senate Print 4392,
4 an act to amend the Environmental Conservation
5 Law, in relation to the enforcement of
6 provisions.

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

9 THE SECRETARY: Section 2. This
10 act shall take effect on the first day of
11 September.

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 60.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 933, by Senator Skelos, Senate Print 557-A, an
20 act to amend the -

21 SENATOR LEICHTER: Lay it aside.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside.

24 THE SECRETARY: Calendar Number
25 981, by Senator Leibell, Senate Print 2694, an

1 act to amend the Vehicle and Traffic Law, in
2 relation to the service charge for distinctive
3 plates.

4 SENATOR LEICHTER: Lay it aside.

5 ACTING PRESIDENT KUHL: Lay the
6 bill aside.

7 THE SECRETARY: Calendar Number
8 985, by Senator Marchi, Senate Print 3768, an
9 act to amend the Public Authorities Law, in
10 relation to changing the date of adoption of
11 plans.

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

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 60.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 987, by Senator Maziarz -

24 SENATOR SKELOS: Lay it aside for
25 the day at the request the sponsor.

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

4 THE SECRETARY: Calendar Number
5 988, by Senator Maziarz, Senate Print 39...

6 SENATOR SKELOS: Lay the bill
7 aside for the day at the request of the sponsor.

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

11 THE SECRETARY: Calendar Number
12 991, by Senator Levy, Senate Print 4234, an act
13 to amend the Vehicle and Traffic Law, in
14 relation to penalties.

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

17 THE SECRETARY: Section 2. This
18 act shall take effect on the first day of
19 November.

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 60.

24 ACTING PRESIDENT KUHL: The bill
25 is passed.

1 THE SECRETARY: Calendar Number
2 1018, by Senator Levy, Senate Print 5134, an act
3 to amend the Vehicle and Traffic Law, in
4 relation to the cancellation and reinstatement.

5 SENATOR LEICHTER: Lay it aside.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 1019, by Senator Maziarz, Senate Print 5231, an
10 act to amend the Highway Law and the
11 Environmental Conservation Law.

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

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 SENATOR DOLLINGER: Can you
20 withdraw the roll call? I apologize.

21 ACTING PRESIDENT KUHL: We'll
22 withdraw the roll call. Lay the bill aside.

23 THE SECRETARY: Calendar Number
24 1041, by Senator Marchi, Senate Print 3356, an
25 act to amend the Not-for-Profit Corporation Law,

1 in relation to the resale.

2 SENATOR LEICHTER: Lay it aside.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar Number
6 1042, by Senator Marchi, Senate Print 3365, an
7 act to amend the Not-for-Profit Corporation Law,
8 in relation to the escrow fund proceeds.

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

11 THE SECRETARY: Section 4. This
12 act shall take effect on July 1.

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 SENATOR GOLD: Lay the bill
17 aside.

18 ACTING PRESIDENT KUHL: Withdraw
19 the roll call. Lay the bill aside.

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

22 SENATOR SKELOS: Mr. President,
23 there will be an immediate meeting of the
24 Tourism Committee in the Majority Conference
25 Room.

1 ACTING PRESIDENT KUHL: There
2 will be an immediate meeting, an immediate
3 meeting of the Tourism, Recreation and Sports
4 Development Committee in the Majority Conference
5 Room, Room 332.

6 Senator Skelos.

7 SENATOR SKELOS: Take up the
8 controversial calendar, please.

9 ACTING PRESIDENT KUHL: The
10 Secretary will read the controversial calendar,
11 beginning with Calendar Number 190, by Senator
12 Volker, on page 7.

13 SENATOR LEICHTER: Mr. President.

14 ACTING PRESIDENT KUHL: Yes,
15 Senator Leichter.

16 SENATOR LEICHTER: Mr. President,
17 I think I notice an absence of a quorum to carry
18 on business. I don't see 31 members here, Mr.
19 President. Could we have a quorum call,
20 please.

21 ACTING PRESIDENT KUHL: The
22 Secretary -- the Secretary will call the roll
23 for the purposes of a quorum call.

24 ACTING PRESIDENT KUHL: Senator
25 Abate.

1 (There was no response.)
2 Senator Alesi.
3 SENATOR ALESI: Here.
4 THE SECRETARY: Senator Breslin.
5 (There was no response.)
6 Senator Bruno.
7 (There was no response.)
8 Senator Connor.
9 SENATOR CONNOR: Here.
10 THE SECRETARY: Senator Cook.
11 (There was no response.)
12 Senator DeFrancisco.
13 (There was no response.)
14 Senator Dollinger.
15 SENATOR DOLLINGER: Here.
16 THE SECRETARY: Senator Farley.
17 SENATOR FARLEY: Here.
18 THE SECRETARY: Senator Gentile.
19 SENATOR GENTILE: Here.
20 THE SECRETARY: Senator Gold.
21 (There was no response.)
22 Senator Gonzalez.
23 (There was no response.)
24 Senator Goodman.
25 (There was no response.)

1 Senator Hannon.
2 (There was no response.)
3 Senator Hoffmann.
4 (There was no response.)
5 Senator Holland.
6 SENATOR HOLLAND: Here.
7 THE SECRETARY: Senator Johnson.
8 (There was no response.)
9 Senator Kruger.
10 (There was no response.)
11 Senator Kuhl.
12 SENATOR KUHL: Present.
13 THE SECRETARY: Senator Lachman.
14 (There was no response.)
15 Senator Lack.
16 (There was no response.)
17 Senator Larkin.
18 SENATOR LARKIN: Present.
19 SENATOR STAFFORD: Can you call
20 my name out of order?
21 THE SECRETARY: Senator Stafford.
22 SENATOR STAFFORD: Here.
23 THE SECRETARY: Senator LaValle.
24 SENATOR LAVALLE: Here.
25 THE SECRETARY: Senator Leibell.

1 SENATOR LEIBELL: Here.
2 THE SECRETARY: Senator
3 Leichter.
4 SENATOR LEICHTER: Present.
5 THE SECRETARY: Senator Levy.
6 (There was no response.)
7 Senator Libous.
8 (There was no response.)
9 Senator Maltese.
10 (There was no response.)
11 Senator Marcellino.
12 SENATOR MARCELLINO: Here.
13 THE SECRETARY: Senator Marchi.
14 (There was no response.)
15 Senator Markowitz.
16 SENATOR MARKOWITZ: Present.
17 THE SECRETARY: Senator Maziarz.
18 SENATOR MAZIARZ: Present.
19 THE SECRETARY: Senator Meier.
20 SENATOR MEIER: Here.
21 THE SECRETARY: Senator Mendez.
22 (There was no response.)
23 Senator Montgomery.
24 SENATOR MONTGOMERY: Present.
25 THE SECRETARY: Senator Nanula.

1 (There was no response.)
2 Senator Nozzolio.
3 SENATOR NOZZOLIO: Present.
4 THE SECRETARY: Senator Onorato.
5 (There was no response.)
6 Senator Oppenheimer.
7 (There was no response.)
8 Senator Padavan.
9 (There was no response.)
10 Senator Paterson.
11 (There was no response.)
12 Senator Present.
13 SENATOR PRESENT: Yeah.
14 THE SECRETARY: Senator Rath.
15 (There was no response.)
16 Senator Rosado.
17 (There was no response.)
18 Senator Saland.
19 SENATOR SALAND: Here.
20 THE SECRETARY: Senator Sampson.
21 (There was no response.)
22 Senator Santiago.
23 SENATOR SANTIAGO: Present.
24 THE SECRETARY: Senator Seabrook.
25 (There was no response.)

1 Senator Seward.

2 SENATOR SEWARD: Here.

3 THE SECRETARY: Senator Skelos.

4 SENATOR SKELOS: Here.

5 THE SECRETARY: Senator Smith.

6 SENATOR SMITH: Present.

7 ACTING PRESIDENT KUHL: Senator
8 Leichter, for the purposes of a quorum call, the
9 Chair would recognize there are at least 31
10 members here. So a quorum is present.

11 The Secretary will call the
12 controversial calendar, beginning with Calendar
13 Number 190, by Senator Volker, on page 7.

14 THE SECRETARY: Calendar Number
15 190, by Senator Volker, Senate Print 2336, an
16 act to amend the Vehicle and Traffic Law, in
17 relation to defining all terrain-type vehicles.

18 SENATOR LEICHTER: Explanation.

19 SENATOR SKELOS: Lay it aside.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside temporarily.

22 THE SECRETARY: Calendar Number
23 232, by Senator Velella, Senate Print 18-A, an
24 act to amend the Insurance Law, in relation to
25 binding authority.

1 SENATOR LEICHTER: Explanation.

2 SENATOR SKELOS: Lay it aside
3 temporarily.

4 ACTING PRESIDENT KUHL: Lay the
5 bill aside temporarily.

6 THE SECRETARY: Calendar Number
7 257, by Senator Marchi, Senate Print 2581-B, an
8 act to amend the Real Property Law, in relation
9 to designation.

10 SENATOR LEICHTER: Explanation.

11 ACTING PRESIDENT KUHL: Senator
12 Marchi, an explanation of Calendar Number 257
13 has been requested by Senator Leichter.

14 SENATOR MARCHI: Yes. Mr.
15 President, in the bill, this is -- concerns
16 itself with Section 339(n)(7) of the Real
17 Property Law, "the contents of each condominium
18 declaration shall name a person to receive
19 process." While the person may have died or
20 disappeared and nobody's around to receive
21 service, this would require -- this would then
22 bring into being the service on the Secretary of
23 State where there is an inability to locate the
24 named recipient of notice so that -- and we do
25 the same -- we do the same exact thing under the

1 General Business Law and the Cooperative
2 Corporations Law. So it just brings in the
3 Secretary of State in those circumstances where
4 the named person for reception is -- we're
5 unable to locate them.

6 So I think it just adds further
7 assurance that appropriate notice be given.

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

10 (There was no response.)

11 Hearing none, the Secretary will
12 read the last section.

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 60.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 310, by Senator Holland, Senate Print 322-B, an
23 act to repeal Section 147 of the Social Services
24 Law.

25 SENATOR LEICHTER: Explanation.

1 ACTING PRESIDENT KUHL: Senator
2 Holland, an explanation of Calendar Number 310
3 has been requested.

4 SENATOR HOLLAND: Mr. President,
5 this bill passed unanimously last year and it
6 simply moves the penalties for food stamp fraud
7 that are currently in the Social Services Law to
8 the Penal Law.

9 The New York County District
10 Attorney's office recommended this change in
11 order to enhance the ability of prosecutors to
12 prosecute instances of food stamp fraud since
13 the courts and the district attorneys are more
14 familiar with the Penal Law than the Social
15 Services Law.

16 ACTING PRESIDENT KUHL: Senator
17 Leichter.

18 SENATOR LEICHTER: Yes. Would
19 Senator Holland yield, please?

20 ACTING PRESIDENT KUHL: Senator
21 Holland, do you yield?

22 SENATOR HOLLAND: Yes.

23 ACTING PRESIDENT KUHL: The
24 Senator yields.

25 SENATOR LEICHTER: Senator, let

1 me understand. Are you saying presently
2 violation of the law relates to misuse of food
3 stamps for provisions pertaining to the Social
4 Service Law and if a violation of fraud occurs
5 in the use of food stamps, is that not
6 prosecuted by the district attorney?

7 SENATOR HOLLAND: Apparently the
8 -- Morgenthau's office tells us that the courts
9 and the judges are not as familiar with the
10 Social Services Law. Therefore, it's not
11 prosecuted as much as it might be in the Penal
12 Law.

13 SENATOR LEICHTER: Senator
14 Holland, you're saying that the judges can't
15 find the volume of McKinney's of the Social
16 Services Law? We haven't made that available to
17 them? I mean I have difficulty in understanding
18 because it's my belief that whether the
19 provision of law, the requirement is in the
20 Social Service Law or it's in the Penal Law,
21 that it's a violation, it is a crime and it's
22 prosecuted by the district attorney that comes
23 before a Criminal Court judge, or a Supreme
24 Court judge if the offense is serious enough.

25 SENATOR HOLLAND: Senator

1 Leichter, we had a forum with lots of
2 representatives to talk about fraud and abuse in
3 the social services area and this was brought up
4 by District Attorney Morgenthau's office that
5 the judges may be aware but they're not as aware
6 as they should be of the Social Services Law
7 rather than having it in the Penal Law area.
8 That's what we're told.

9 SENATOR LEICHTER: Senator
10 Holland, if you would be good enough to continue
11 to yield.

12 ACTING PRESIDENT KUHL: Senator
13 Holland, do you continue to yield? The Senator
14 continues to yield.

15 SENATOR LEICHTER: Are you
16 changing the penalties that presently exist in
17 the law by this bill?

18 SENATOR HOLLAND: The only thing
19 we're doing is taking out the \$1,000 in the
20 fifth degree because sometimes it's difficult to
21 decide whether -- how much money the food stamps
22 might be. So there is no limit in the fifth
23 degree. Otherwise it's not changed.

24 ACTING PRESIDENT KUHL: Senator
25 Leichter, did you wish Senator Holland to

1 continue to yield?

2 SENATOR LEICHTER: Yes, Mr.
3 President.

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

6 SENATOR HOLLAND: Yes.

7 ACTING PRESIDENT KUHL: The
8 Senator continues to yield.

9 SENATOR LEICHTER: Senator
10 Holland, I believe, at least my memo so
11 indicates, a quick reading of the bill seems to
12 confirm this, that you're now creating a "C"
13 felony and even a "B" felony. Is that not the
14 case?

15 SENATOR HOLLAND: There are -
16 yes. Depending upon the amount of food stamps
17 taken in the fraud, it could be "B", "C", "D"
18 and "E" or an "A" misdemeanor.

19 SENATOR LEICHTER: You are
20 increasing the penalties.

21 SENATOR HOLLAND: No.

22 SENATOR LEICHTER: You're now
23 creating a "B" felony, right?

24 SENATOR HOLLAND: It's the same
25 thing that was in the Social Services Law.

1 SENATOR LEICHTER: Really?

2 SENATOR HOLLAND: Yeah.

3 SENATOR LEICHTER: There's no
4 change as far as that's concerned?

5 SENATOR HOLLAND: No, there's
6 not.

7 SENATOR LEICHTER: Okay. The
8 memo I have indicates otherwise, but I certainly
9 accept your word on it.

10 Let me ask you one other
11 question.

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

14 SENATOR HOLLAND: Yes, sir.

15 ACTING PRESIDENT KUHL: The
16 Senator continues to yield.

17 SENATOR LEICHTER: I see that
18 your memorandum in support of the bill says -
19 and I'm quoting -- "clearly when the system is
20 experiencing massive losses as a result of the
21 illegal discounting of food stamps for cash" -
22 can you tell us what the amount of the losses
23 are?

24 SENATOR HOLLAND: We've had
25 testimony on that, Senator, a while back but I

1 cannot tell you exactly what that is, no.

2 SENATOR LEICHTER: Okay. So
3 you're not in a position to say that, in fact,
4 there are massive losses.

5 SENATOR HOLLAND: We have had
6 testimony that there have been massive losses,
7 yes, Senator, by a number of people inside and
8 outside of government, but I cannot tell you
9 specifically what those figures are. I don't
10 know how you want to define "massive" but it's
11 very wide, expensive to the taxpayer losses.

12 SENATOR LEICHTER: That's really
13 what I was trying to find out from you
14 because -

15 ACTING PRESIDENT KUHL: Senator
16 Leichter -- Senator Leichter, are you asking
17 Senator Holland to continue to yield?

18 SENATOR LEICHTER: Yes, please.

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

21 SENATOR HOLLAND: Yes, Mr.
22 President.

23 ACTING PRESIDENT KUHL: The
24 Senator continues to yield.

25 SENATOR LEICHTER: You used the

1 word "massive", so I'm trying to understand from
2 you what the amounts are and I gather you're
3 telling us you really can't say what the amounts
4 are. You don't have any figures on that.

5 SENATOR HOLLAND: No, sir, not
6 specifically.

7 SENATOR LEICHTER: Senator
8 Holland, again if you'll continue to yield.

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

11 SENATOR HOLLAND: Yes.

12 ACTING PRESIDENT KUHL: The
13 Senator continues to yield.

14 SENATOR LEICHTER: The fraud
15 involving food stamps is also a federal crime,
16 is it not?

17 SENATOR HOLLAND: Yes. Food
18 stamps are federal, yes.

19 SENATOR LEICHTER: And there's
20 federal prosecutions, right?

21 SENATOR HOLLAND: Yes, depending
22 upon which court it goes to. Yes.

23 SENATOR LEICHTER: Is there -
24 has there been a problem with the level or the
25 extent of federal prosecution which makes it

1 necessary to get New York State more involved in
2 prosecuting food stamp fraud?

3 SENATOR HOLLAND: I'm told by a
4 number of sources absolutely.

5 SENATOR LEICHTER: Could you
6 share with us some of these learned sources?

7 SENATOR HOLLAND: I can tell you
8 that the D.A.'s offices have told us that.

9 I yield to Senator Lack.

10 ACTING PRESIDENT KUHL: Senator
11 Lack -- the Chair recognizes Senator Lack to
12 yield.

13 SENATOR LACK: Thank you.

14 I would be glad to answer your
15 question, Senator Leichter. As a participant in
16 the Blair House Conference called by the Presi
17 dent of the United States -- the Vice-president
18 of the United States in February 1994, in which
19 I was one of two state legislators present, the
20 source of the information on the question you're
21 asking is William Jefferson Clinton, President
22 of the United States, who called upon the
23 Governors, state legislators and others who were
24 present at the Blair House Conference to help in
25 the fight against food stamp fraud because it is

1 a federally funded program.

2 It was felt by several members of
3 the federal administration that since it is 100
4 percent federally funded, that state officials
5 do not care very much about fraud in the food
6 stamp program.

7 The three governors who were in
8 the room and the two state legislators, one of
9 which is myself, said quite the contrary. We
10 had a lot of problems with the administration on
11 the federal level of the food stamp program
12 because of the requirements by the federal
13 government that a completely different type of
14 administration be maintained for food stamps as
15 opposed to the administration of other social
16 service programs and welfare programs in the
17 various states.

18 What Senator Holland very nobly
19 is trying to do here -- and I can speak now as a
20 former assistant district attorney in Suffolk
21 County -- is to get greater recognition amongst
22 the district attorneys of the state of New
23 York.

24 Senator Leichter, you know as a
25 practicing attorney, as I do, that a non-Penal

1 Law crime, for the most part, is handled by
2 other less sensitive bureaus in a district
3 attorney's office than those that would handle
4 Penal Law crimes. The same thing happens when
5 such types of crimes come before the Criminal
6 Court system.

7 I, for example, was a principal
8 assistant district attorney in Suffolk County in
9 the Frauds Bureau in which we had a
10 responsibility in the Frauds Bureau to not only
11 handle food stamp fraud -- this is 25 years ago
12 -- but all sorts of General Business Law
13 consumer violations, et cetera, and that that
14 was considered to be a different status of crime
15 than something that was contained in the Penal
16 Law.

17 What Senator Holland is nobly
18 trying to put forth to this body once again is a
19 conversion of this very serious massive fraud
20 recognized by the President of the United States
21 into the Penal Law of the state of New York
22 where it most properly belongs.

23 SENATOR LEICHTER: Mr. President.

24 ACTING PRESIDENT KUHL: Senator
25 Leichter.

1 SENATOR LEICHTER: Far be it for
2 me to interfere with anything noble that Senator
3 Holland does. We have been looking for -
4 waiting for something to come from him. Now
5 that it has, I'm going to support this bill.

6 ACTING PRESIDENT KUHL: The
7 Secretary will read the last section -- excuse
8 me. Senator Dollinger.

9 SENATOR DOLLINGER: Would Senator
10 Holland yield to a couple questions?

11 ACTING PRESIDENT KUHL: Senator
12 Holland, do you yield to Senator Dollinger?

13 SENATOR HOLLAND: Yes, sir.

14 SENATOR DOLLINGER: Senator
15 Holland, one question that -- again through you,
16 Mr. President, the fraudulent food stamp act,
17 does that include the transfer of food stamps
18 between family members?

19 SENATOR HOLLAND: Say it again.
20 I sorry. I didn't hear it.

21 SENATOR DOLLINGER: Again through
22 you, Mr. President, does that fraudulent food
23 stamp act include the transfer of food stamps
24 from one family member to another?

25 SENATOR HOLLAND: No, sir. I

1 wouldn't think so.

2 SENATOR DOLLINGER: Again through
3 you, Mr. President.

4 ACTING PRESIDENT KUHL: Senator
5 Holland, do you continue to yield? The Senator
6 continues to yield.

7 SENATOR DOLLINGER: Does it
8 include the transfer of food stamps between a
9 divorced father and his ex-wife?

10 SENATOR HOLLAND: I wouldn't
11 think so, Senator.

12 SENATOR DOLLINGER: Well, is it
13 legal for a -- a single recipient who gets food
14 stamps to transfer them to another family?

15 SENATOR HOLLAND: I'm sorry. Try
16 it again.

17 SENATOR DOLLINGER: Again through
18 you, Mr. President.

19 ACTING PRESIDENT KUHL: Senator
20 Dollinger, excuse me. We've got a lot of
21 movement in the chamber and a lot of noise.
22 We've been very patient trying to move the
23 conversation -- the debate along, but I would
24 ask the staff who are having conversations to
25 please take your conversations out of the

1 chamber if you have to talk, members.

2 Excuse me, Senator Holland. Just
3 a minute. Let's quiet it down here. We have a
4 long afternoon ahead of us. That's much better.

5 Senator Dollinger.

6 SENATOR DOLLINGER: Again through
7 you, Mr. President. Senator Holland, is it a
8 fraudulent food stamp act within the ambit of
9 your bill if a divorced father transfers his own
10 food stamps to a -- his children and his
11 ex-wife?

12 SENATOR HOLLAND: Senator, there
13 is no change. We have made no other changes in
14 the food stamp bill, whether it's federal or
15 state. Everything that was in current law is
16 still current law. Nothing changes.

17 I would assume the answer to your
18 question is no, but we have not changed anything
19 that's in current law other than moving this
20 section from the DSS Law to the Penal Law.

21 SENATOR DOLLINGER: Again through
22 you, Mr. President.

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

25 SENATOR HOLLAND: Yes, sir.

1 ACTING PRESIDENT KUHL: The
2 Senator continues to yield.

3 SENATOR DOLLINGER: Do I under
4 stand you, Senator, to say that Section 5900,
5 the definition section of your bill, is directly
6 from the Social Services Law?

7 SENATOR HOLLAND: Correct.

8 SENATOR DOLLINGER: No change
9 then.

10 SENATOR HOLLAND: The only change
11 is in the "A" misdemeanor, we deleted the \$1,000
12 or less because of problems defining \$1,000,
13 below or above. That's all.

14 SENATOR DOLLINGER: Again through
15 you, Mr. President. Turning to Section 159.30
16 of the bill, it says that any person who
17 violates the provision who has a license to sell
18 alcohol or sells lottery tickets shall have that
19 authority revoked. Who will bring that
20 proceeding?

21 SENATOR HOLLAND: The district
22 attorney, Senator.

23 SENATOR DOLLINGER: The district
24 attorney will bring a civil proceeding to revoke
25 the license of those? If so, I'd just point

1 out, I think it would be the first time that a
2 district attorney would seek civil relief of
3 this type that I'm aware of.

4 SENATOR HOLLAND: I don't know,
5 really. I don't know the specific answer to
6 your question but it is the same bill. It will
7 be handled the same way it was. Nothing has
8 changed.

9 SENATOR DOLLINGER: Again through
10 you, Mr. President.

11 SENATOR HOLLAND: I'm not an
12 attorney.

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

15 SENATOR DOLLINGER: Again through
16 you, Mr. President -

17 ACTING PRESIDENT KUHL: Senator
18 continues -

19 SENATOR DOLLINGER: -- if Senator
20 Holland would yield. Who currently brings those
21 proceedings?

22 SENATOR HOLLAND: The district
23 attorney, as far as I know.

24 SENATOR DOLLINGER: The district
25 attorney brings a civil action to revoke the

1 license of a member of the alcohol -- if someone
2 holds a liquor license or a lottery ticket
3 license?

4 SENATOR LACK: Mr. President -

5 SENATOR HOLLAND: I yield to my
6 counsel.

7 ACTING PRESIDENT KUHL: Senator
8 Holland yields to Senator Lack for an answer to
9 Senator Dollinger's question.

10 SENATOR LACK: Thank you, Mr.
11 President.

12 What normally happens with
13 non-Penal Law criminal sanctions in which there
14 is a license to regulated activity, when brought
15 to the attention of the sentencing judge as part
16 of the elements of the offense committed, the
17 sentencing judge can, in effect, as part of the
18 penalties assessed against the defendant,
19 assuming guilt, Senator, cause the revocation of
20 whatever the license, certification or
21 authorization would be. In this case, it would
22 be whatever liquor license and lottery approval
23 exists. That order is then transferred to the
24 state, and the authority is diminished. It's
25 not normally a separate proceeding but it's

1 something that a moving D.A. could use if only
2 -- as part of a plea bargaining arrangement
3 with respect to a final determination or pending
4 charges against the defendant.

5 SENATOR DOLLINGER: Again through
6 you, Mr. President, if Senator Lack will yield,
7 if he is now yielded from Senator Holland.

8 ACTING PRESIDENT KUHL: Senator
9 Lack, would you yield to a question from Senator
10 Dollinger?

11 SENATOR LACK: Yeah.

12 ACTING PRESIDENT KUHL: The
13 Senator yields.

14 SENATOR DOLLINGER: Do you know,
15 in fact, how many times this provision has been
16 invoked?

17 SENATOR LACK: I don't have the
18 vaguest idea, Senator Dollinger. I don't think
19 you were in the -

20 A VOICE: One or two.

21 SENATOR LACK: One or two times,
22 I'm being told. I've got to ask -- I've got to
23 tell you that when I was a prosecuting attorney
24 this is the type of provision I always liked to
25 see in a statute in terms of the investigatory

1 arm, the arm I was in, of a district attorney's
2 office, and it is in keeping with what Senator
3 Holland is basically trying to do with this
4 statute which, quite frankly, is to give it a
5 little more oomph in D.A.s' offices in terms of
6 its trying to be utilized, transferring in toto
7 the elements of the crime from Social Services
8 Law into the Penal Law, because I don't know if
9 you were in the chamber when I was answering
10 Senator Leichter. D.A.s, of course, recognize
11 Penal Law violations as much greater violations
12 than they do non-Penal Law. That was always the
13 case when I was in the D.A.'s office, and I
14 don't think anything's changed since I left the
15 D.A.'s office.

16 SENATOR DOLLINGER: Again, just
17 through you, Mr. President, if Senator Lack will
18 continue to yield.

19 ACTING PRESIDENT KUHL: Senator
20 Lack, do you continue to yield?

21 SENATOR LACK: Sure.

22 ACTING PRESIDENT KUHL: Senator
23 continues to -

24 SENATOR DOLLINGER: As I
25 understand it, upon a conviction of a fraudulent

1 food stamp act under this bill, the trial court
2 would have the ability to transfer its
3 determination of a violation of this penal
4 statute and report it to the Alcohol Beverage
5 Control Commission or the State Liquor Authority
6 or whomever, and then they would commence the
7 proceeding, the civil proceeding, to revoke the
8 license; is that correct?

9 SENATOR LACK: Yeah, in the sense
10 absolutely, Senator. It wouldn't be -- it's
11 really not much different than an attorney
12 convicted of a felony with respect to his
13 ability -- his or her ability to continue to
14 practice law, that felonious conduct then
15 forming the basis for the revocation of the
16 ability -- the ability to practice law and it's
17 transferred to the Board of Bar Examiners for
18 that purpose, and it works -- it works in the
19 same regard, as has already been mentioned. It
20 is obviously a section that is not used very
21 much from my personal point of view, and you can
22 think about it from the standpoint of attorneys
23 who get into similar situations. It's something
24 I'd like to see used a lot more with respect to
25 the fraudulent practices contained in the bill.

1 SENATOR DOLLINGER: O.K. Through
2 you, Mr. President, to Senator Holland, I just
3 have one other question.

4 ACTING PRESIDENT KUHL: Senator
5 Holland, would you yield to a question from
6 Senator Dollinger? The Senator yields.

7 SENATOR HOLLAND: Yes, sir.

8 SENATOR DOLLINGER: Once again
9 I'm tag-teamed by the other side of the aisle.
10 I feel like I ought to be looking for a slap
11 somewhere.

12 Does this also apply to the sale
13 of Keno? It's not in the bill. So if you had a
14 license to sell Keno or play Keno in your bar or
15 whatever, and this bill were brought up, you
16 would lose your right to sell lottery tickets
17 but you could still play Keno.

18 SENATOR HOLLAND: As far as I
19 understand, yes, sir.

20 SENATOR DOLLINGER: O.K.

21 SENATOR HOLLAND: It's not in the
22 bill.

23 SENATOR DOLLINGER: Through you,
24 Mr. President, just on the bill generally. I'm
25 going to vote in favor of the bill -

1 ACTING PRESIDENT KUHL: Senator
2 Dollinger, on the bill.

3 SENATOR DOLLINGER: -- although
4 I'm not quite sure it goes as far as it should.
5 I would remove any state license that a fraud -
6 person guilty of a fraud in food stamps
7 including Keno, anything that's granted under
8 the lottery division, anything, for example, as
9 some of these bars and other facilities are,
10 they're authorized check-cashing agents. I'd
11 remove that as well.

12 I think if you're going to get
13 serious about food stamp fraud, which I
14 understand Senator Holland is trying to do, I
15 would make it more encompassing. With all due
16 respect to my colleague, Senator Lack, who talks
17 about the procedure that would be used here, I
18 would also give our district attorneys and our
19 trial court judges a little more guidance. I
20 would say upon conviction of this, the trial
21 court judge must transmit this to the State
22 Liquor Authority and the lottery division and
23 upon the delivery of a certification of judgment
24 of conviction against someone, then the -
25 either the lottery or the -- any other state

1 authority will commence a proceeding to revoke
2 the license, and it shall be revoked. I'd give
3 them more specific directions than this bill
4 does.

5 ACTING PRESIDENT KUHL: Senator
6 Holland.

7 SENATOR HOLLAND: I appreciate
8 your statement. If you like the bill so much,
9 Senator, I'd appreciate it if you'd tell the
10 Assembly to pass the bill.

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

15 THE SECRETARY: Section 5. This
16 act shall take effect on the first day of
17 November.

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 60.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

24 Senator Larkin.

25 SENATOR LARKIN: Mr. President -

1 -- regular order.

2 ACTING PRESIDENT KUHL: Secretary
3 will continue to call the controversial calendar
4 in regular order.

5 THE SECRETARY: Calendar Number
6 451, by Senator Maltese, Senate Print 1560, an
7 act to amend the Labor Law and the Penal Law, in
8 relation to certain employment.

9 SENATOR GOLD: Can we have just a
10 second?

11 ACTING PRESIDENT KUHL: We're on
12 Calendar Number 451.

13 SENATOR LARKIN: Lay it aside
14 temporarily.

15 ACTING PRESIDENT KUHL: Lay the
16 bill aside temporarily.

17 THE SECRETARY: Calendar Number
18 561, by Senator Cook, Senate Print 955, an act
19 to amend the Education Law and the Family Court
20 Act, in relation to reducing school violence.

21 SENATOR GOLD: Explanation.

22 SENATOR LARKIN: Lay it aside
23 temporarily.

24 ACTING PRESIDENT KUHL: Lay the
25 bill aside temporarily.

1 THE SECRETARY: Calendar Number
2 562, by Senator Johnson, Senate Print 2884, an
3 act to amend the Education Law, in relation to
4 authorizing.

5 SENATOR DOLLINGER: Explanation.

6 ACTING PRESIDENT KUHL: Senator
7 Johnson, an explanation of Calendar Number 562
8 has been requested.

9 SENATOR JOHNSON: Mr. President,
10 this legislation is needed to clarify the role
11 of the schools to protect the students, teachers
12 and officials from thousands of guns brought
13 into the schools every day.

14 In 1995-96 school year, the City
15 school officials confiscated almost 7,000
16 weapons, including 129 hand guns. This arises
17 out of a case in 1992 where a 15-year-old Bronx
18 high school student was caught carrying a loaded
19 hand gun in the school by a school security
20 guard. The student was suspended for a year. A
21 Family Court judge later overturned that
22 suspension and held that the search of the
23 student was unconstitutional.

24 This outrageous decision got many
25 people upset, and on the street, of course, an

1 officer must have probable cause to search an
2 individual on the street, but school
3 administrators, security officers and public
4 officials are held to a lower standard of
5 reasonable suspicion when attempting a search,
6 as a result of the Supreme Court decision in
7 1993 in -- in 1983 in New Jersey.

8 In any event, there was a recent
9 court decision which said that the previous
10 decision was wrong and the decision of the
11 schools was upheld but not before going through
12 two or three levels of court action. I think
13 the question still unanswered is, can evidence
14 seized in searches judges have ruled to be
15 illegal still be a part of the school
16 disciplinary process?

17 What we're trying to do in this
18 case to clarify the fact that school districts
19 can, if they have reasonable cause -- reasonable
20 suspicion, search a student. If they find a
21 weapon, they can suspend him for a year in
22 accordance with the state law. This just puts
23 that into the law that you don't have to go
24 through three or four layers of court to find
25 out that what you did was correct.

1 The school district in this case
2 will be able to suspend a student found with a
3 gun if they did not just do a random search but
4 they had a reasonable cause to check this person
5 out to see if he had a weapon, not just gun, any
6 weapon.

7 It's a very good solution to the
8 problem, I think strengthening the power of the
9 schools to keep guns out of our schools and
10 protect our youngsters and our teachers.

11 Thank you.

12 SENATOR DOLLINGER: Will the
13 sponsor yield to a question, Mr. President?

14 ACTING PRESIDENT KUHL: Senator
15 Johnson, do you yield to a question from Senator
16 Dollinger?

17 SENATOR JOHNSON: Yes.

18 ACTING PRESIDENT KUHL: Senator
19 yields.

20 SENATOR DOLLINGER: As I
21 understand the purpose of this legislation, it's
22 to restrict students' access to guns, is that
23 correct?

24 SENATOR JOHNSON: No, it has
25 nothing to do with their access to guns. It has

1 to do with carrying a gun in school, or a weapon
2 of any kind, any kind of a weapon, not just a
3 gun certainly, knives, switchblades, box
4 cutters, as well as -- as well as pistols,
5 obviously.

6 SENATOR DOLLINGER: O.K. Again,
7 through you, Mr. President, then is it fair to
8 say that this proposal seeks to protect students
9 in schools from guns and box cutters and knives
10 and all the other tools that you just described,
11 all the other weapons you just described?

12 SENATOR JOHNSON: That's correct.

13 SENATOR DOLLINGER: O.K. And is
14 it also fair to say that the -- the goal of this
15 is to restrict violence in the schools, to
16 reduce the violence in the schools?

17 SENATOR JOHNSON: No, it's to
18 permit us to suspend students who bring weapons
19 to school. Obviously there are other kinds of
20 violence. You could use your fist; you could do
21 a lot of other kinds of violence, but we're
22 dealing with weapons in this case, yes.

23 SENATOR DOLLINGER: Again through
24 you, Mr. President, if the Senator continues to
25 yield.

1 ACTING PRESIDENT KUHL: Senator
2 Johnson, do you continue to yield?

3 SENATOR DOLLINGER: The purpose
4 of this bill is to reduce and protect the
5 students in our schools from the incidence of
6 violence, is that correct, weapons violence?

7 SENATOR JOHNSON: Yes.

8 SENATOR DOLLINGER: O.K.

9 SENATOR JOHNSON: It's really to
10 enhance and, what should I say, clarify the
11 power of a school to suspend a student who is
12 found with a weapon. That's what it does.

13 SENATOR DOLLINGER: And again
14 through you, Mr. President. Is it fair to say,
15 Senator Johnson, that it's your position that
16 these weapons don't belong in schools?

17 SENATOR JOHNSON: Is there any
18 question about that, Senator?

19 SENATOR DOLLINGER: Well, is it
20 fair to say that that -

21 ACTING PRESIDENT KUHL:
22 Gentlemen, gentlemen, can we go through -- are
23 you asking Senator Holland, I mean Senator
24 Johnson to continue to yield, Senator Dollinger?

25 SENATOR DOLLINGER: Yes, I am, Mr.

1 President.

2 ACTING PRESIDENT KUHL: Just
3 trying to maintain some order in the chamber.
4 There's a lot of chaos on the outside, we don't
5 want the same chaos on the inside, Senator
6 Dollinger.

7 SENATOR DOLLINGER: I concur, Mr.
8 President.

9 ACTING PRESIDENT KUHL: Senator
10 Johnson, do you continue to yield?

11 SENATOR JOHNSON: Yes.

12 ACTING PRESIDENT KUHL: Senator
13 continues to yield.

14 SENATOR DOLLINGER: Is it safe to
15 say, Senator, that the purpose of this is to
16 prevent or to protect our students from assault
17 by weapons in the school environment?

18 SENATOR JOHNSON: Senator, I
19 don't know how many times you're asking the same
20 question, but I think I've answered it three
21 times already, and the answer is yes, we do not
22 want guns in schools. It's against the law.

23 SENATOR DOLLINGER: O.K. Mr.
24 President, I have at the desk an amendment that
25 I've proposed to Senator Johnson's bill, and I

1 would ask that I waive the reading of the
2 amendment and be heard on it.

3 ACTING PRESIDENT KUHL: Senator
4 Dollinger, the amendment that's up here is
5 rather lengthy, and we're taking a look at it
6 right now, so before I rule on the question of
7 germaneness to this particular bill give us just
8 a second, if you would.

9 SENATOR DOLLINGER: I'd be glad
10 to, Mr. President.

11 ACTING PRESIDENT KUHL: Senator
12 Dollinger, thank you for your patience, and the
13 Chair in reviewing your amendment and looking at
14 the original context of the bill and in doing
15 so, it appears to me to be quite evident that
16 the original object of the bill is really not
17 the object of your amendment and so under the
18 provisions of Rule VI (4) subdivision (b) it
19 appeals -- appears to the Chair that your
20 amendment is not germane, and the Chair would so
21 rule.

22 SENATOR DOLLINGER: Mr.
23 President, just a point of order before I
24 perhaps appeal the ruling of the Chair. Am I
25 allowed to be heard on the issue of germaneness

1 prior to the President issuing his determination
2 of germaneness?

3 ACTING PRESIDENT KUHL: I've
4 already decided that, Senator Dollinger, but
5 you're welcome to appeal the ruling of the
6 Chair, certainly, and you have the ability to -

7 SENATOR DOLLINGER: I appreciate
8 that, Mr. President.

9 ACTING PRESIDENT KUHL: (talking
10 over-unintelligible).

11 SENATOR DOLLINGER: I also
12 appreciate your patience in reviewing our
13 proposed submission and conducting the analysis
14 with your counsel. Despite that, I'd like to
15 appeal the ruling of the Chair, and I'd like to
16 be heard on the appeal.

17 ACTING PRESIDENT KUHL: The Chair
18 recognizes Senator Dollinger, on the appeal of
19 the ruling of the Chair.

20 SENATOR DOLLINGER: The issue in
21 this case is whether the proposed amendment that
22 we have advanced which is the assault weapons
23 bill that passed the New York State Assembly and
24 could become law if it were passed by this
25 chamber is germane to Senator Johnson's bill

1 which seeks to change the rules with respect to
2 or to provide greater guidance to our courts
3 with respect to the admissibility weapons in
4 proceedings involving the suspension of
5 students.

6 With all due respect to the
7 Chair, Senator Johnson, in response to my
8 question, said that the purpose of his bill was
9 to protect students. The purpose of his bill,
10 he said in response, was to allow school
11 districts to have greater authority in removing
12 these weapons from schools, to send a message to
13 our students that weapons are not permissible in
14 school, and that suspension and severe
15 punishment will be accorded if those weapons are
16 found in a school.

17 I submit, Mr. President, with all
18 due respect to the Chair, that this bill which
19 would ban assault weapons in New York State
20 would send exactly the same message as Senator
21 Johnson's bill. In fact, it would send an even
22 stronger message to the students of this state
23 that weapons are not permissible in school and
24 that, in fact, certain types of large ammunition
25 clips, rapid fire weapons are not permissible

1 any place in this state.

2 So I'm disappointed that Senator
3 Johnson, who has expressed a profound interest
4 in protecting students of this state, has not
5 accepted this amendment because this would go to
6 the next step. This would go the next step of
7 providing even greater protection to our
8 students so that they would never have to fear
9 that someone, any place in our environment,
10 would be walking around with an AK-47 loaded
11 with 15 bullets, ready to rip the -- wreak the
12 kind of havoc that we're all afraid of in our
13 school yards and in our school buildings, so I'm
14 disappointed that the sponsor hasn't accepted
15 the amendment.

16 I appeal the ruling of the Chair
17 and I would ask everyone in the chamber to join
18 us so that we could then have a debate as to
19 this amendment's effectiveness in achieving the
20 exact goals that Senator Johnson articulated
21 which is protecting our students from acts of
22 violence in the school yard or anywhere else.

23 ACTING PRESIDENT KUHL: Chair
24 recognizes Senator Paterson, on the appeal to
25 overturn the ruling of the Chair.

1 SENATOR PATERSON: Thanks so
2 much, Mr. President. I think that Senator
3 Dollinger has stated the position quite
4 accurately and admirably, and I'd just like to
5 add that we changed our procedures a few years
6 ago.

7 SENATOR SKELOS: Mr. President, I
8 believe when there's an appeal of the ruling of
9 the Chair -- Senator Dollinger has made his
10 appeal. I think it's appropriate at this time
11 to vote as to uphold or not uphold the ruling of
12 the Chair, and I would ask for a party vote in
13 favor of upholding the ruling of the Chair.

14 SENATOR DOLLINGER: Point of
15 order, Mr. President. Is there debate on -

16 ACTING PRESIDENT KUHL: Do you
17 wish to be heard on that point, Senator
18 Dollinger?

19 SENATOR DOLLINGER: I just raise
20 a point of order, Mr. President, in response to
21 the Deputy Majority Leader. Is there debate on
22 the appropriateness -- appropriateness of the
23 ruling of the Chair, on which any Senator could
24 be heard?

25 ACTING PRESIDENT KUHL: Senator

1 Dollinger, just to answer your question, but
2 really not to even bother with the point of
3 order. The Chair recognizes this, as does the
4 Acting Majority Leader, that this is a debatable
5 motion, and there can be a number of -- any
6 individual can be heard on the motion so,
7 Senator Paterson, you have the floor to continue
8 with the debate.

9 SENATOR PATERSON: Thank you, Mr.
10 President, and thank you, Senator Dollinger, for
11 lending your voice to provide me with some
12 opportunity to speak.

13 I just would like to say that
14 when we amended our rule, the amendment passed
15 by this house is very general about the
16 germaneness of subject matter when an amendment
17 is actually filed. Previously, the germaneness
18 test or the threshold was reached by the
19 determination of whether or not the amendment
20 would also amend that section of the law, but we
21 have much broader and over-reaching sense of
22 germaneness in this chamber as implemented by
23 our distinguished Majority Leader, Senator
24 Bruno, and I just on the appeal would like to
25 suggest to my colleagues before we vote on this

1 that the new interpretation is the one that
2 certainly would provide Senator Dollinger the
3 opportunity to present his amendment, since it
4 is far within the bounds of what the original
5 bill called for.

6 ACTING PRESIDENT KUHL: Is there
7 any other Senator wishing to speak on the appeal
8 to overrule the ruling of the Chair?

9 A vote in favor will be a vote to
10 overrule the ruling of the Chair. A vote in the
11 negative will be a vote to sustain the ruling of
12 the Chair. All those in favor of overruling the
13 rule of the Chair, signify by saying aye.

14 SENATOR PATERSON: Slow roll
15 call, Mr. President.

16 ACTING PRESIDENT KUHL: Slow roll
17 call has been requested. Are there five members
18 in the chamber who -- would they stand, one,
19 two, three, five. Secretary will call the roll
20 slowly.

21 THE SECRETARY: Senator Abate.

22 SENATOR ABATE: Yes.

23 THE SECRETARY: Senator Alesi.

24 SENATOR ALESI: No.

25 THE SECRETARY: Senator Breslin.

1 SENATOR BRESLIN: Yes.
2 THE SECRETARY: Senator Bruno.
3 (Negative indication.)
4 THE SECRETARY: Senator Connor.
5 (Affirmative indication.)
6 Senator Cook.
7 (There was no response.)
8 Senator DeFrancisco.
9 SENATOR DeFRANCISCO: No.
10 THE SECRETARY: Senator
11 Dollinger.
12 SENATOR DOLLINGER: Yes.
13 THE SECRETARY: Senator Farley.
14 SENATOR FARLEY: No.
15 THE SECRETARY: Senator Gentile.
16 SENATOR GENTILE: Yes.
17 THE SECRETARY: Senator Gold.
18 (There was no response.)
19 Senator Gonzalez.
20 (There was no response.)
21 Senator Goodman.
22 (There was no response.)
23 Senator Hannon.
24 (There was no response.)
25 Senator Hoffmann excused.

1 Senator Holland.
2 SENATOR HOLLAND: No.
3 THE SECRETARY: Senator Johnson.
4 SENATOR JOHNSON: No.
5 THE SECRETARY: Senator Kruger.
6 (There was no response.)
7 Senator Kuhl.
8 SENATOR KUHL: No.
9 THE SECRETARY: Senator Lachman.
10 (There was no response.)
11 Senator Lack.
12 SENATOR LACHMAN: Yes.
13 ACTING PRESIDENT KUHL: Wait.
14 He's in the back, saying yes.
15 THE SECRETARY: Did not answer,
16 so Lachman is yes.
17 Senator Larkin.
18 SENATOR LARKIN: No.
19 THE SECRETARY: Senator LaValle.
20 SENATOR LAVALLE: No.
21 THE SECRETARY: Senator Leibell.
22 SENATOR LEIBELL: No.
23 THE SECRETARY: Senator
24 Leichter.
25 SENATOR LEICHTER: Yes.

1 THE SECRETARY: Senator Levy.
2 (There was no response.)
3 Senator Libous.
4 SENATOR LIBOUS: No.
5 THE SECRETARY: Senator Maltese.
6 SENATOR MALTESE: No.
7 THE SECRETARY: Senator
8 Marcellino.
9 SENATOR MARCELLINO: No.
10 THE SECRETARY: Senator Marchi.
11 SENATOR MARCHI: No.
12 THE SECRETARY: Senator
13 Markowitz.
14 SENATOR MARKOWITZ: Yes.
15 THE SECRETARY: Senator Maziarz.
16 (There was no response.)
17 Senator Meier.
18 SENATOR MEIER: No.
19 THE SECRETARY: Senator Mendez.
20 (There was no response.)
21 Senator Montgomery.
22 SENATOR MONTGOMERY: Yes.
23 THE SECRETARY: Senator Nanula.
24 SENATOR NANULA: Yes.
25 THE SECRETARY: Senator

1 Nozzolio.

2 (There was no response.)

3 Senator Onorato.

4 (There was no response.)

5 Senator Oppenheimer.

6 SENATOR OPPENHEIMER: Yes.

7 THE SECRETARY: Senator Padavan.

8 (There was no response.)

9 Senator Paterson.

10 SENATOR PATERSON: No.

11 THE SECRETARY: Senator Present.

12 SENATOR PRESENT: No.

13 THE SECRETARY: Senator Rath.

14 (There was no response.)

15 Senator Rosado.

16 (There was no response.)

17 Senator Saland.

18 SENATOR SALAND: No.

19 THE SECRETARY: Senator Sampson.

20 SENATOR SAMPSON: Yes.

21 THE SECRETARY: Senator

22 Santiago.

23 (There was no response.)

24 Senator Seabrook.

25 (There was no response.)

1 Senator Seward.
2 SENATOR SEWARD: No.
3 THE SECRETARY: Senator Skelos.
4 SENATOR SKELOS: No.
5 THE SECRETARY: Senator Smith.
6 SENATOR SMITH: Yes.
7 THE SECRETARY: Senator Spano.
8 SENATOR SPANO: No.
9 THE SECRETARY: Senator
10 Stachowski.
11 SENATOR STACHOWSKI: Yes.
12 THE SECRETARY: Senator
13 Stafford.
14 (There was no response.)
15 Senator Stavisky.
16 (There was no response.)
17 Senator Trunzo.
18 SENATOR TRUNZO: No.
19 THE SECRETARY: Senator Tully.
20 SENATOR TULLY: No.
21 THE SECRETARY: Senator Velella.
22 (There was no response.)
23 Senator Volker.
24 SENATOR VOLKER: No.
25 THE SECRETARY: Senator Waldon.

1 SENATOR WALDON: Aye.
2 THE SECRETARY: Senator Wright.
3 SENATOR WRIGHT: No.
4 ACTING PRESIDENT KUHL: Call the
5 absentees.
6 THE SECRETARY: Senator Cook.
7 SENATOR COOK: No.
8 THE SECRETARY: Senator Gold.
9 SENATOR GOLD: Definitely.
10 THE SECRETARY: Senator
11 Gonzalez.
12 (There was no response.)
13 Senator Goodman.
14 (There was no response.)
15 Senator Hannon.
16 (There was no response.)
17 Senator Kruger.
18 (There was no response.)
19 Senator Lack.
20 (There was no response.)
21 Senator Levy.
22 (There was no response.)
23 Senator Maziarz.
24 SENATOR MAZIARZ: No.
25 THE SECRETARY: Senator Mendez.

1 (There was no response.)
2 Senator Nozzolio.
3 SENATOR NOZZOLIO: No.
4 THE SECRETARY: Senator Onorato.
5 SENATOR ONORATO: Yes.
6 THE SECRETARY: Senator Padavan.
7 SENATOR PADAVAN: No.
8 THE SECRETARY: Senator Rath.
9 (There was no response.)
10 Senator Lack.
11 SENATOR LACK: No.
12 THE SECRETARY: Senator Rosado.
13 (There was no response.)
14 Senator Santiago.
15 (There was no response.)
16 Senator Seabrook.
17 SENATOR SEABROOK: Yes.
18 THE SECRETARY: Senator
19 Stafford.
20 SENATOR STAFFORD: No.
21 THE SECRETARY: Senator
22 Stavisky.
23 SENATOR STAVISKY: Yes.
24 THE SECRETARY: Senator Velella.
25 (There was no response.)

1 Senator Levy.

2 SENATOR LEVY: No.

3 THE SECRETARY: Senator Kruger.

4 SENATOR KRUGER: Yes.

5 ACTING PRESIDENT KUHL: Announce
6 the results.

7 THE SECRETARY: Ayes 21, nays
8 31.

9 ACTING PRESIDENT KUHL: The
10 motion to overrule the rule of the Chair -- the
11 ruling of the Chair fails.

12 On debate.

13 SENATOR LEICHTER: Mr.
14 President.

15 ACTING PRESIDENT KUHL: Senator
16 Leichter.

17 SENATOR LEICHTER: Yes. Would
18 Senator Johnson yield, please?

19 ACTING PRESIDENT KUHL: Senator
20 Johnson, do you yield to a question from Senator
21 Leichter?

22 SENATOR SKELOS: All right. If
23 we could have some order now.

24 ACTING PRESIDENT KUHL: Yes. The
25 member's point is very well taken, Senator

1 Skelos. Ask the members to take their chairs
2 please, staff to take their places,
3 conversations out of the chamber except for the
4 debate, the exchange that's about to occur
5 between Senator Leichter and Senator Johnson.
6 Give me just a minute, Senator Leichter, to get
7 everything quiet.

8 Senator Leichter.

9 SENATOR LEICHTER: I think
10 everybody here agrees with you that somebody who
11 brings a gun or another dangerous weapon to
12 school and is found to have that weapon should
13 be suspended.

14 The problem I had with your bill,
15 a provision that said notwithstanding a
16 determination that the discovery of the weapon
17 was a result of an illegal search and seizure.
18 Aren't you trying to eliminate or to read out a
19 constitutional due -- constitutional safeguard
20 of due process?

21 SENATOR JOHNSON: Senator.

22 A VOICE: We have the answer.

23 Why do we say that?

24 SENATOR JOHNSON: My lawyer says
25 that there's a different standard in criminal

1 courts than there is in school district
2 proceedings, and what we consider an illegal
3 search in a criminal court to be charged for a
4 crime on the street is not the same standard
5 that the schools are bound to when they're
6 protecting their children.

7 In other words, a police officer
8 must have a reasonable -- which is a reasonable
9 suspicion?

10 A VOICE: Reasonable suspicion.

11 SENATOR JOHNSON: -- reasonable
12 suspicion but what do we have to have?

13 A VOICE: It doesn't rise to the
14 extent of the criminal standard for a legal
15 search.

16 SENATOR LACK: The intent to
17 commit a crime.

18 SENATOR JOHNSON: What's our
19 standard? We must have probable cause -- I'm
20 getting a lot of advice here -- to apprehend you
21 on the street and to search you, but in the
22 school, the standard is only a reasonable
23 suspicion. This person, there was a reasonable
24 suspicion because they saw a gun in this
25 person's pocket. What they did was proper on

1 school grounds in that circumstance, but a court
2 overturned the administrative proceeding of the
3 school. We're saying the schools do things
4 properly and they suspend this student, the
5 court decision should not have any bearing on
6 the outcome in the schools. That doesn't mean
7 he can't be charged for a crime by the D.A. or
8 someone else, but the school proceeding shall be
9 free from attack by a court so that, if you find
10 a child with a gun or a knife you simply can -
11 you can suspend them and it would be legal, it
12 wouldn't be changed by any court.

13 SENATOR LEICHTER: Mr. President,
14 if Senator Johnson would continue to yield.
15 Senator, that's not what your bill says. Your
16 bill says flat out that the Constitution won't
17 apply, the constitutional guarantee of search
18 and seizure. You say "Notwithstanding the
19 fact", and I'm reading line 4 and 5 on page 2,
20 "*** notwithstanding the fact that such weapon,
21 instrument or appliance was or may have been
22 recovered as a result of an unlawful search and
23 seizure." The Constitution says that we have a
24 right to be safe in our property, that we have a
25 right not to be unlawfully searched and seized.

1 Now, you're absolutely correct
2 that different standards apply in the streets
3 and the schools, but your bill says irrespective
4 of any standard, if it's a legal search and
5 seizure, it doesn't apply or the -- or the
6 Constitution doesn't apply, that you can still
7 proceed to suspend the student, and that,
8 Senator, I don't think that you can do or I
9 would hope you wouldn't want to read the
10 Constitution out of the protection of people in
11 the state of New York.

12 SENATOR JOHNSON: Senator, I
13 don't believe your argument holds water in that
14 this is not a person charged with a crime. This
15 is a person who is charged with a violation of
16 school regulations and has been suspended
17 because of that, so there is a different
18 standard. We're not about to change the
19 Constitution, Senator. I'd be the last person
20 to want to do that, as you know.

21 SENATOR LEICHTER: Well, Mr.
22 President, I would certainly hope that, Senator,
23 because I know, if anything, you're a strict
24 constructionist, and yet here you say in plain
25 bold language, you say in effect, "The Constitu

1 tion be damned." You say "***notwithstanding
2 the fact that such weapon, instrument or
3 appliance may have been recovered as a result of
4 an unlawful search and seizure." You say the
5 search and seizure was unlawful, but
6 irrespective under this bill, you can go ahead
7 and suspend the student.

8 Senator, I -- first of all, I
9 don't think you want to repeal the constitu
10 tional guarantee against unreasonable search and
11 seizure and, secondly, even if you wanted to,
12 you can't do it. I think this bill is clearly
13 unconstitutional. I mean you're flailing at the
14 courts. I think you could write a bill to deal
15 with the situation that you want to, which could
16 be constitutional, but you can't put in the
17 bill, AAh, if the search and seizure was
18 illegal, violative of the Constitution of the
19 United States, doesn't apply, doesn't apply.
20 You can go ahead and you can still suspend the
21 student. You can't do that.

22 SENATOR JOHNSON: Senator, I
23 don't think you're correct. Assemblyman Kaufman
24 in the other house doesn't think you're
25 correct. Assemblyman Silver, who supports this,

1 doesn't think you're correct and James Lack, the
2 esteemed attorney to my left, doesn't think
3 you're correct, and he would like to rebut your
4 rebuttal. Will you yield the floor to Senator
5 Lack?

6 SENATOR LEICHTER: What is
7 Senator Lack, a hired gun?

8 SENATOR JOHNSON: He handles all
9 the discussions for this size bill.

10 ACTING PRESIDENT KUHL:
11 Gentlemen, if I -- if we could maintain a little
12 procedure here. Senator Leichter, are you
13 yielding the floor now? I didn't hear a
14 question.

15 SENATOR LEICHTER: Yes, I yield
16 to Senator Lack.

17 ACTING PRESIDENT KUHL: Senator
18 Lack, would you like to speak on the bill?

19 SENATOR LEICHTER: But I don't
20 yield the floor.

21 ACTING PRESIDENT KUHL: Well, I
22 haven't heard a question, Senator Leichter.
23 That's normally the process we go through is you
24 ask a Senator to yield to a question, not for a
25 course of give and take, so if you're going to

1 ask Senator Lack a question, I'd be happy to ask
2 Senator Lack if he'd like to answer the
3 question.

4 SENATOR LEICHTER: I thought that
5 Senator Lack was assisting Senator Johnson in
6 answering the question that I had asked.

7 ACTING PRESIDENT KUHL: Could you
8 repeat the question then. Senator Lack, will
9 you yield to a question from Senator Leichter?

10 SENATOR LACK: Yes, Mr.
11 President, and I -

12 ACTING PRESIDENT KUHL: Senator
13 yields.

14 SENATOR LACK: The question has
15 already been asked and I'll be glad to -

16 SENATOR LEICHTER: Go ahead.

17 SENATOR LACK: Mr. President,
18 I've got the greatest respect for Senator
19 Leichter's protection of the Constitution, and
20 I'm certainly glad, Mr. President, that he's
21 finally joining our side to be a strict
22 interpretationist of the United States
23 Constitution, and there will be transcripts of
24 this proceeding preserved by every member of the
25 Majority for the appropriate subsequent bills

1 that come before this house.

2 But specifically, with respect
3 to, Mr. President, to Senator Johnson's bill,
4 Senator Leichter, I think your interpretation,
5 quite frankly, has gone too far. First of all,
6 the school district is not a party to a
7 proceeding in a criminal court. The school
8 district, quite frankly, Senator, acts on its
9 own. You know, in many respects, this is
10 nothing more than how you apply evidentiary
11 material depending on the type of proceeding
12 before it. It's not too different from the
13 different standards that were used in the O.J.
14 Simpson trial, for example, between the criminal
15 trial and the civil trial when you apply what -
16 what degree or what standard to utilize.

17 The only thing Senator Johnson is
18 trying to put forth is that in terms of trying
19 to protect the children in the school system the
20 fact that, for one or more reasons the -- a
21 weapon found on a child in a school is not
22 admissible in a criminal or Family Court
23 proceeding for evidentiary standards, is one set
24 of standards that applies in that court.

25 The fact of the presence of the

1 weapon which cannot be denied, but was on -- in
2 the school and in the possession of a particular
3 student can be used for reasonable suspicion
4 purposes by the school district with respect to
5 the status of that particular child as a student
6 in the school system, notwithstanding -

7 SENATOR LEICHTER: Senator, would
8 this -

9 SENATOR LACK: -- how that
10 evidence is used or not used in a criminal
11 proceeding with respect to the prosecution of
12 that child. In other words, it is not a defense
13 to a superintendent's hearing in a school
14 district that counsel -- and I think it would be
15 counsel for the student comes in and says, Wait
16 a minute, we can't talk about the revolver that
17 was found in the possession of the student
18 because X, Y, Z Family Court has held that the
19 presence of that revolver is not admissible in a
20 criminal proceeding.

21 Wonderful! Agreed. No
22 particular problem. All we're saying is with
23 respect to the superintendent's hearing, the
24 fact of the weapon that was found on the student
25 and there was reasonable suspicion by the school

1 district is credible enough for the superin
2 tendent's hearing to proceed and the child to be
3 suspended.

4 SENATOR LEICHTER: Mr. President,
5 if Senator Lack will continue to yield, please.

6 ACTING PRESIDENT KUHL: Senator
7 Lack, do you continue to yield?

8 SENATOR LACK: Yes.

9 ACTING PRESIDENT KUHL: The
10 Senator continues to yield.

11 SENATOR LEICHTER: Senator, do
12 you agree with me that it's the court's
13 interpretation that students in a school setting
14 do have the constitutional protection of
15 unlawful search and seizure, although the
16 protection is less pervasive, if you will, than
17 the protection that you and I, if we're walking
18 on the street, do you agree with that?

19 SENATOR LACK: I agree that for
20 purposes of the elements of the criminal
21 activity that is before the court, the
22 protection of the Constitution attaches to the
23 student. That is a different set of standards
24 that attach to the student in a superintendent's
25 hearing with respect to the student's status in

1 the school district.

2 SENATOR LEICHTER: Senator Lack,
3 if you would continue to yield, please.

4 SENATOR LACK: Sure.

5 ACTING PRESIDENT KUHL: Senator
6 continues to yield.

7 SENATOR LEICHTER: Senator, are
8 you saying that search and seizure protections
9 do not apply if the evidence is only going to be
10 produced in a superintendent's hearing?

11 SENATOR LACK: I don't know if I
12 would, Senator Leichter, try to make a bold
13 general statement that no search and seizure
14 procedures apply at all with respect to a
15 superintendent's hearing, and I don't think
16 that's what Senator Johnson's bill says. I -- I
17 do think that Senator Johnson's bill, where it
18 says that with respect to the criminal
19 evidentiary standard with respect to a search
20 and seizure procedure before a court for the
21 elements of a crime, which is what his bill
22 says, that does not apply to a superintendent's
23 hearing.

24 I wouldn't make a bold-faced
25 statement that there -- you can do anything in

1 respect to a school district, run along and
2 throw a gun in a student's hand and then say,
3 Look who has the gun, and that becomes an
4 element of suspension for the student when he
5 only got the gun since he caught it, so I
6 wouldn't -- I wouldn't dream up any situation.

7 I think just what Senator Johnson
8 has put forward in his bill, that you can't use
9 the fact that in a criminal circumstance,
10 because of search and seizure requirements in a
11 criminal trial as a defense to not having the
12 fact of the weapon introduced in a
13 superintendent's hearing. That's all Senator
14 Johnson is saying, and it doesn't trample on the
15 Constitution.

16 SENATOR LEICHTER: Senator Lack,
17 if you would continue to yield.

18 ACTING PRESIDENT KUHL: Senator
19 Lack, do you continue to yield?

20 SENATOR LACK: I will.

21 SENATOR LEICHTER: Where in this
22 bill does it make the distinction that you're
23 making between a criminal hearing and a
24 superintendent's hearing? The bill says flat
25 out, flat out, that an illegal search, an

1 unlawful search and seizure will not prevent the
2 introduction of evidence.

3 It makes no distinction as to
4 criminal case or as to a superintendent's
5 hearing. It says even if the search and seizure
6 was unlawful in a school setting. That's the
7 only -- the only interpretation you can give to
8 this language. It could -- you could still
9 introduce the evidence, and I think you agree
10 with me that that leaves constitutional
11 protections out of -- out of this situation
12 which we can't do, and I would hope we wouldn't
13 want to do.

14 SENATOR LACK: I wouldn't -- Mr.
15 President, I wouldn't agree, because it does
16 have reference to a criminal -- criminal or
17 juvenile defense, juvenile delinquency
18 proceeding, which as far as I'm concerned sets
19 forth a -- the necessary -- the necessity to
20 establish the elements of a crime to a criminal
21 standard. If you were appealing a superintend
22 ent's -- if the -- if you were going to go in on
23 an Article 78 to appeal a determination of a
24 superintendent -- of a superintendent's hearing
25 with respect to suspension of a student, you

1 would not be, Mr. President, going forward on -
2 in a criminal or juvenile delinquency proceeding
3 in a court. You'd be going in to appeal the
4 administrative determination with respect to the
5 superintendent's hearing and that requires a
6 whole different standard of proof than what is
7 in the criminal or juvenile delinquency
8 proceeding.

9 SENATOR LEICHTER: Senator Lack,
10 if you continue to yield, that's in the first -
11 that's in the subdivision 1. Subdivision 2 has
12 no reference whatsoever to a criminal or
13 juvenile delinquency hearing. It says flat out
14 that, notwithstanding the fact that such weapon,
15 instrument or appliance was or may have been
16 recovered as a result of an unlawful search and
17 seizure. You can't read in the qualification
18 that was in subdivision 1.

19 SENATOR LACK: Mr. President,
20 yes, you can. Senator Leichter, if you'd refer
21 to line 4 on page 2, the conjunctive word "and"
22 after the semicolon before the subdivision 2,
23 that links subdivision 1 with subdivision 2 and
24 requires subdivision 1, semicolon and
25 subdivision 2. Therefore, you have to read 1

1 with 2.

2 SENATOR LEICHTER: Now, Mr.
3 President, I -- I appreciate that -- what
4 Senator Lack is trying to do. I do note, and I
5 think it -- I think it's significant that when
6 he defended Senator Holland, he called it "a
7 noble effort". He made no such statement about
8 Senator Johnson's bill, and I take note of that
9 but, Mr. President, there's a certain amount of
10 levity, but I think we're dealing with a very
11 serious matter.

12 First of all, let's be all clear
13 that none of us want to see children with
14 weapons in the schools and if they bring weapons
15 to the school and they're found to have weapons,
16 they ought to be punished. So let's be clear on
17 it. But what Senator Johnson's responding to is
18 a particular court decision where the court
19 didn't say it's the right for students to have
20 weapons in the school. The court didn't say you
21 can't suspend a student who is found with a
22 weapon. The court said that constitutional
23 guarantees of due process search and seizure
24 apply, and I would hope that all of us would
25 have sufficient commitment to the Constitution,

1 and I know Senator Johnson does, that we want to
2 safeguard those constitutional protections.

3 Whether we do or not, the courts are going to do
4 it anyhow, but I don't think we want to be in a
5 situation where we pass legislation that I think
6 flies in the face of the Constitution and how
7 the courts have interpreted the Constitution.

8 Now, you can have a different
9 standard for search and seizure in the schools
10 than you have in the streets, but you cannot say
11 there will be no standards whatsoever. There
12 will be no protection of search and seizure, and
13 that's what the bill says, and no matter how
14 artful Senator Lack is in trying to put together
15 the conjunctive it's on, Senator Johnson's bill
16 provides two conditions, one which may be all
17 right. It says notwithstanding a determination
18 by a court in a criminal or juvenile delinquency
19 proceeding that the recovery of such weapon was
20 the result of an unlawful search and seizure,
21 that's -- that can be explained and understood
22 by a different standard applying in criminal
23 cases than applies in superintendent's hearings.

24 But then there's number two, and
25 as you read it, Senator Lack, number two would

1 make absolutely no sense, because you have it
2 just repeating number one. Then Senator Johnson
3 wants to grab it all and he says, and the hell
4 with it, no matter if that search and seizure is
5 unlawful, you -- you can still introduce the
6 evidence and, Senator Johnson, you can't do
7 that.

8 I think you could fix this bill
9 and make it a constitutional, appropriate bill,
10 but I think as it's written now, it's clearly
11 unconstitutional. I'm going to vote for it just
12 on that basis and that doesn't mean anybody
13 wants to join me or that I am not concerned
14 about weapons in the schools, but I'm concerned
15 about proceeding in a sensible, effective and
16 constitutional manner and, unfortunately, this
17 bill doesn't do that.

18 ACTING PRESIDENT KUHL: Any other
19 Senator wishing to speak on the bill?

20 Senator Gold.

21 SENATOR GOLD: Yeah. Will
22 Senator Lack yield, please?

23 ACTING PRESIDENT KUHL: Senator
24 Lack, do you yield to Senator Gold?

25 SENATOR LACK: I'm happy to yield

1 to Senator Johnson's noble effort.

2 SENATOR GOLD: Yeah, Senator
3 Lack. I really will be brief. I intend, I
4 think, to vote for it if I'm understanding it
5 properly. This -- we're talking about the use
6 in an administrative hearing, isn't that
7 correct?

8 SENATOR LACK: Yes, Senator.

9 SENATOR GOLD: All right. And
10 what the bill says is that in spite of the fact
11 that there may have been a ruling or some
12 determination as to illegal evidence not being
13 able to be used in a criminal case or something
14 you can use it in this sense, correct?

15 (Senator Lack nods head.)

16 SENATOR GOLD: Senator, my last
17 question, Mr. Chairman, if I may.

18 ACTING PRESIDENT KUHL: Senator
19 Lack, do you yield?

20 SENATOR GOLD: Senator Lack,
21 whether we like it or not, isn't it a fact that
22 in administrative proceedings there are
23 different rules of evidence than in the courts?
24 There are hearsay statements which are allowed,
25 which would not be allowable in a criminal court

1 or even in some civil courts, and, as I
2 understand it, if this bill passes, the only use
3 for this evidence would be in an administrative
4 hearing by the superintendent dealing with the
5 conduct of this student, is that correct?

6 SENATOR LACK: That's certainly
7 correct, Senator Gold, and of course, there
8 would then be an appellate process to the civil
9 portion through Article 78 up through the courts
10 of the state.

11 ACTING PRESIDENT KUHL: Senator
12 Montgomery.

13 SENATOR MONTGOMERY: Yes, Mr.
14 President. I also have a question of
15 clarification on the bill of the sponsor or
16 Senator Lack.

17 ACTING PRESIDENT KUHL: Senator
18 Johnson. Senator Johnson, do you yield to
19 Senator Montgomery?

20 SENATOR JOHNSON: Mr. President,
21 I'm going to stand in for Senator Lack in this
22 case.

23 SENATOR MONTGOMERY: Senator
24 Johnson, if you would yield to one question.
25 There was an incident that I'm aware of in New

1 York City where a student who was, I think,
2 actually a kindergarten child came to school
3 with a gun in their book bag, and it was for the
4 child something that he found in the home, and
5 it was brought to school as a "show and tell"
6 item pretty much.

7 I'm just wondering in that case
8 where clearly, you know, it's a dangerous weapon
9 taken from the child by the school officials but
10 the child is not really in any way intending to
11 use that weapon in a -- in a criminal fashion,
12 how would that situation be dealt with?

13 SENATOR JOHNSON: The schools
14 have a procedure where they investigate the
15 incident, and the hearing officer makes a
16 recommendation. I'm sure they wouldn't
17 recommend to suspend a kindergarten child who
18 was unaware of what they had or what they were
19 doing or might have mistaken it for a toy or
20 something like that.

21 So I mean there is discretion.
22 It isn't if they have a gun, they're suspended
23 for a year. The process goes forward and common
24 sense prevails in most of these hearings.

25 SENATOR MONTGOMERY: So the

1 school, Mr. President, just to clarify further,
2 the school has the latitude to make the
3 determination as to the intent to -

4 SENATOR JOHNSON: Yes.

5 SENATOR MONTGOMERY: -- use as
6 part of any decision that is made?

7 SENATOR JOHNSON: That is true.

8 SENATOR MONTGOMERY: Thank you,
9 Mr. President.

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

14 THE SECRETARY: Section 2. This
15 act shall take effect on the first day of
16 November.

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

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

22 THE SECRETARY: Ayes 59, nays
23 one, Senator Leichter recorded in the negative.

24 ACTING PRESIDENT KUHL: The bill
25 is passed.

1 Senator Stavisky, why do you
2 rise?

3 SENATOR STAVISKY: Mr. President,
4 I understand that 561 was voted on previously,
5 am I correct?

6 ACTING PRESIDENT KUHL: No, that
7 bill was laid aside, Senator.

8 SENATOR STAVISKY: Oh, still laid
9 aside.

10 ACTING PRESIDENT KUHL: Still
11 laid aside.

12 SENATOR STAVISKY: Thank you.

13 ACTING PRESIDENT KUHL: Senator
14 Goodman, why do you rise?

15 SENATOR GOODMAN: I wish to make
16 a brief announcement with the permission of the
17 Majority Leader.

18 Mr. President, this evening from
19 6:00 to 8:00 p.m., at the State Museum in the
20 West Gallery, there will be an exhibit of
21 Winslow Homer art, brought to Albany by the
22 Metropolitan Museum of Art. This is the first
23 in a series of loan exhibitions which have been
24 arranged to make available great works of art
25 from the leading institutions in the city of New

1 York for the benefit of the Albany community in
2 the State Museum, and I'd like to urge every
3 member within the sound of my voice, as well as
4 staff members and guests, to come to the State
5 Museum from 6:00 to 8:00 for a gala reception in
6 honor of the Metropolitan Museum and those who
7 have made this exhibition possible.

8 I think I can promise you both
9 cultural elevation and gastronomic sustenance.
10 Please join us. We'd be happy to see you.

11 ACTING PRESIDENT KUHL: Senator
12 Meier.

13 SENATOR MEIER: Mr. President,
14 may I now ask that the Senate stand at ease for
15 a few moments.

16 ACTING PRESIDENT KUHL: The
17 Senate will stand at ease for a few moments.

18 (At 2:20 p.m., the Senate stood
19 at ease briefly.)

20 ACTING PRESIDENT WRIGHT: Senator
21 Holland.

22 SENATOR HOLLAND: There will be
23 an immediate meeting of the Rules Committee in
24 Room 332 of the Capitol.

25 ACTING PRESIDENT WRIGHT: There

1 will be an immediate meeting of the Rules
2 Committee in Room 332 of the Capitol.

3 SENATOR HOLLAND: And could we
4 return to the reading of the calendar, please.

5 ACTING PRESIDENT WRIGHT: My bill.

6 ACTING PRESIDENT LIBOUS:
7 Secretary will read.

8 THE SECRETARY: Calendar Number
9 451, by Senator Maltese, Senate Print 1560, an
10 act to amend the Labor Law and the Penal Law, in
11 relation to certain employment of minors.

12 SENATOR PATERSON: Explanation.

13 ACTING PRESIDENT LIBOUS: Senator
14 Maltese, an explanation has been asked for.

15 SENATOR MALTESE: Mr. President,
16 with the proliferation of child pornography and
17 the universal condemnation of such, we have
18 attempted not only in this state Legislature but
19 in every state Legislature in the country and at
20 the national level, to prevent these obscene,
21 indecent and absolutely outrageous performances,
22 and with a renewed interest in preventing child
23 abuse and the unlawful use and improper use,
24 certainly improper use of children, we have
25 attempted to close the door and close the cell

1 doors on the pornographers and those that would
2 spread and encourage and promote this terrible
3 activity, and yet as we attempt to close one
4 door and attempt to make one aspect of the
5 conduct unlawful, we have to face ever renewed
6 efforts on the part of profit-making demons who
7 would attempt to use our children to their
8 nefarious purposes.

9 This bill is an extension of
10 prior legislation which seeks to make unlawful
11 the use of children, this terrible use of
12 children under 16 years of age, and this
13 particular legislation which is co-sponsored by
14 13 of my colleagues and which is sponsored in
15 the Assembly by Assemblyman Seminerio, would
16 amend the Labor Law and the Penal Law in
17 relation to the employment of minors under 16
18 years of age and prohibits the viewing and
19 possession of certain obscene materials
20 involving such minors.

21 What the specific wording is, any
22 play, motion picture, dance or other exhibition
23 in which such minor engages in sexual conduct as
24 such term is defined in subdivision 3 of section
25 263 of the Penal Law -- so we have cited section

1 263 exactly, and section 263, Mr. President,
2 specifically defines sexual conduct, so that the
3 case would withstand constitutional scrutiny by
4 our state courts and by the United States
5 Supreme Court.

6 In addition, the phrase which is
7 "harmful to said minor", the term "harmful to
8 said minor" specifically within the legislation
9 states, "shall have the same meaning as the term
10 'harmful to minors' as defined in subdivision 6
11 of section 235.20 of the Penal Law," and 235.20
12 of the Penal Law specifically recites "harmful
13 to minors" which means "that quality of any
14 description or representation in whatever form
15 of nudity, sexual conduct, sexual excitement or
16 sado-masochistic abuse which when considered as
17 a whole appeals to the prurient interest and sex
18 of minors; and (b) and is patently offensive to
19 prevailing standards in the adult community as a
20 whole with respect to what is suitable material
21 for minors; and (c) considered as a whole lacks
22 serious artistic, literary, political and
23 scientific value for minors."

24 What we are attempting to do, Mr.
25 President, is bring ourselves under the most

1 recent United States Supreme Court case which is
2 Clyde Osborn vs. The State of Ohio, and Clyde
3 Osborn was convicted in the Court of Common
4 Pleas in Ohio and his conviction was appealed to
5 the Court of Appeals in Ohio and then appealed
6 on certiorari and then went to the United States
7 Supreme Court which ruled, in a 6 to 3 decision,
8 that -- Justice White: "Prohibition against
9 possession and viewing of child pornography
10 complies with the First Amendment and is not
11 unconstitutionally overbroad."

12 The court recites the interest of
13 society in protecting our children and in
14 preventing this heinous practice, and the
15 statute in Ohio, as a matter of fact, lacks any
16 mens rea language. Our proposed statute
17 specifically recites which is harm -- "which is
18 harmful to said minor," but in addition in -- on
19 line 16 and 17, requires, quote, "knowing the
20 character and content thereof." I'll read the
21 whole sentence.

22 A person is guilty of illegal
23 possession or viewing of material containing
24 obscene depictions of the nudity of a child or
25 of obscene sexual performance by a child if,

1 quote, "knowing the character and content
2 thereof he possesses any material or views any
3 performance which contains any obscene sexual
4 performance by a child less than 16 years of age
5 or depicts nudity involving lewd exhibition or
6 graphic focus on the genitals of such a child."

7 So what we have sought to do here
8 is protect children and at the same time bring
9 our statute within the limitations imposed by
10 both case and statute law as defined by the
11 United States Supreme Court.

12 ACTING PRESIDENT LIBOUS: Senator
13 Paterson.

14 SENATOR PATERSON: Thank you, Mr.
15 President. If Senator Maltese would yield for a
16 question.

17 SENATOR MALTESE: Yes.

18 ACTING PRESIDENT LIBOUS: Senator
19 Maltese, would you yield for a question? Yes, he
20 will, sir.

21 SENATOR PATERSON: Senator, we,
22 meaning that I'm concerned and I know that
23 you're concerned about the freedoms granted
24 under the First Amendment, so, therefore, you
25 must have considered it when you wrote the

1 legislation, and not as much on the sexual
2 performance by a minor, but on viewing the
3 information and the fact that we attach an "E"
4 felony to it, tell me and please explain to
5 those who you'd like to join with you in
6 supporting this bill, how you feel this doesn't
7 violate the protections granted under the First
8 Amendment.

9 SENATOR MALTESE: Well, I think
10 that what we're after is the definition of
11 "sexual performance", the definition of "sexual
12 conduct". We've recited that it's only children
13 under 16. In other words, what we have
14 attempted to do is follow the dictates set down
15 by Osborn, and Osborn specifically as, in
16 Justice White's decision, he states -- and, as I
17 say, the Ohio statute lacked any mens rea
18 language, and even at that, they upheld it and
19 stated: "The Ohio statute is not constitution
20 ally overbroad. Although on its face, the
21 statute purports to prohibit constitutionally
22 protected depictions of nudity, it is doubtful
23 that any overbreadth would be substantial under
24 this court's cases in light of the statutory
25 exemptions and proper purposes provisions.

1 "In any event, the statute as
2 construed by the Ohio Supreme Court plainly
3 provides overbreadth scrutiny by limiting the
4 statute's operation to nudity that constitutes
5 lewd exhibition or focuses on genitals," just as
6 ours does. "The court avoided penalizing
7 persons for viewing or possessing innocuous
8 photographs of naked children and thereby
9 rendered the nudity language permissible."

10 ACTING PRESIDENT LIBOUS: Senator
11 Paterson.

12 SENATOR PATERSON: Thank you, Mr.
13 President.

14 If Senator would yield for
15 another question.

16 SENATOR MALTESE: Yes.

17 ACTING PRESIDENT LIBOUS: Senator
18 Maltese, will you continue to yield?

19 SENATOR MALTESE: Yes.

20 ACTING PRESIDENT LIBOUS: He
21 will, sir.

22 SENATOR PATERSON: Now, turning
23 to the issue of enforcement, it would not seem
24 very difficult for someone that might want to
25 avoid observing this kind of conduct to become

1 victimized just by the exposition in that it
2 might not be clear whether or not the performer
3 is 16 years of age or under, and also there is
4 just a matter of one doesn't know, it could come
5 to us over the Internet, it could come to us in
6 some kind of performance, but that the
7 individual doesn't know what the next scene is
8 going to be, and I'm just saying that to attach
9 as strong a punishment as you have in the
10 legislation, what would be the kind of
11 exculpatory evidence in which the individual
12 might make it clear that they disapprove of the
13 conduct as much as anyone else but,
14 unfortunately, came into possession of it, I
15 mean it can be in a book, it can be anywhere,
16 and under your legislation, I would imagine it
17 would put the individual that holds it, it would
18 make them liable for prosecution.

19 SENATOR MALTESE: Mr. President,
20 as I've stated, the provision specifically
21 within the four corners of the legislation
22 states "knowing the character and content
23 thereof," and with reference to my good
24 colleague's statement as to the age of the
25 defendants or the, I'm sorry, the age of the

1 participants as whether or not ascertainable by
2 the defendants, I believe there are specific
3 exclusions under 262 of the Penal Law which is
4 specifically alluded to here, which would bring
5 it under the exceptions that the -- the
6 exceptions as to -- would have some basis, some
7 reasonable basis of ascertaining the age of the
8 participants.

9 Obviously, in some of these
10 loathesome performances, it would be absolutely
11 evident, the children participating are infants
12 or close to infants, obviously pre-puberty and
13 that would be certainly prima facie. In a close
14 case or close situation, you would, I believe,
15 have the criminal statute strictly construed and
16 you would be able to fight the case
17 effectively.

18 So I think, and since it brings
19 it under 263, which is also specifically
20 enumerated in the statute, you would have the
21 normal sexual conduct and as sexual conduct is
22 spelled out, it means actual or simulated sexual
23 intercourse, deviate sexual intercourse, sexual
24 bestiality, masturbation, sado-masochistic abuse
25 or lewd exhibition of the genitals, so we're not

1 talking about statues, marble statues of David
2 or some scientific treatise or some innocent -
3 innocent nude of September morn. We're talking
4 about hard core child pornography.

5 ACTING PRESIDENT LIBOUS: Senator
6 Paterson.

7 SENATOR PATERSON: Mr. President,
8 not only am I going to vote for Senator
9 Maltese's bill, but I think we also should limit
10 the discussion of all these subjects as too
11 exciting.

12 ACTING PRESIDENT LIBOUS: Read
13 the last section.

14 THE SECRETARY: Section 3. This
15 act shall take effect on the first day of
16 November.

17 ACTING PRESIDENT LIBOUS: Call
18 the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 60.

21 ACTING PRESIDENT LIBOUS: The
22 bill is passed.

23 Senator Holland.

24 SENATOR HOLLAND: Mr. President,
25 can we return to the reports of standing

1 committees for a report from the Rules
2 Committee, please.

3 ACTING PRESIDENT LIBOUS:
4 Secretary will read the report of the Rules
5 Committee.

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

9 Senate Print 5296, by Senator
10 Trunzo, an act to amend Chapter 41 of the Laws
11 of 1997 providing a retirement incentive to
12 certain public employees;

13 5337, by the Senate Committee on
14 Rules, an act to amend Chapter 708 of the Laws
15 of 1992; and

16 5345, by Senator Velella, an act
17 to amend the Insurance Law, in relation to home
18 owners insurance catastrophe coverage.

19 ACTING PRESIDENT LIBOUS: All
20 bills reported directly to third reading.

21 Senator Holland.

22 SENATOR HOLLAND: Mr. President,
23 can we return and take up Calendar 1072,
24 please.

25 ACTING PRESIDENT LIBOUS:

1 Secretary will read Calendar Number 1072.

2 THE SECRETARY: Senator Velella
3 moves to discharge from the Committee on Rules,
4 Assembly Bill Number 8005 and substitute it for
5 the identical Third Reading Calendar 1072.

6 ACTING PRESIDENT LIBOUS:
7 Substitution ordered.

8 SENATOR HOLLAND: Is there a
9 message of necessity at the desk, please?

10 ACTING PRESIDENT LIBOUS:
11 Secretary will read.

12 THE SECRETARY: Calendar Number
13 1072, by the Assembly Committee on Rules,
14 Assembly Print 8005, an act to amend the
15 Insurance Law, in relation to homeowners
16 insurance catastrophe coverage.

17 ACTING PRESIDENT LIBOUS: Yes,
18 there's a message at the desk.

19 SENATOR HOLLAND: Move to accept
20 the message.

21 ACTING PRESIDENT LIBOUS: All
22 those in favor say aye.

23 (Response of "Aye.")

24 Opposed nay.

25 (There was no response.)

1 The message is accepted.

2 Read the last section.

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

5 ACTING PRESIDENT LIBOUS: Call
6 the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 60.

9 ACTING PRESIDENT LIBOUS: The
10 bill is passed.

11 SENATOR HOLLAND: Mr. President,
12 can we do Calendar 1070, please.

13 ACTING PRESIDENT LIBOUS:
14 Calendar 1070.

15 THE SECRETARY: Calendar Number
16 1070, by Senator Trunzo, Senate Print 5296, an
17 act to amend Chapter 41 of the Laws of 1997,
18 providing a retirement incentive for certain
19 public employees.

20 ACTING PRESIDENT LIBOUS: Read
21 the last section.

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

24 ACTING PRESIDENT LIBOUS: Call
25 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 60.

3 ACTING PRESIDENT LIBOUS: The
4 bill is passed.

5 SENATOR HOLLAND: Can we return
6 to -

7 ACTING PRESIDENT LIBOUS: Senator
8 Holland.

9 SENATOR HOLLAND: Mr. President,
10 can we return to the regular order of the
11 calendar, please.

12 ACTING PRESIDENT LIBOUS:
13 Secretary will read. Regular order. Secretary
14 will read.

15 THE SECRETARY: Calendar Number
16 571, by Senator Wright, Senate Print 3560-A, an
17 act to amend the Environmental Conservation Law,
18 in relation to muzzle loading firearm big game
19 seasons.

20 ACTING PRESIDENT LIBOUS: I'm
21 sorry, Senator Paterson. Did you ask for an
22 explanation?

23 SENATOR PATERSON: I'm sorry.
24 Yes.

25 ACTING PRESIDENT LIBOUS: Senator

1 Paterson has asked Senator Wright for an
2 explanation. Senator Wright, Senator Paterson
3 has respectfully asked for an explanation of
4 your bill.

5 SENATOR WRIGHT: Thank you, Mr.
6 President.

7 Were Senator Lack in the
8 chambers, I would yield to him to assist me in
9 this noble effort, but since he's not, I guess
10 I'll have to explain the bill as the sponsor.

11 We are amending -- proposing an
12 amendment to the Environmental Conservation Law
13 that would modify the duration of the season for
14 muzzle loading firearms and big game seasons in
15 the northern zone for the deer hunting season in
16 New York State.

17 This proposal has been developed
18 over the last several years in consultation with
19 the local sportsmen community, after a series of
20 public meetings in the region, talking with
21 sportsmen, farmers and other individuals in the
22 community, and working with DEC officials, each
23 of the last two years, most recent community
24 meetings being held within the last two months
25 within the region, and the alternative being

1 advanced is to grant DEC in the northern zone
2 only the latitude to extend the season from the
3 current 7 days to 16, that they be granted the
4 flexibility to extend it either prior to or
5 subsequent to the regular deer season based upon
6 deer population and other factors and criteria
7 that the Department would utilize.

8 ACTING PRESIDENT LIBOUS: Senator
9 Paterson.

10 SENATOR PATERSON: Explanation
11 satisfactory, Mr. President.

12 SENATOR WRIGHT: Thank you,
13 Senator Paterson.

14 ACTING PRESIDENT LIBOUS: Read
15 the last section.

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

18 ACTING PRESIDENT LIBOUS: Call
19 the roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 60.

22 ACTING PRESIDENT LIBOUS: The
23 bill is passed.

24 Secretary will read.

25 THE SECRETARY: Calendar Number

1 586 by Senator Vellella, Senate Print 20, an act
2 to amend the Insurance Law, in relation to agent
3 termination reporting requirements.

4 SENATOR PATERSON: Explanation.

5 SENATOR HOLLAND: Lay aside.

6 ACTING PRESIDENT LIBOUS: Lay
7 that bill aside.

8 THE SECRETARY: Calendar Number
9 606, by Senator Libous, Senate Print 1931, an
10 act to amend the General Business Law, in
11 relation to unlawful possession of tobacco.

12 ACTING PRESIDENT LIBOUS: Senator
13 Paterson, we'll give you an explanation as soon
14 as we can get somebody up in the Chair.

15 ACTING PRESIDENT MARCELLINO:
16 Senator Libous, an explanation has been
17 requested.

18 SENATOR LIBOUS: Thank you, Mr.
19 President, and Senator Paterson. I know that
20 last year we also discussed this.

21 Basically what this legislation
22 will do is, it teaches some responsibilities to
23 minors, basically those under the age of 18
24 possessing tobacco, can be fined with a
25 violation. The violation could mean up to a \$50

1 fine and 30 hours of community service. We
2 discussed this bill, I believe, last year at
3 great length, and the purpose for the bill is -
4 what we're trying to do is teach some
5 responsibility. At the same time we also look
6 at the situation with tobacco, cigarette
7 products, other tobacco products. Obviously
8 Washington, D.C. has done a number of things in
9 recent months, and we feel that this just
10 complements some of the laws that were actually
11 passed right here in this chamber back in 1992
12 when we restricted the sale of tobacco products
13 in vending machines and strengthened penalties
14 against retailers who violated the law.

15 ACTING PRESIDENT MARCELLINO:

16 Read the last section.

17 THE SECRETARY: Section 2. This
18 act shall take effect the first day of
19 September.

20 ACTING PRESIDENT MARCELLINO:

21 Call the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes -- those
24 recorded in the negative on Calendar Number 606
25 are Senators Maltese, Markowitz, Montgomery and

1 Waldon. Ayes 56, nays 4. Also Senator Leichter.
2 Ayes 55, nays 5.

3 ACTING PRESIDENT MARCELLINO: The
4 bill is passed.

5 THE SECRETARY: Calendar Number
6 620, by Senator Stafford, Senate Print 3765, an
7 act to amend the Executive Law, in relation to
8 standardizing and improving state agency permit
9 applications.

10 SENATOR SKELOS: Lay it aside for
11 the day, please, at the request of the sponsor.

12 THE SECRETARY: 632 -- Calendar
13 Number 632, by Senator Spano, Senate Print 4077,
14 an act to amend the Public Health Law, in
15 relation to establishment of regional emergency
16 medical services councils.

17 SENATOR SKELOS: Lay aside
18 temporarily.

19 ACTING PRESIDENT MARCELLINO: Lay
20 the bill aside temporarily.

21 THE SECRETARY: Calendar Number
22 647 by Senator Seward, Senate Print 4279, an act
23 to amend the Public Service Law, in relation to
24 elimination of the mandate.

25 SENATOR SKELOS: Lay it aside

1 temporarily.

2 ACTING PRESIDENT MARCELLINO: Lay
3 the bill aside temporarily.

4 THE SECRETARY: Calendar Number
5 657, by Senator Volker, Senate Print 3617, an
6 act to amend the Civil Practice Law and Rules,
7 in relation to motions addressed prior orders.

8 ACTING PRESIDENT MARCELLINO:
9 Senator Volker, an explanation has been asked
10 for by Senator Paterson.

11 SENATOR VOLKER: This was a bill
12 that was proposed to us by the Office of Court
13 Administration and supported by the Association
14 of the Bar of the city of New York. It attempts
15 to codify a number of court cases that, although
16 most of them have gone in basically the same
17 direction, there have been some that have gone
18 in different directions on the issue of
19 re-argument of motions and motions for leave to
20 renew pursuant to -- pursuant to decision.

21 It's an attempt to codify and
22 settle case law and under the present case law
23 re-argument would be denied where there's no
24 showing to the court of overlooked or mis
25 apprehended relevant facts or misapplied

1 controlling law. What this would allow is to do
2 a re-argument basically only where there is some
3 sort of new -- new evidence, or some sort of new
4 material that would actually allow the court not
5 to be in a situation where you would be merely
6 rearguing the same points that were argued in
7 the motion before.

8 What they're trying to do here is
9 develop some sort of certainty if there is
10 actually good reason to reargue or to renew the
11 motion, then that would be allowed specifically
12 under this section but, if not, then it would be
13 denied as not being applicable.

14 ACTING PRESIDENT MARCELLINO:
15 Read the last section.

16 THE SECRETARY: Section 4. This
17 act shall take effect on the first day of
18 January.

19 ACTING PRESIDENT MARCELLINO:
20 Call the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 60.

23 ACTING PRESIDENT MARCELLINO: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 six seventy -

2 SENATOR SKELOS: Mr. President,
3 can you take up Calendar Number 190 now by
4 Senator Volker.

5 ACTING PRESIDENT MARCELLINO:
6 Secretary will read Calendar Number 190, by
7 Senator Volker.

8 THE SECRETARY: On page 7,
9 Calendar Number 190, by Senator Volker, Senate
10 Print 2336, an act to amend the Vehicle and
11 Traffic Law.

12 ACTING PRESIDENT MARCELLINO:
13 Read the last section.

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

16 ACTING PRESIDENT MARCELLINO:
17 Call the roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 60.

20 ACTING PRESIDENT MARCELLINO: The
21 bill is passed.

22 Senator Skelos, what's your
23 pleasure?

24 SENATOR SKELOS: Regular order.
25 Please take up Calendar Number 678, by Senator

1 Maltese.

2 ACTING PRESIDENT MARCELLINO:
3 Secretary will read Calendar Number 678, by
4 Senator Maltese.

5 THE SECRETARY: Calendar Number
6 678, by Senator Maltese, Senate Print 2469, an
7 act to amend the Social Services Law, in
8 relation to access to criminal history records.

9 ACTING PRESIDENT MARCELLINO:
10 Read the last section.

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

13 SENATOR LEICHTER: Explanation.

14 ACTING PRESIDENT MARCELLINO: I
15 hear a faint cry for an explanation out there?
16 Senator Maltese, will you give an explanation of
17 this bill, please?

18 SENATOR MALTESE: Mr. President,
19 this bill was previously introduced in this
20 house -- I was its prime sponsor -- in 1993. It
21 passed 58 to zero. In 1994, it passed 56 to 1.
22 It was on the non-controversial calendar. The
23 Assembly sponsor is Assemblyman Crowley in the
24 Assembly.

25 The bill permits the Department

1 of Social Services to have access to the
2 criminal history record of any person seeking
3 approval to become an operator, administrator or
4 receiver of an adult care facility, in addition,
5 any person seeking recertification as an
6 operator, administrator or receiver of an adult
7 care facility. This occurs every four years.

8 All requests must be accompanied
9 by -

10 ACTING PRESIDENT MARCELLINO:

11 Senator Maltese, your explanation has been
12 deemed satisfactory. Can we read the last
13 section, please.

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

16 ACTING PRESIDENT MARCELLINO:

17 Call the roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 60.

20 ACTING PRESIDENT MARCELLINO: The
21 bill is passed.

22 Secretary will read Calendar
23 Number 647, by Senator Seward.

24 THE SECRETARY: Calendar Number
25 647, by Senator Seward, Senate 4279, an act to

1 amend the Public Service Law, in relation to the
2 elimination of the mandate.

3 SENATOR LEICHTER: Explanation.

4 ACTING PRESIDENT MARCELLINO:

5 Before we have an explanation, can we have some
6 order in the house, please, so we can hear the
7 explanation by Senator Seward. Senator Seward.

8 SENATOR SEWARD: Thank you, Mr.
9 President.

10 This bill passed the Senate last
11 year (inaudible-microphone inoperative) electric
12 and gas utilities with annual revenues in excess
13 of \$200 million which, in fact, are all seven of
14 the major utilities and two gas corporations.

15 The idea behind this legislation
16 is that, as the utilities are beginning to
17 restructure and move to more of a market-based
18 competitive era, the need for these regular
19 management audits has diminished. Originally,
20 they were in place to improve the efficiency and
21 reduce the costs of the utility for the
22 ratepayers under the traditional rate of return
23 regulation, but in a more market-based
24 competitive era, the marketplace will, in fact,
25 take care of this in terms of bringing out

1 efficiencies in the utilities.

2 But we do -- we do maintain under
3 this legislation the PSC does have the authority
4 to come in with one of these audits, not on an
5 every five-year basis but on a -- it's at their
6 discretion so that if there are any problems
7 that may arise or a number of complaints that
8 may come in that such an audit could be
9 conducted at that point to take care of the
10 problems that may be there.

11 ACTING PRESIDENT MARCELLINO:
12 Read the last section.

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

15 ACTING PRESIDENT MARCELLINO:
16 Call the roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT MARCELLINO:
19 Tully is no.

20 THE SECRETARY: Ayes 59, nays
21 one, Senator Tully recorded in the negative.

22 ACTING PRESIDENT MARCELLINO: The
23 bill is passed.

24 THE SECRETARY: Calendar Number
25 688, by member of the Assembly Greene, Assembly

1 Print 5470, an act to amend the Banking Law, in
2 relation to junior mortgages.

3 SENATOR PATERSON: Explanation.

4 ACTING PRESIDENT MARCELLINO:
5 Senator Farley, there's been an explanation
6 called for on the bill.

7 SENATOR FARLEY: I will be most
8 happy to do the explanation. Now, pay
9 attention.

10 This is a bill that would
11 decrease the minimum loan amount that is
12 required for a line of credit on a junior lien
13 mortgage, also known as an open end home equity
14 loan from the current minimum of 7,500 to 2500.

15 This bill was passed unanimously
16 in the Assembly on March 24th. The existing
17 \$7500 minimum was established for financial
18 institutions and licensed lenders in 1983 when
19 open ended lines of credit secured by a junior
20 lien mortgage were a brand new product in New
21 York State.

22 Now that the consumers have
23 become more educated on the benefits and risks
24 associated with these loans, there is no need
25 for such a high and arbitrary minimum loan

1 amount. The proposed minimum of 2500 is
2 consistent with the statutes and lending
3 practices in almost all the other states.
4 Furthermore, under New York law, no similar
5 minimum exists for closed end home equity
6 loans. There's no need to maintain such a
7 different standard for these two types of home
8 equity loan. Closed end loans often carry a
9 higher interest rate, and open ended loans do
10 not offer the borrower the flexibility to access
11 a revolving line of credit as the need arises.

12 The bill would give borrowers a
13 greater ability to decide which type of loan
14 best suits their needs. By lowering this
15 minimum, home owners with low equity in their
16 homes will be given more financial options, in
17 other words, young home owners. Home equity
18 loans are a popular source of money for home
19 owners because the proceeds can be used to meet
20 various needs such as home improvements, debt
21 consolidation and education costs. Incident
22 ally, home owners who really need this money
23 will get it one way or the other, but home
24 equity loans are generally the most cost
25 effective way to get it, and interest rates on

1 these open-ended home equity loans are much
2 lower than unsecured loans and on credit cards
3 and, incidentally, the interest that is paid is
4 tax deductible.

5 Is that more than you wanted to
6 know?

7 SENATOR GOLD: Will the Senator
8 yield to a question, please?

9 ACTING PRESIDENT MARCELLINO:
10 Senator Farley, will you yield?

11 SENATOR FARLEY: Yeah.

12 ACTING PRESIDENT MARCELLINO:
13 Senator Farley yields, sir.

14 SENATOR GOLD: Senator, I would
15 like to clarify this for myself. I hear this
16 all the time. You said that the interest is tax
17 deductible, is that correct, sir?

18 SENATOR FARLEY: That's my
19 understanding.

20 SENATOR GOLD: Well, Senator, if
21 somebody borrows on a home equity loan, let's
22 say \$5,000, and they spend the next two weeks in
23 London on that money, are you saying to me that
24 that loan is -- the interest on that loan is tax
25 deductible?

1 SENATOR FARLEY: It's my
2 understanding, yes.

3 Incidentally, let's just address
4 that loan for a minute. If somebody is
5 borrowing \$5,000 to go to London, I think, I'm
6 not sure, I don't make loans, but the bank would
7 want to know why they're making this loan. If
8 it's for home improvement, they're perhaps more
9 apt to get it. If it is for education
10 improvement, that sort of thing, but I mean you
11 gave an example that might not -- and
12 incidentally they couldn't get a \$5,000 loan
13 because the minimum is 7500 now.

14 SENATOR GOLD: But not under your
15 bill, Senator.

16 SENATOR FARLEY: Under my bill,
17 it would be 2500.

18 SENATOR GOLD: Well, under your
19 bill, they could get a loan to go to London.

20 SENATOR FARLEY: Actually, it's
21 Assemblywoman Greene's bill.

22 SENATOR GOLD: Oh. Will the
23 Senator yield to one more question?

24 ACTING PRESIDENT MARCELLINO:
25 Senator, will you yield to one more question?

1 SENATOR FARLEY: I would be
2 delighted.

3 ACTING PRESIDENT MARCELLINO: He
4 will be delighted.

5 SENATOR GOLD: Senator, you have
6 a home owner that's got a lot of credit card
7 debt out there at a high interest rate and they
8 borrow 25-, \$30,000, take a home equity loan.
9 They pay off the credit card. That's all they
10 do is pay off the credit card. Is it your
11 understanding, sir, that that interest is tax
12 deductible?

13 SENATOR FARLEY: I think it is
14 and I think it's a -- that's a good way to do it
15 because they'd be paying 18 to 20-some-odd
16 percent on these credit cards and these loans
17 are much lower.

18 SENATOR GOLD: Mr. President.

19 ACTING PRESIDENT MARCELLINO:
20 Yes, sir.

21 SENATOR GOLD: On the bill, Mr.
22 President.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Gold, on the bill.

25 SENATOR GOLD: Oh, I'm sorry.

1 With Senator Farley's permission, could I ask
2 one more question?

3 ACTING PRESIDENT MARCELLINO:
4 Senator Farley, do you yield for one more
5 question?

6 SENATOR FARLEY: I'd like to know
7 who that is up in the balcony.

8 ACTING PRESIDENT MARCELLINO:
9 It's a person imitating Senator Dollinger.

10 SENATOR GOLD: Point of order,
11 Mr. President.

12 ACTING PRESIDENT MARCELLINO:
13 Senator Gold.

14 SENATOR GOLD: I thought that the
15 other side would be thrilled to have him up in
16 the balcony. I don't know why you're encouraging
17 him to come back down.

18 SENATOR FARLEY: Mr. President,
19 how long do we get to keep him there?

20 ACTING PRESIDENT MARCELLINO:
21 That's what the guard at the door is for.

22 SENATOR GOLD: Now, would Senator
23 Farley yield to a question?

24 ACTING PRESIDENT MARCELLINO:
25 Senator Farley.

1 SENATOR FARLEY: Senator Farley
2 would be delighted to yield.

3 ACTING PRESIDENT MARCELLINO: He
4 yields.

5 SENATOR GOLD: Senator Farley, in
6 order to get the home equity loan, my under
7 standing is they are secured by a mortgage or a
8 lien.

9 SENATOR FARLEY: Second mortgage.

10 SENATOR GOLD: Are there closing
11 costs?

12 A VOICE: They could be waived.

13 ACTING PRESIDENT MARCELLINO:
14 Excuse me. I know I got you on that one.

15 SENATOR GOLD: As the attorney
16 for the reporter, I -

17 ACTING PRESIDENT MARCELLINO:
18 Senator Gold, thank you.

19 SENATOR FARLEY: It was my
20 opinion, and I have been corroborated in that.
21 They're almost always waived.

22 SENATOR GOLD: They're waived?

23 SENATOR FARLEY: Almost always.
24 It's a competitive market.

25 SENATOR GOLD: O.K. On the bill,

1 Mr. President.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Gold, on the bill.

4 SENATOR GOLD: Yeah, Mr.

5 President. I don't want to state something as a
6 fact that I'm not a hundred percent sure of, but
7 I think, Senator Farley, that you might be
8 interested in just checking this out because I
9 think there has been some misleading
10 advertising.

11 My understanding, and I'd like to
12 be corrected if I'm wrong, Senator Farley, that
13 if you own a piece of real estate, a home, and
14 you want to put an addition on your home or fix
15 up your home and you get a home equity loan,
16 there's no doubt that that interest is tax
17 deductible, but if you get a home equity loan
18 for a vacation or to pay off credit cards or to
19 do something unrelated to the property, I do not
20 believe that that is tax deductible, and what
21 bothers me, Senator, is I respect you very much
22 as a law professor, and if I'm right and you're
23 wrong, it just shows how the average citizen can
24 be misled if I am right.

25 Am I right, Senator?

1 SENATOR FARLEY: You're partially
2 right.

3 SENATOR GOLD: O.K.

4 SENATOR FARLEY: You're properly
5 right -

6 ACTING PRESIDENT MARCELLINO:
7 (Hitting gavel) excuse me -

8 SENATOR FARLEY: -- or nobly
9 right. Let me just say -

10 ACTING PRESIDENT MARCELLINO:
11 Excuse me.

12 SENATOR GOLD: Yeah, I saw the
13 Senator rise, Mr. President, so I would yield if
14 he wants to respond if you don't mind, Mr.
15 President.

16 ACTING PRESIDENT MARCELLINO: Do
17 you wish to ask Senator Gold a question, Senator
18 Farley?

19 SENATOR FARLEY: I -- I will -
20 I'll respond to his question. I thought he
21 asked me -

22 ACTING PRESIDENT MARCELLINO:
23 (Talking over) Well, actually -

24 SENATOR FARLEY: -- a question.

25 ACTING PRESIDENT MARCELLINO: -

1 let Senator Gold finish his statement and then
2 you can respond afterwards.

3 SENATOR GOLD: Well, Mr.
4 President -

5 ACTING PRESIDENT MARCELLINO:
6 (Talking over) because just to get some order in
7 the house so we don't have (unintelligible).

8 SENATOR GOLD: I know you want to
9 get some order and I admire you.

10 ACTING PRESIDENT MARCELLINO:
11 Thank you.

12 SENATOR GOLD: So let me stop my
13 remarks. Senator Farley, would you like to
14 amend the answer?

15 SENATOR FARLEY: Yes, you're
16 right in the respect that if you go in and say,
17 Gee, I want to get a loan to go to Las Vegas, or
18 something, that that is not tax deductible.
19 This has been a very controversial question.
20 Generally speaking, when somebody gets a home
21 equity loan, the reason has got to be a little
22 bit more substantial, or they won't get the loan
23 or it won't be tax deductible. But I once had a
24 professor in law school, of course, I did not go
25 -- in taxation that says if there is any doubt

1 claim it. You know, I mean I'm not going to
2 prescribe that, but generally speaking almost
3 always, it's my understanding -- I'm not an
4 accountant even though I do teach them -- that
5 almost all home equity loans are tax deductible
6 whereas an unsecured loan is not, so
7 consequently it's a better way to consolidate
8 your debts and a few other things.

9 SENATOR GOLD: Mr. President,
10 thank you and thank you, Senator Farley.

11 Senator Farley, I appreciate that
12 comment, but Senator Farley, I got to go at it
13 again. I don't think you're right, Senator. I
14 think that, as a matter of fact, the lending
15 institutions that advertise down around in the
16 city of New York say exactly that. They say,
17 you know, and besides which it will be tax
18 deductible, and then at the end of the commer
19 cial, they all say, as to the deductibility you
20 may want to consult your tax adviser; so that's
21 their hook, I guess, not to get sued, but
22 Senator, there is a misapprehension, and I
23 believe that it is our responsibility
24 particularly, Senator, if you want to change the
25 eligibility and open it up to more and more

1 people, we're going to have more and more people
2 being audited, more and more people getting in
3 trouble.

4 I believe, Senator Farley, that
5 if it's the intent to make these tax deductible
6 and we want to do it, then let's do it but under
7 existing law, Senator Farley, and I know it's
8 something that concerns you, under existing law,
9 I believe we are misleading people, because I
10 believe that unless the loan's purpose is to
11 improve the real estate, it is not tax
12 deductible and when you say, Senator, it's not
13 tax deductible if you go to Las Vegas, well, I
14 don't think it's tax deductible if you go to Las
15 Vegas on your credit card, if you buy a
16 motorcycle on your credit card, if you do any
17 other things on your credit card and then pay
18 off your credit card. Since those purposes were
19 not related to the reality, I do not believe
20 it's tax deductible, and all I'm saying to you,
21 Senator Farley, is you can do a service to the
22 public if we either demand that the banks do not
23 make this claim or let's change the law and make
24 it deductible, but I don't think we should allow
25 the banking institutions to sell a product to

1 people on the basis that they're gaining a tax
2 deduction if they are not.

3 ACTING PRESIDENT MARCELLINO: Any
4 other Senator wishing to be heard? Read the
5 last section.

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

8 ACTING PRESIDENT MARCELLINO:
9 Call the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 58, nays 2,
12 Senators Marchi and Stavisky recorded in the
13 negative.

14 ACTING PRESIDENT MARCELLINO: The
15 bill is passed.

16 THE SECRETARY: Calendar Number
17 701, by Senator Maziarz, Senate Print 2805, an
18 act to authorize Adam C. Mesiti to apply for
19 retroactive membership.

20 ACTING PRESIDENT MARCELLINO:
21 Read the last section.

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

24 ACTING PRESIDENT MARCELLINO:
25 Call the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 60.

3 ACTING PRESIDENT MARCELLINO: The
4 bill is passed.

5 THE SECRETARY: Calendar Number
6 715, by Senator Velella, Senate Print 4447, an
7 act authorizing the city of New Rochelle to
8 accept an application.

9 ACTING PRESIDENT MARCELLINO:
10 Read the last section.

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

13 ACTING PRESIDENT MARCELLINO:
14 Call the roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 60.

17 ACTING PRESIDENT MARCELLINO: The
18 bill is passed.

19 THE SECRETARY: Calendar Number
20 730, by Senator Maziarz, Senate Print 405, an
21 act to amend the Vehicle and Traffic Law, in
22 relation to increasing penalties.

23 ACTING PRESIDENT MARCELLINO:
24 Read the last section.

25 THE SECRETARY: Section 3. This

1 act shall take effect on the first day of
2 November.

3 ACTING PRESIDENT MARCELLINO:
4 Call the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 60.

7 ACTING PRESIDENT MARCELLINO: The
8 bill is passed.

9 THE SECRETARY: Calendar Number
10 742, by Senator Trunzo, Senate Print 1523-A.

11 SENATOR TRUNZO: Will you lay it
12 aside.

13 ACTING PRESIDENT MARCELLINO: Lay
14 that bill aside at the request of the sponsor.

15 THE SECRETARY: Calendar Number
16 806 by Senator Velella, Senate Print 3494, an
17 act to amend the General Business Law, in
18 relation to permitting the sale.

19 SENATOR PATERSON: Explanation.

20 ACTING PRESIDENT MARCELLINO:
21 Senator Velella, an explanation has been
22 requested.

23 SENATOR VELELLA: Under the
24 current law, pawnbrokers are only allowed to
25 offer up items that aren't redeemed at public

1 auction. This bill, which we passed last year,
2 would allow them to offer up items that haven't
3 been reclaimed in a private sale.

4 The Governor vetoed the bill last
5 year and asked that we put the provision in that
6 under this bill all aspects of any private sale
7 must meet the standard of being commercially
8 reasonable, so that some type of a private in
9 house deal could not be made. Pawnbrokers in
10 the state have been operating under this law
11 which makes them go by public auction and very
12 often it's costly to hold a public auction with
13 the advertising and with the auctioneer fees.

14 This would make them be able to
15 have private sales which would be measured by a
16 commercially responsible standard.

17 ACTING PRESIDENT MARCELLINO:
18 Read the last section.

19 SENATOR PATERSON: Mr.
20 President.

21 ACTING PRESIDENT MARCELLINO:
22 Senator Paterson, why do you rise?

23 SENATOR PATERSON: If Senator
24 Velella will yield for one question.

25 ACTING PRESIDENT MARCELLINO:

1 Senator Velella, do you yield?

2 SENATOR PATERSON: Senator, there
3 was an issue which caused the Governor to veto
4 this legislation relating to the unscrupulous
5 activities of pawnbrokers, and my question
6 simply is do you feel you have addressed this in
7 the new legislation because I know the Governor
8 would want me to ask you that.

9 SENATOR VELELLA: You know, thank
10 God we have a very reasonable, intelligent
11 Governor, and he picked up a defect that
12 previous governors would not have picked up, I'm
13 sure, so that commercial -- commercially
14 reasonable was at his request, and I think it
15 improves the bill tremendously. Thank God for
16 his leadership.

17 SENATOR PATERSON: Thank you.

18 ACTING PRESIDENT MARCELLINO:
19 Senator Stavisky. You're no, I'm sorry. Read
20 the last section.

21 THE SECRETARY: Section 6. This
22 act shall take effect on the 30th day.

23 ACTING PRESIDENT MARCELLINO:
24 Call the roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 59, nays 1,
2 Senator Stavisky recorded in the negative.

3 ACTING PRESIDENT MARCELLINO: The
4 bill is passed.

5 Senator Skelos.

6 SENATOR SKELOS: Would you call up
7 Senator Velella's bill, Calendar Number 232.

8 ACTING PRESIDENT MARCELLINO:
9 Secretary will read Calendar Number 232.

10 THE SECRETARY: Calendar Number
11 232, by Senator Velella, Senate Print 18-A, an
12 act to amend the Insurance Law, in relation to
13 binding authority.

14 ACTING PRESIDENT MARCELLINO:
15 Read -- Senator Velella, an explanation.

16 SENATOR VELELLA: Yes, this is a
17 technical bill which will put New York State on
18 an even level with our neighboring states.

19 Currently excess line brokers in
20 New Jersey, Connecticut and Pennsylvania are
21 permitted to bind coverages, while New York
22 brokers are not allowed to. Basically what will
23 happen is a broker will call for an excess lines
24 placement of a policy. He cannot tell the
25 client that the policy is bound until he

1 receives a copy of the binder, whereas a Jersey
2 or a Connecticut broker can be -- can receive a
3 binder over the phone and can issue a binder
4 directly.

5 This will put our brokers on an
6 even level with brokers in the other states. It
7 will help to retain jobs in New York because the
8 excess line brokers will stay in New York and
9 not jump over the line to Jersey or to
10 Connecticut. It's supported by the Excess Line
11 Association in New York, the Professional
12 Insurance Wholesalers Association, and there is
13 no known opposition to the bill.

14 ACTING PRESIDENT MARCELLINO:
15 Senator Paterson.

16 A VOICE: Explanation
17 satisfactory.

18 SENATOR PATERSON: The
19 explanation is satisfactory.

20 ACTING PRESIDENT MARCELLINO: He
21 is overwhelmed by the explanation, as we all
22 are. Read the last section.

23 THE SECRETARY: Section 3. This
24 act shall take effect in 180 days.

25 ACTING PRESIDENT MARCELLINO:

1 Call the roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 60.

4 ACTING PRESIDENT MARCELLINO: The
5 bill is passed.

6 SENATOR DOLLINGER: Mr.
7 President.

8 ACTING PRESIDENT MARCELLINO:
9 Senator.

10 SENATOR DOLLINGER: I was out of
11 the chamber when Calendar 714 and 715 were voted
12 on. May I ask unanimous consent to be recorded
13 in the negative on both of those. I was
14 elsewhere in the chamber.

15 ACTING PRESIDENT MARCELLINO: No
16 objection, your recorded vote will be -- excuse
17 me. 714 I don't think we did yet, but we're
18 checking.

19 A VOICE: It's not on the active
20 list.

21 ACTING PRESIDENT MARCELLINO: Not
22 even on the active list.

23 SENATOR DOLLINGER: Well, then
24 just on Number 715.

25 ACTING PRESIDENT MARCELLINO: 715

1 has passed, yes.

2 SENATOR DOLLINGER: Thank you.

3 SENATOR SKELOS: Mr. President,
4 would you call up Senator Velella's bill,
5 Calendar Number 586.

6 ACTING PRESIDENT MARCELLINO:
7 Secretary will read.

8 THE SECRETARY: Calendar Number
9 586, by Senator Velella, an act to amend the
10 Insurance Law, in relation to agent termination
11 reporting requirements.

12 SENATOR PATERSON: Explanation.

13 ACTING PRESIDENT MARCELLINO:
14 Explanation has been asked for, Senator
15 Velella.

16 SENATOR VELELLA: Under the
17 present system, when a company wants to
18 terminate a broker, they just simply send in a
19 termination report that the broker is not going
20 to be writing business for them any more. That
21 does not provide a system for some type of
22 analysis as to the reason behind why the broker
23 may have been terminated.

24 This will give immunity to a
25 company and require them to file a statement

1 with the Insurance Department telling them the
2 reason why, and giving a copy to the broker.
3 The broker will then be able to respond and seek
4 legal redress. The immunity provision here is
5 very simply the company may say that this
6 person's issued bad checks. This person's
7 defaulted on payments to the company and if, in
8 fact, that is not true they would be held
9 liable. We'd rather have an adversarial
10 proceeding where that person can go in and deny
11 the claim and prove them wrong without the
12 question of liability attaching. Other states
13 do it, and I think it will improve the working
14 conditions for brokers.

15 SENATOR PATERSON: Mr. President,
16 if Senator Volker would yield -- sorry, I mean
17 if Senator Velella would yield for a question.

18 SENATOR VELELLA: Yeah.

19 ACTING PRESIDENT MARCELLINO:
20 Senator Velella, do you yield? He yields.

21 SENATOR PATERSON: Senator
22 Velella, if truth is an affirmative defense,
23 then why would there be a necessity to establish
24 immunity in this particular case? In other
25 words, if the insurance company is saying this

1 about the broker and it's correct, why would we
2 want to limit the opportunity for there to be
3 any court intervention here?

4 SENATOR VELELLA: Two reasons
5 that I can think of immediately, Senator, the
6 first reason being the congestion in the courts
7 and the ability for the courts to deal with this
8 issue over a long period of time while a
9 broker's livelihood may depend on it. It may
10 take him four, five or six years to get the
11 proper litigation and, secondly, it would be
12 less costly to a broker and to a company to
13 bring this matter as a disciplinary or as an
14 administrative proceeding before the Insurance
15 Department rather than go through the costly
16 litigation of lawsuits for libel, slander and
17 then pleading the affirmative defense, having
18 the case established, establishing the
19 affirmative defense. It would take a long
20 period of time, at which point the broker might
21 not have the opportunity to place business and,
22 secondly, it would cost them money to retain
23 counsel and jam up the court system with a lot
24 of unneeded litigation.

25 SENATOR PATERSON: Then, Mr.

1 President, if Senator Velella would continue to
2 yield.

3 ACTING PRESIDENT MARCELLINO:
4 Senator Velella, do you continue to yield?

5 SENATOR VELELLA: Yes.

6 ACTING PRESIDENT MARCELLINO: He
7 does.

8 SENATOR PATERSON: Then, Senator
9 Velella, it would appear, based on your
10 statement, that what we're really saying is that
11 the Insurance Department rather than the courts
12 would be the one that would be most apt to judge
13 these types of situations.

14 SENATOR VELELLA: Well, I don't
15 think we're going to be in complicated legal
16 problems. I think a company will file a notice
17 that an agent has been terminated. They will
18 give the reason. The agent now will get a copy
19 of that which he -- which he never gets -- which
20 he never got under existing law, and he will be
21 able to respond, and the Insurance Department
22 will be able to intervene and try to negotiate a
23 settlement of the issue.

24 You always have the right to sue
25 them for some wrongful act if it's an outrageous

1 act that you feel that you want to litigate. I
2 don't think that this should be binding on them
3 only if they made some kind of a remark that
4 might be determined to be libelous or
5 slanderous. It is confidential, by the way,
6 does not go out to the public. Could be
7 discovered in a judicial proceeding but not as a
8 public release or a public item.

9 SENATOR PATERSON: If Senator
10 Velella would continue to yield.

11 ACTING PRESIDENT MARCELLINO:
12 Senator yields.

13 SENATOR VELELLA: Yes.

14 SENATOR PATERSON: I understand
15 that, Senator, but the only problem I have in
16 this particular situation is that by keeping it
17 within the Department, some of the allegations
18 that might be made theoretically might be
19 slanderous or libel and, therefore, to establish
20 immunity in that particular case are in those
21 types of situations, in my opinion, denies the
22 aggrieved some of the options they otherwise
23 would have, and what is actually binding them in
24 this case is their own professional duty, and so
25 I'm just wondering if this is really a question

1 in which the entity that would make the final
2 decision really understands the actual civil
3 action as much as they understand insurance and,
4 if they don't, then that would put the plaintiff
5 at some -- in some position where, in my
6 opinion, they wouldn't -- they wouldn't perhaps
7 be receiving justice.

8 SENATOR VELELLA: That might not
9 be an ideal solution to a problem, but right now
10 the broker is left with no recourse at all. The
11 company merely states that they terminate the
12 relationship. The broker is not given a
13 reason. The broker is not told why; they are
14 just simply terminated and there is no
15 recourse. This will at least require that the
16 company give a reason. Now, a company might
17 want to say, this fellow stole a lot of money
18 from us. They would not be able to say that if
19 they would have to then go through a long legal
20 battle and possibly win their case, because they
21 can prove that he stole money but wind up in
22 litigation for years.

23 The Department would be the place
24 to resolve that, and while it may have not be
25 perfect, it does provide the broker an

1 opportunity to stop large companies from
2 cancelling brokers and agents agreements.

3 ACTING PRESIDENT MARCELLINO:
4 Senator Dollinger.

5 SENATOR DOLLINGER: Sponsor yield
6 to a couple questions?

7 ACTING PRESIDENT MARCELLINO:
8 Senator Velella, do you yield?

9 SENATOR VELELLA: Yes.

10 ACTING PRESIDENT MARCELLINO: He
11 yields.

12 SENATOR DOLLINGER: So I
13 understand this through you, Mr. President, the
14 current law simply provides that an insurance
15 company must file its statement with the
16 Department of Insurance of the reasons for
17 termination, is that correct?

18 SENATOR VELELLA: No, they -
19 they don't have to file a detailed statement.
20 They simply say we are cancelling the agency
21 with Guy Velella, a broker of ours, and they can
22 give a vague answer like we're reducing our
23 field operations, we're making corporate cut
24 backs. The agent is never given any opportunity
25 to try and change that, and I'm sure you're

1 aware some companies, not all but one or two
2 that may be not dealing with 100 percent good
3 faith have cancelled agencies and tried to
4 directly write business that brokers had
5 developed and, therefore, cut them out of the
6 commission -- or agencies had developed, cut
7 them out of the commission, and this will at
8 least give them an opportunity to give a
9 statement as to why. Clearly if the person was
10 dishonest, fine. Then they can have the
11 opportunity, the agent or the broker can have
12 the opportunity to respond to that and bring it
13 to the attention of the Insurance Department.
14 It will also help to flush out the fact that
15 maybe some companies are trying not to write
16 business in certain areas and not write business
17 with certain brokers who have less than perfect
18 claim records.

19 SENATOR DOLLINGER: Again through
20 you, Mr. President, but that's current law.
21 Your -- this bill doesn't affect the current law
22 which is that the state, upon termination of an
23 agency, the insurance carrier must file, shall
24 file, with the Superintendent of Insurance a
25 statement which says the facts relative to such

1 termination and the cause thereof; that's
2 current law.

3 SENATOR VELELLA: What it is is
4 that the problem comes up because the notices
5 that are filed are extremely sanitized. They are
6 vague, nondescript statements. Hopefully with
7 this, with the person getting -- the person
8 involved that's been cancelled, the agent not
9 the policyholder, the agent being canceled will
10 get a notice of what the company is doing and be
11 able to see and counteract that by filing his
12 own statement back.

13 SENATOR DOLLINGER: O.K. Again
14 through you, Mr. President. The reason why I
15 ask -

16 ACTING PRESIDENT MARCELLINO:
17 Senator Velella, do you continue to yield?

18 SENATOR VELELLA: Yes.

19 ACTING PRESIDENT MARCELLINO: He
20 continues.

21 SENATOR DOLLINGER: The reason
22 why I ask this question is I'm trying to figure
23 out what this bill does, as far as amending
24 subdivision (d) of section 212 of the Insurance
25 Law. What exactly will it do to promote more

1 information from the insurer to the agent? What,
2 as I understand, this says is that if you don't
3 -- if there's no evidence of fraud, no evidence
4 of bad faith, no evidence of gross negligence,
5 but the statement ends up being untrue for some
6 reason or inaccurate for some reason, there's no
7 cause of action.

8 This creates a qualified immunity
9 for the insurance company making the report, is
10 that correct?

11 SENATOR VELELLA: Yes. Let me
12 try to explain it from the other end of the
13 coin. You're talking about the broker who is
14 victimized by the company.

15 SENATOR DOLLINGER: Right.

16 SENATOR VELELLA: Let's talk
17 about the broker who may not be the most
18 honorable broker around. Right now companies
19 will not put any specific statement as to what
20 he's done in there because they feel that they
21 may be sued for libel or slan... libel. With
22 this law, in the absence of bad faith, fraud or
23 gross negligence, they will be able to better
24 call to the attention of the Insurance
25 Department those acts which a broker committed

1 that have caused them to cancel him.

2 Now, that broker then has the
3 opportunity to come in and we are approaching it
4 from giving the broker his fair day in court.
5 Right now companies will not file any details
6 about it because they're afraid of the
7 possibility of law suits, so it works from both
8 ends. Depends which end you're looking at.

9 SENATOR DOLLINGER: O.K. Again,
10 through you, Mr. President, just to clarify for
11 me, what do you mean by the phrase "bad faith"?

12 SENATOR VELELLA: Not good
13 faith.

14 SENATOR DOLLINGER: Again,
15 through you, Mr. President, the reason why I ask
16 that question is, is it bad faith to put a fact
17 in a report that you know may not be true or
18 that you don't have any evidence to support and
19 then aren't you right back in the problem that
20 we described a minute ago?

21 SENATOR VELELLA: No, Senator, I
22 don't believe so, because you're probably closer
23 to the judicial future than I am, but let me -
24 let me say that the courts are constantly
25 determining what is a good faith effort, what is

1 reasonable, a variety of legislative terms that
2 we use that we can't specifically define every
3 single act and every single condition, so we
4 have to depend on our judiciary to make those
5 kinds of decisions and in many cases our
6 agencies to determine what is a good faith
7 effort, what is reasonable, what is the degree
8 that would be required, and I think reasonable
9 intelligent minds can arrive at some type of a
10 conclusion as to what is an obviously bad faith
11 statement -- totally without fact, totally with
12 a disregard for the truth. I don't mean to
13 limit the means of determining bad faith but
14 merely to outline some of the provisions that a
15 person adjudicating that would have to look at.
16 Is it just a total disregard of the facts as you
17 know them? Those are the kinds of things that
18 I'm sure you're familiar with.

19 SENATOR DOLLINGER: O.K. Thank
20 you, Mr. President.

21 Just on the bill, briefly. I'm
22 not -

23 ACTING PRESIDENT MARCELLINO:
24 Senator Dollinger, on the bill.

25 SENATOR DOLLINGER: I appreciate

1 Senator Vellella's interpretation of the term
2 "bad faith" but, quite frankly, I think bad
3 faith could be just the kinds of things that
4 created liability in the first place, knowing
5 misrepresentation of the facts, knowing
6 statement of something that they don't believe
7 is truth or that they can't support by
8 evidence. If that's the case, then you're
9 triggering the same kind of liability and I
10 don't think you're so much changing the
11 qualified immunity that already exists. I also
12 find it interesting, and I'm not sure about the
13 number of people that have sued under this
14 provision, but I find it unusual if somebody
15 could maintain much of a damage action against
16 an insurance company for the contents of that
17 report when that report is a privileged
18 communication; that is, it's not dispersed by
19 the insurance company.

20 The report comes in, says Rick
21 Dollinger, broker, has made X number of
22 mistakes, never disclosed to anyone. I'm not
23 sure what kind of defamation action. I'm also
24 concerned because the Professional Insurance
25 Agents seem to be against this bill. I've read

1 their memo. I think they make some -- they're
2 concerned, perhaps overly so, about some of
3 these factors and, frankly, I'll listen to the
4 rest of the debate before I figure out how I'm
5 going to to vote.

6 ACTING PRESIDENT MARCELLINO:
7 Read the last section, please.

8 THE SECRETARY: Section 2. This
9 act shall take effect on the 180th day.

10 ACTING PRESIDENT MARCELLINO:
11 Call the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Those recorded in
14 the negative on Calendar Number 586 are Senators
15 Abate, Connor, Dollinger, Gold, Gonzalez,
16 Paterson, Sampson, Seward, Smith and Waldon;
17 also Senator Leichter; also Senator Montgomery.
18 Ayes 48, nays 12.

19 ACTING PRESIDENT MARCELLINO: The
20 bill is passed.

21 Senator Skelos.

22 SENATOR SKELOS: Calendar Numbers
23 987 and 988, by Senator Maziarz, were inadver
24 tently laid aside. If we could call them up at
25 this time.

1 ACTING PRESIDENT MARCELLINO:

2 Secretary will read the inadvertent bills.

3 THE SECRETARY: Calendar Number
4 987, by Senator Maziarz, Senate Print 3945, an
5 act to amend the Highway Law, in relation to
6 designating a portion of the state highway
7 system.

8 ACTING PRESIDENT MARCELLINO:

9 Read the last -- call the roll.

10 Last section, I'm sorry. Senator
11 Maziarz.

12 SENATOR MAZIARZ: I would like to
13 explain my vote. I thought you said call the
14 roll.

15 ACTING PRESIDENT MARCELLINO:

16 Well -- can you read the last section, please.

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

19 ACTING PRESIDENT MARCELLINO:

20 Call the roll.

21 Senator Maziarz.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT MARCELLINO:

24 Senator Maziarz, to explain his vote.

25 SENATOR MAZIARZ: This is on 987,

1 correct?

2 ACTING PRESIDENT MARCELLINO:

3 Yes.

4 SENATOR MAZIARZ: Mr. President,
5 this legislation will designate the tri-way
6 bridge in the city of Lockport after a near and
7 dear friend of mine who happened to be on the
8 other side of the political fence. That's why I
9 was somewhat surprised when my colleagues on the
10 other side of the aisle laid this bill aside.

11 Mayor Rotondo served for several
12 years as the mayor of Lockport and as an alder
13 man in the city of Lockport, did an excellent
14 job during his tenure. The city of Lockport
15 grew, and also this bridge, the tri-way bridge,
16 which is the widest bridge along the entire
17 canal system, was constructed largely due to the
18 efforts of Mayor Tom Rotondo.

19 So, Mr. President, I stand in
20 support of this legislation. I think it's a
21 great tribute to a great public servant.

22 Thank you, Mr. President.

23 ACTING PRESIDENT MARCELLINO:

24 Senator Maziarz in the affirmative. Can you
25 read the results of the vote?

1 THE SECRETARY: Ayes 60.

2 ACTING PRESIDENT MARCELLINO: The
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 988, by Senator Maziarz, Senate Print 3946, an
6 act to amend the Highway Law, in relation to
7 designating a portion of the state highway
8 system.

9 SENATOR PATERSON: Explanation.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Maziarz, Senator Paterson has asked for
12 an explanation.

13 SENATOR MAZIARZ: I'm sorry, Mr.
14 President. I was engaged in some conversation
15 with my colleague, Senator Alesi. That was an
16 explanation of Calendar Number 988?

17 ACTING PRESIDENT MARCELLINO:
18 Yes, sir.

19 SENATOR MAZIARZ: Okay. Senator
20 Paterson, William Gregory piloted the space
21 shuttle Endeavor in March of 1995 and also
22 during his trip, shall we say, he made special
23 arrangements to talk via satellite to students
24 in the Lockport High School, where he graduated
25 back in the early 1970s -- or mid-1970s, I

1 should say.

2 After his tour with the astronaut
3 corps for NASA, he has come back to Lockport,
4 spoken to high school students and elementary
5 school students numerous times, Senator
6 Paterson, and is probably the greatest
7 ambassador for science and space exploration in
8 Western New York.

9 ACTING PRESIDENT MARCELLINO:
10 Senator Paterson.

11 SENATOR PATERSON: Yes, Mr.
12 President and Senator Maziarz, Senator Lachman
13 had some questions on these bills and he's out
14 of the chamber on a very busy day on other
15 assignments and I have been unable to figure out
16 what the questions he might have asked were.
17 Perhaps on this bill, he thought maybe this was
18 a bypass that you've created for Republicans
19 that don't want to go over the bridge you just
20 named for a Democrat, but other than that, I
21 can't think of any reason and, hopefully, your
22 explanation is satisfactory.

23 ACTING PRESIDENT MARCELLINO:
24 It's certainly satisfactory to me.

25 SENATOR MAZIARZ: Thank you.

1 ACTING PRESIDENT MARCELLINO:

2 Read the last section.

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

5 ACTING PRESIDENT MARCELLINO:

6 Call the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 60.

9 ACTING PRESIDENT MARCELLINO: The
10 bill is passed.

11 Senator Skelos.

12 SENATOR SKELOS: Mr. President,
13 would you call up Senator Alesi's bill, Calendar
14 Number 809.

15 ACTING PRESIDENT MARCELLINO:

16 Will the Secretary reluctantly read Calendar
17 Number 809.

18 THE SECRETARY: Calendar Number
19 809, by Senator Alesi, Senate Print 4371, an act
20 to amend the Agriculture and Markets Law, in
21 relation to removing the unit pricing exemption
22 for standardized packaging.

23 SENATOR PATERSON: Explanation.

24 ACTING PRESIDENT MARCELLINO:

25 Senator Alesi, an explanation has been asked

1 for.

2 SENATOR ALESI: Thank you, Mr.
3 President.

4 This bill preserves the exemption
5 for certain unit priced commodities by
6 transferring them from regulation to statute.

7 Thank you very much.

8 ACTING PRESIDENT MARCELLINO:
9 Read the last section.

10 Senator Paterson.

11 SENATOR PATERSON: Mr. President,
12 if the sponsor would yield for a question.

13 ACTING PRESIDENT MARCELLINO:
14 Senator Alesi, do you yield?

15 SENATOR ALESI: Yes.

16 ACTING PRESIDENT MARCELLINO: He
17 is happy to, sir.

18 SENATOR PATERSON: What I don't
19 understand, Senator, is why is this necessary
20 now that I know what you're doing? I don't
21 understand why there needs to be any change.

22 SENATOR ALESI: It's not changing
23 it in any way, shape or form, Senator. It's
24 simply streamlining it and making it more
25 efficient to move this from the Ag' and Markets

1 Law directly into the Unit Pricing Law where
2 it's only now referred to.

3 ACTING PRESIDENT MARCELLINO:
4 Read the last section.

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

7 ACTING PRESIDENT MARCELLINO:
8 Senator Leichter, excuse me.

9 SENATOR LEICHTER: I'm sorry, Mr.
10 President. If Senator Alesi would try to yield.
11 I'm trying to understand this bill.

12 ACTING PRESIDENT MARCELLINO:
13 Senator Alesi, would you yield to Senator
14 Leichter?

15 SENATOR LEICHTER: I'm always
16 interested when people say, you know, "This bill
17 really doesn't do anything." It's three pages
18 long. Yours isn't quite three pages.

19 Senator, did I hear you say that
20 all your bill does is move a provision from one
21 chapter of the law into the other chapter of the
22 law? I apologize. I wasn't really paying that
23 careful attention. For that, I apologize.

24 SENATOR ALESI: That's all right,
25 Senator. I'm not sure I was either for that

1 matter. It takes -- the items in question that
2 are specifically mentioned as exempt from unit
3 pricing, such as a quart of this and a gallon of
4 that, currently specifically delineated in the
5 Ag' and Markets Law, in the Unit Pricing Law,
6 they are only referred to and this simply takes
7 them out of Ag' and Markets and specifically
8 refers to them in Unit Pricing.

9 SENATOR LEICHTER: Okay. Just,
10 again, so I understand, Senator, with your
11 indulgence -- you're good enough to answer the
12 question. You're not eliminating unit pricing
13 for the items listed in your bill, am I -- do I
14 understand that correctly?

15 SENATOR ALESI: The items listed
16 in the bill, Senator, with all respect are
17 exempt from unit pricing because they are the
18 standard by which we measure against for unit
19 pricing. In other words, we use a gallon. We
20 use a quart. We use a half pint, five pounds,
21 ten pounds as those standard units of measure.
22 They are exempt from unit pricing because they
23 are the benchmark aainst which we do comparative
24 shopping.

25 SENATOR LEICHTER: Again, if you

1 would continue to yield, please. Is that also
2 true for ice cream, sherbert, sorbet, frozen
3 yogurts? I guess they're sold in pints and half
4 pints, and so on.

5 SENATOR ALESI: If you had said
6 yogurt, Senator, you would have had me but, yes,
7 it's also true for those items you mentioned.
8 No longer true for yogurt.

9 SENATOR LEICHTER: Why is that?

10 SENATOR ALESI: Because yogurt is
11 no longer sold in half pints, pints, quarts or
12 gallons. It's now sold in a different unit.

13 SENATOR LEICHTER: But what
14 happens if somebody decides to put sorbet into
15 units other than pints or half pints, and so
16 on?

17 SENATOR ALESI: Well, then it
18 would be -- then it would be unit priced and it
19 would not be exempt under the bill that we're
20 talking about here and that would be good for
21 the consumers because then they'd have a measure
22 of unit against which to compare.

23 SENATOR LEICHTER: But, as I look
24 at the bill -- I'm reading it quickly -- why
25 didn't it just say that any product that is sold

1 other than in a quart or, I guess in one -
2 yeah, I guess you start off pint, quart, half
3 gallon, one gallon, one half liter, will be
4 subject to unit pricing?

5 SENATOR ALESI: Senator, I'm
6 sorry. Would you just repeat the question for
7 me.

8 SENATOR LEICHTER: Well, I want
9 to be sure that when you say that if somebody,
10 to get around a unit pricing, puts his sorbet
11 into a container which is not one of the sizes
12 you mention, that that product will still be in
13 that different container, now will still be
14 subject to unit pricing.

15 SENATOR ALESI: That's exactly
16 what the bill does, Senator, because if it is
17 not in any one of those units of measure that
18 are specifically mentioned and in Unit Pricing
19 Law that we're proposing, then it would have to
20 be unit priced.

21 SENATOR LEICHTER: All right. So
22 this is -- in no respect, you're assuring us
23 will eliminate unit pricing but what you're
24 saying is that actually this will ensure that
25 unit pricing will occur when somebody uses other

1 than the standard packaging sizes.

2 SENATOR ALESI: Not only can I
3 assure you that, I can tell you what the
4 confusion stems from because initially it says
5 we're repealing it from the Ag' and Markets Law,
6 and I think that that's probably the initial
7 confusion, if there is any. It's simply being
8 done to transfer it over into the Unit Pricing
9 Law to streamline it and make it more
10 efficient.

11 SENATOR LEICHTER: All right.
12 Thank you.

13 ACTING PRESIDENT MARCELLINO:
14 Read the last section, please.

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

17 ACTING PRESIDENT MARCELLINO:
18 Call the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 60.

21 ACTING PRESIDENT MARCELLINO: The
22 bill is passed.

23 THE SECRETARY: Calendar Number
24 856, by Senator Skelos, Senate Print 3504, an
25 act to amend the Civil Practice Law and Rules,

1 in relation to privileged communications.

2 SENATOR PATERSON: Explanation.

3 ACTING PRESIDENT MARCELLINO:

4 Senator Skelos, an explanation has been
5 requested.

6 SENATOR SKELOS: Mr. President,
7 this bill was introduced at the request of the
8 committee on Civil Practice Law and Rules of the
9 New York State Bar Association and is really
10 intended to recognize that electronic media,
11 such as E-mail, is here to stay as an integral
12 part of our lives.

13 CPLR, Article 45, concerns
14 certain privileged -- privileges for
15 confidential communications between certain
16 classes of people, such as lawyers and clients,
17 doctors and patients, spouses, clergy, and so
18 forth.

19 Apparently communication by
20 E-mail has raised a significant concern with
21 practitioners. On one hand, an E-mail message,
22 even one that is intended to remain private, can
23 remain on the server of various computer
24 systems. Although no case has addressed it,
25 there is a significant issue as to whether such

1 commun...

2 SENATOR LEICHTER: Explanation
3 satisfactory.

4 SENATOR SKELOS: Thank you very
5 much.

6 ACTING PRESIDENT MARCELLINO:
7 Read the last section.

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

10 ACTING PRESIDENT MARCELLINO:
11 Call the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 60.

14 ACTING PRESIDENT MARCELLINO: The
15 bill is passed.

16 SENATOR SKELOS: Mr. President.

17 ACTING PRESIDENT MARCELLINO:
18 Senator Skelos.

19 SENATOR SKELOS: Would you please
20 call up Senator Cook's bill, Calendar Number
21 561.

22 ACTING PRESIDENT MARCELLINO: The
23 Secretary will read Calendar Number 561 by
24 Senator Cook.

25 THE SECRETARY: Calendar Number

1 561, by Senator Cook, Senate Print 955, an act
2 to amend the Education Law and the Family Court
3 Act, in relation to reducing school violence.

4 SENATOR MONTGOMERY: Explanation.

5 ACTING PRESIDENT MARCELLINO:

6 Senator Cook, an explanation has been asked
7 for.

8 SENATOR COOK: Mr. President,
9 thank you very much.

10 This is an effort to codify, if
11 you will, some standardized -- some standards
12 relative to our codes of conduct in schools, to
13 establish procedures by which those codes can be
14 enforced, to require that the provisions of the
15 code be circulated to parents and students and
16 the general public. It relates to conduct not
17 only in school buildings, but in school buses,
18 facilities that may be owned by the school
19 district, and it provides for a procedure
20 whereby the parents are brought into the process
21 and, in fact, ultimately and if the parent
22 refuses absolutely to participate in dealing
23 with whatever problems the child may have, to
24 actually hold the parent accountable in Family
25 Court under educational neglect.

1 To just quickly run through the
2 provisions, the first provision sets out a
3 general outline of what the code of conduct
4 needs to be, and it does this for the reason
5 that the present regulations are somewhat
6 ambiguous. That is, there are already
7 regulations relative to codes of conducts but
8 there are commissioner's rulings which, in some
9 cases, have overruled portions of codes of
10 conduct of certain school districts and the
11 school districts have been left to wonder in
12 some cases exactly what they are empowered to
13 cover and, in fact, some of the commissioner's
14 rulings have specifically said that the reason
15 they have overruled the provision of a code of
16 conduct at a school district has been that there
17 is no statutory authority for them to do it.

18 So, in effect, we are giving them
19 statutory authority. We are mandating that we
20 have -- that they have a code of conduct, that
21 the code of conduct be filed with the
22 Commissioner of Education as a means of ensuring
23 that the code has been adopted and we are
24 specifying the things that may be included
25 within the code of conduct so that that question

1 of legislative authority is answered, but we are
2 not mandating the form or nature of the code of
3 conduct.

4 The second issue, we are
5 extending the times by which a student may be
6 suspended from the classroom or from the
7 school. There are some concerns on the part of
8 teachers in particular that they are not being
9 -- they are not getting an adequate response
10 from the administration, that they in some cases
11 repeatedly refer students to the administration
12 for discipline. The administration does not
13 respond, simply sends the student back to the
14 classroom.

15 This provides that every school
16 district shall have either a committee or as
17 many committees as it may need in different
18 buildings to adjudicate cases where teachers
19 feel that the administration is not responding
20 in the case of a given student, and that is a
21 board or a committee that is made up equally of
22 members of the administration and of the faculty
23 so that a teacher can bring a case directly to
24 this appeals committee and have a decision
25 made. The decision, of course, cannot be

1 legally binding until adopted by the adminis
2 tration because the -- this is not an official
3 board and, therefore, they can't take official
4 action, but it does make a finding. That
5 finding then is referred to the administration
6 and a report of it has to be referred to the
7 Board of Education so the Board of Education
8 would be advised, for example, if there was an
9 administrator who repeatedly was refusing to
10 deal with discipline problems in a school and
11 the teachers -- the faculty felt that the
12 administration was not seriously -- was not
13 taking the issue seriously.

14 It gets into the issues of
15 violence and some of the issues that relate to
16 weapons in schools and makes it clear that where
17 there is a criminal charge that can be levied -
18 either is or could be levied against a student,
19 that the school may immediately suspend the
20 student.

21 Now, this is somewhat related to
22 the discussion that was held earlier on Senator
23 Johnson's bill.

24 ACTING PRESIDENT MARCELLINO:

25 Excuse me, Senator Cook. Gentlemen, if we could

1 have a little order in the house so we can hear
2 the Senator.

3 SENATOR COOK: It somewhat
4 relates to the earlier discussion on Senator
5 Johnson's bill, in that you do not have to have
6 found, in fact, through the criminal procedure,
7 that the child was guilty of whatever charge,
8 whatever criminal charge may have been brought
9 against him as long as there's a prima facie
10 finding, an initiation of an investigation. The
11 school can, in fact, suspend the student, the
12 reason being that it is our concern that the
13 real purpose of the school administration is to
14 protect the safety of the other students in the
15 school and that since the criminal investigation
16 might take some period of time, we want it clear
17 that the administrative proceeding can move
18 ahead and the suspension can take place by the
19 school administration in order to protect the
20 other students.

21 It also provides and reiterates
22 that when there is a suspension from school or
23 from the classroom, whichever the case may be,
24 that the educational program of the student is
25 required to be continued. Our basic concern in

1 this is that the requirements of the Education
2 Law be fulfilled and that is the students be
3 provided with an educational program. So we
4 reiterate that if there is a suspension that
5 there is still responsibility to provide the
6 educational program for the student.

7 We finally in the last analysis
8 -- and let me indicate, Mr. President, that we
9 envision this as a progressive situation; in
10 other words, a series of steps, and we assume
11 that most of the problems that might arise with
12 the student will be handled at the earlier steps
13 and those -- and that only a smaller -
14 continuously smaller number of cases would
15 continue through this process, but we do reach
16 the point ultimately where the parents are to be
17 involved in the process. Hopefully that is
18 sufficient to help deal with whatever problems
19 the child may be having, but if the parent
20 absolutely refuses to participate in dealing
21 with the problems of the child, there is a
22 provision called educational neglect which may
23 be filed with the Family Court and all of the
24 remedies which exist for neglect -- for child
25 neglect can be applied through educational

1 neglect, that is, working -- intense case work
2 with the family. If that doesn't work, the
3 potential actually of removing the child from
4 the home for a period of time.

5 All of these are done with
6 required review periods so that this doesn't
7 simply become a process where you bring a child
8 out and forget them, but you continuously -
9 continually review the situation with them and
10 with their family, and it's really, as I
11 indicated, an effort to bring together into one
12 place in the law a continuum of steps that can
13 be taken to deal with discipline problems being
14 experienced by a child within the school system.

15 ACTING PRESIDENT MARCELLINO:
16 Senator Stavisky.

17 SENATOR STAVISKY: Mr. President,
18 I will not ask the sponsor to yield to a
19 question but simply wish to point out certain
20 provisions of the legislation which concern me.

21 ACTING PRESIDENT MARCELLINO:
22 Senator Stavisky, on the bill.

23 SENATOR STAVISKY: It increases
24 from five to ten days the length of time for
25 which a pupil may be suspended without a fair

1 hearing. What kind of procedure is this, to
2 increase from five to ten days, which means two
3 weeks, where a pupil may be suspended without a
4 fair hearing?

5 It also provides that students
6 may be suspended for 20 days.

7 ACTING PRESIDENT MARCELLINO:
8 Senator Stavisky, one second, please.

9 Gentlemen, can we take the
10 conversations outside, please? Can we close
11 that door, please?

12 I'm sorry, Senator.

13 SENATOR STAVISKY: The bill also
14 provides that students may be suspended for 20
15 days and the hearing requirements stayed where a
16 request for the filing of a juvenile delinquency
17 petition is submitted to a principal or
18 superintendent. 20 days without a hearing,
19 that's a month. That is a substantial period of
20 time during which there is no requirement for
21 proof. There's no requirement for certainty.
22 There is, again, an expulsion of the student.

23 I want to emphasize I am not in
24 favor of coddling. I am not in favor of turning
25 your back on serious offenses. I believe that

1 they may be -- must be dealt with in order that
2 there shall be a climate for learning in the
3 school system but there is no climate for
4 learning if we suspend for large periods of time
5 these students without a fair hearing simply as
6 a means of trying to cover the problem.

7 Why would -- if I may cite this
8 -- why would the New York State School Boards
9 Association be opposed to this bill? Why would
10 the New York Educators Association, the NEANY,
11 be opposed to this bill? Why would the
12 Conference of Big Five School Districts be
13 opposed to this bill? Why would the New York
14 City Board of Education also express its
15 opposition to this legislation? Because in an
16 effort to contain problem cases, you have gone
17 too far and you have done it in what may be -
18 I'll leave it to Senator Leichter to determine
19 whether he views it as a constitutional
20 infringement, but I view it as an educational
21 infringement. It means that the opportunity for
22 a child to be placed in supervision, to be
23 continued in education can be brushed aside and
24 that's wrong, dead wrong. It means that there
25 is an abandonment of responsibility, not an

1 acceptance of responsibility.

2 There are certain situations
3 where, if a student misbehaves and it is easy
4 enough to get that kid out of the classroom,
5 there are people who would say, let us suspend
6 from five to ten days. Let us suspend for 20
7 days, but that begs the question -- it does not
8 answer the issue of how do you control the
9 uncontrollable, nor does it answer the question
10 of how you create a climate for learning in the
11 school system.

12 Expulsion from class is not an
13 answer. Failure to provide an opportunity to
14 continue the education is not an answer, and I
15 think that there is sufficient reason when
16 statewide youth advocates, when the New York
17 State School Boards Association and the NEA, and
18 the Conference of Big Five School Districts and
19 the New York City Board of Education put aside
20 their opposition to each other on other issues
21 and coalesce around the notion that this is not
22 the way to go.

23 I hope that the Senator would
24 consider holding his bill further for further
25 consultation and not pushing for the adoption of

1 this bill in this unseemly manner.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Dollinger.

4 SENATOR DOLLINGER: Will Senator
5 Cook yield to a couple of questions, please?

6 ACTING PRESIDENT MARCELLINO:

7 Senator Cook, do you yield?

8 SENATOR COOK: Sure.

9 ACTING PRESIDENT MARCELLINO:

10 Senator Cook yields.

11 SENATOR DOLLINGER: Senator,
12 these may sounds like very technical questions
13 but on page 2 of the bill when it talks about
14 the contents of a school code of conduct, it
15 says that "the stipulation upon the filing,
16 bringing or entering of a criminal complaint
17 upon -- based upon an alleged criminal act of a
18 student, the student shall immediately be
19 removed from the classroom." Do you intend that
20 that language include criminal offenses that
21 occur off school grounds?

22 SENATOR COOK: Mr. President, I
23 think if there is a situation in which a student
24 has been involved in something which has involv
25 ed -- which has caused a criminal investigation

1 to be begun, there is certainly an indication
2 that there is reason why that student can be
3 removed -- should be removed.

4 Now, Senator, recognize that
5 removal can be extremely temporary and, if the
6 criminal charge is determined to be something
7 that is basically irrelevant, that doesn't mean
8 they have to be suspended permanently but it
9 does, in fact -- the real thing we're
10 envisioning here is when a student is charged
11 with being involved in a violent act and you
12 continue to leave them in the classroom under
13 some provision or some assumption that you have
14 to prove that they're guilty of that act before
15 you can remove them from the classroom, that
16 endangers the other children that are in the
17 school, and we really are attempting to make
18 sure that the school is able to protect the
19 other children.

20 We're not, after all, dealing
21 with an isolated situation where one by one
22 people exist. They are in a societal situation
23 in which 20 or 30 kids are in a classroom and
24 everyone in that classroom is potentially
25 impacted by the conduct of this student and it

1 really is the rights of those 20 or 30 other
2 people that we have to be concerned about in
3 that kind of a setting as well as the individual
4 who may be directly involved in the situation.

5 SENATOR DOLLINGER: Again through
6 you, Mr. President, if Senator Cook will yield.

7 ACTING PRESIDENT MARCELLINO:
8 Senator Cook, do you continue to yield?

9 SENATOR COOK: Yes.

10 ACTING PRESIDENT MARCELLINO: He
11 does.

12 SENATOR DOLLINGER: Suppose the
13 criminal complaint is not brought by a district
14 attorney but brought by complaining witnesses.
15 In other words, someone accuses John Q. Student
16 of beating him up on the school grounds or off
17 school grounds. A criminal complaint is filed.
18 Despite the fact that John Q. Student says, "I
19 didn't beat him up", would he be required to be
20 suspended under this provision? After all,
21 there would be a criminal complaint filed
22 consistent with the language here.

23 SENATOR COOK: Yeah. Mr.
24 President, according to the language, yes, but
25 again, I repeat, that that doesn't mean they

1 have to be kept out permanently. If the school
2 board -- if the school administration -- in
3 other words, there's a hearing. There's a
4 complaint. I guess you're saying that on the
5 way home last night this student -

6 SENATOR DOLLINGER: Let me give
7 you a better example. I'll give you an example
8 that occurred in Senator Volker's district,
9 which I'm intimately familiar with since I
10 represent the seven members of the school
11 district who happened to get into a fight after
12 a basketball game. A melee breaks out. There
13 are more people throwing punches and fighting
14 than you could want to throw a -- shake a stick
15 at. Eight of them are -- there are criminal
16 complaints filed against eight of the students.
17 Those eight students are charged with various
18 forms of assault. They're all heard in the
19 local criminal courts. Are they all immediately
20 removed from school even though this had nothing
21 to do with their classroom participation?

22 SENATOR COOK: Removed -
23 Senator, removed until such -- pending some
24 further action on the part of the school. Now,
25 if the school decided in your case that, yeah,

1 there were 25 kids all involved in throwing
2 punches at each other and that there wasn't any
3 continued endangerment, then that suspension
4 obviously can be one day or part of a day until
5 such time as that -- as that hearing or decision
6 is made, the point being, however, that under
7 the present law, without this language there,
8 there are those who have contended, as you heard
9 earlier, that you can't really remove the person
10 from the classroom until the guilt or innocence
11 has been determined in the Criminal Court which
12 is obviously not an appropriate thing.

13 SENATOR DOLLINGER: Again through
14 you, Mr. President, if Senator Cook will yield.

15 ACTING PRESIDENT MARCELLINO:
16 Senator Cook, do you yield? He yields.

17 SENATOR DOLLINGER: My question
18 is, are you -- is the school district going to
19 have to make an independent adjudication of
20 their guilt or innocence as part of its
21 suspension?

22 SENATOR COOK: No. It has to
23 make its -

24 SENATOR DOLLINGER: How does it
25 deal with the fact that there is a complaint

1 filed and the student may be accused of a
2 violent crime?

3 SENATOR COOK: Senator -- Mr.
4 President, Senator, it has to make a decision
5 based on the fact as to whether having a student
6 back in the classroom constitutes an
7 endangerment to other students or to the
8 teacher.

9 Now, if the finding is that
10 whatever happened was something totally
11 unrelated to anything that's apt to ever
12 continue in the classroom, they don't have to do
13 it.

14 Let me point out -- and this
15 really relates to something that Senator
16 Stavisky said. School districts are not going
17 to be anxious to remove kids from classrooms for
18 a simple reason. They have to continue an
19 alternate educational program.

20 SENATOR DOLLINGER: Right.

21 SENATOR COOK: So the inclination
22 is going to be to keep that student in the
23 classroom so they don't have to get tutors or
24 they don't have special classes or they don't
25 have to do the other kinds of things to continue

1 the educational program. So the kind of
2 situation that you're talking about, the school
3 is going to be more than anxious to try to make
4 a finding that, in fact, whatever occurred did
5 not constitute endangerment to other students.

6 SENATOR DOLLINGER: One final
7 question, Mr. President.

8 ACTING PRESIDENT MARCELLINO: Do
9 you continue to yield, Senator?

10 SENATOR COOK: Yes.

11 ACTING PRESIDENT MARCELLINO: He
12 yields.

13 SENATOR DOLLINGER: Section 3214
14 of the Education Law currently provides that if
15 a student is suspended for less than five days,
16 the school district must give the parent or the
17 person in parental relation to the child notice
18 of the intention to suspend and an opportunity
19 for the parent or the guardian to confront the
20 complaining witnesses prior to the issuance of
21 the suspension less than ten days. What it's
22 called -- and I'm sure you're familiar with it
23 -- it's not the full due process protections of
24 a full-blown hearing with an impartial decision
25 maker and the production of evidence by

1 attorneys under oath but instead it's a minimal
2 due process protection that provides some
3 ability for the parents to go in and contest the
4 ground for the suspension when it's less than
5 five days.

6 There is nothing in the code that
7 you describe on pages 1 and 2 -- that is 2801 of
8 the code on school -- on school district
9 property. There is nothing that suggests that
10 the parent gets notice and an opportunity to be
11 heard or an opportunity to question before the
12 suspensions occur. It seems to me that that's a
13 marked departure from 3214 and one that is -
14 seems to me is ill-advised if our goal is to get
15 the parents involved in the disciplining of
16 their child, so that they know before the
17 suspension occurs, they have an opportunity not
18 for a full trial but simply to go in and say to
19 the principal, "Who accuses my son of this
20 particular offense?" Is it your intention to
21 make that substantive change?

22 SENATOR COOK: Mr. President, we
23 have not repealed the section of the law to
24 which you refer. Please note that there's a
25 difference between removing from a classroom and

1 suspending from a school, and if you read page
2 2, you'll note that it's a matter of being
3 removed from the classroom which, of course, can
4 be done any time, any day of the week if the
5 administration feels that there is reason to
6 remove the student from the classroom.

7 Let me indicate that the teachers
8 union, in fact, has submitted some legislation
9 which would unilaterally give teachers authority
10 to remove students from the classroom. This is
11 an attempt at a middle ground to respond to the
12 concerns which the teachers unions have
13 expressed to us and that is the fact that
14 students continue to be in the classroom and
15 they have to deal with the disruption and the
16 possible endangerment of the other students
17 under those circumstances.

18 So this is really a middle
19 ground. It doesn't change the suspension
20 portion but it does permit the immediate removal
21 from the classroom.

22 SENATOR DOLLINGER: Thank you,
23 Mr. Chairman.

24 Senator Cook, I appreciate your
25 responses. I voted for this bill last year.

1 I'm going to vote again for it this year. My
2 hope is that it goes to a Conference Committee
3 and you look carefully at the issue of a code of
4 conduct in a school district, what notice the
5 parents get prior to suspending for less than
6 ten days.

7 I think Senator Stavisky properly
8 points out, it will go from five to ten days.
9 It seems to me that the code of conduct of the
10 school district, we should tell them that as
11 part of that code of conduct, before you can
12 issue a suspension for less than ten days,
13 before you can punish this child, not to trigger
14 their full due process protections, the parents
15 should have the right to go and ssay to the
16 superintendent or the building principal, "What
17 did my child do and what is he accused of and
18 can I talk to the person who is accusing him of
19 this particular act of violence?"

20 By doing that and giving the
21 parent just an opportunity to be satisfied that
22 there is wisdom, sustenance and evidence that
23 supports the determination of school district
24 personnel, I think we'll go a long way to
25 improving people's confidence in their school

1 district administrators, in the decisions that
2 they make and bring the families and the parents
3 into the school process of disciplining their
4 children.

5 In the case that I talked about,
6 the school district did not do that. It
7 engendered terrible feelings in the community
8 because the parents felt that they were cut out
9 of the discipline of their children. They
10 acknowledged that their children had done
11 wrong. They acknowledged that they should be
12 disciplined. What they wanted was a chance to
13 go in and talk to the school administrators
14 about what the discipline should be, who accused
15 them of it and how they reached the decision.

16 By doing that, by facilitating
17 parents to come in for those kinds of
18 disciplines, I think we'll go a long way to
19 building the infrastructure of parent/
20 administrator/teacher cooperation necessary to
21 make our schools truly safe.

22 ACTING PRESIDENT MARCELLINO:
23 Senator Montgomery.

24 SENATOR MONTGOMERY: Mr.
25 President, I wonder if Senator Cook would yield

1 for a couple of questions.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Cook, do you yield? Senator Cook
4 yields.

5 SENATOR MONTGOMERY: Thank you.

6 Senator Cook, the current law -
7 I'm looking at a memo which states that the
8 current law provides that all school boards
9 shall adopt rules and regulations for the
10 maintenance of public order on school property
11 and provide for their enforcement. If that is
12 the law as it is -- as it exists now, where does
13 the request for this legislation come from since
14 they already seem to have the statute which
15 allows them to do this?

16 SENATOR COOK: Senator -- Mr.
17 President, Senator, the piece that you have
18 recited is -- I guess I would have to call it a
19 necessary precedent to follow. In other words,
20 we wanted to recite what this would -- what
21 would be included in this code of conduct. That
22 begs the question, if you're going to have a
23 code of conduct, how do you get it in place in
24 the first place and that's really the question
25 -- that's really the answer to your question.

1 What we are really attempting to
2 do is respond to some issues that have arisen
3 around the state in which, in specific
4 instances, as I said earlier, the commissioner
5 has told school districts that particular
6 provisions of their code of conduct could not be
7 enforced because there was no statutory
8 authority and our real intent is to outline
9 those kinds of issues that can be addressed in
10 the code of conduct and so we aren't really
11 intending to change the legal authority of the
12 Board of Education, of the school board -- or of
13 the school board, depending on which case you're
14 talking about, to adopt a code of conduct. What
15 we are trying to say is these are the elements
16 that may be included within a code of conduct
17 that is adopted.

18 SENATOR MONTGOMERY: I'm a little
19 bit confused, Mr. President. If I can continue
20 along that line of questioning. It says "under
21 Article 55 of the Education Law", so does that
22 mean, Senator, that you're trying to establish
23 for those school boards a code of conduct -

24 SENATOR COOK: No.

25 SENATOR MONTGOMERY: -- since

1 they have not done so themselves? Is that what
2 we're trying to do today?

3 SENATOR COOK: Mr. President,
4 really two things. One is to kind of ensure
5 that there is a code of conduct, that people pay
6 some attention to this, that being true, but
7 more importantly, what I stated earlier, is that
8 it sets some legal parameters so that when
9 people are adopting a code of conduct, they can
10 look at this law and say, well, these are things
11 that we are -- that we can legally include
12 within a code of conduct and they won't be
13 subject to legal challenges based on the fact
14 that there is no statutory authority.

15 SENATOR MONTGOMERY: All right.
16 Mr. President, if Senator Cook would continue to
17 yield.

18 ACTING PRESIDENT MARCELLINO:
19 Senator Cook, do you continue to yield? He
20 yields.

21 SENATOR MONTGOMERY: There is
22 another section of the bill, Senator Cook, where
23 you talk about instructing the Commissioner to
24 develop an interpersonal violence prevention
25 education resource for grades kindergarten

1 through 12 which resource may consist of student
2 pamphlets, parent pamphlets, videotapes and
3 other informative materials to be distributed,
4 as well as teacher lesson plans, videotapes for
5 teachers and other informative materials to be
6 distributed to the school districts by the
7 Commissioner of state Ed.

8 Does -- is there in the
9 legislation, Senator Cook, anywhere where we
10 propose that the state will pay for the
11 development of these materials by the
12 Commissioner to be distributed in the local
13 school districts? I didn't see where we
14 proposed any budget allocation for that
15 particular activity.

16 SENATOR COOK: Mr. President,
17 Senator, there is no budgetary appropriation in
18 this bill. So obviously there's nothing
19 included within -- within the budget for that.

20 I would have to indicate that I
21 would assume that the Commissioner is going to
22 proceed at that point and -- and to submit as a
23 part of the Education Departmental budget a
24 request for whatever personnel and printing may
25 be necessary to do that. I recognize your point

1 that, in fact, this can't be done out of thin
2 air, but we don't provide for that money
3 because, quite frankly, I don't know -- I don't
4 really have a ball park figure even as to what
5 it might cost.

6 SENATOR MONTGOMERY: All right.
7 I appreciate that, Senator Cook.

8 Now, Senator -- Mr. President, if
9 I may just ask one further question of Senator
10 Cook, if he would continue to yield.

11 One section of -- another section
12 of the legislation adds a new Article 12 to the
13 Family Court Act which sanctions parents of
14 children who fail to attend school and it's the
15 educational neglect proceedings -- it
16 establishes the educational neglect proceedings
17 and it creates a Family Court process to
18 determine whether a child is educationally
19 neglected and what, if anything, must be done.
20 Potential outcomes range from dismissal of the
21 petition where no neglect is found to six months
22 in jail where the parent willfully violates a
23 judge's order of supervision.

24 Now, I understand that, Senator
25 Cook, you are intending to force parental

1 involvement in decisions regarding the education
2 of their children.

3 The question that I have for you
4 is -- I think you've in some ways already
5 answered it, but certainly where do we provide
6 for some support to school districts who -
7 whose families in this particular kind of
8 situation may need some support, may need some
9 assistance and that school district is not able
10 at this point in time to provide such a range of
11 services and, two, you establish prosecution
12 essentially of poor parents because we would
13 naturally assume that most of the cases in this
14 category would probably involve poor or working
15 poor families and their children.

16 What do we do with the rest of
17 the family in cases where you're going to end up
18 prosecuting parents for child neglect and what
19 are we doing to support those families so that
20 -- so that the issue of prosecution becomes
21 rather an opportunity to provide supports and
22 where do we get the money for that vis-a-vis
23 this legislation?

24 SENATOR COOK: Senator, that's a
25 complicated question.

1 SENATOR MONTGOMERY: Yes. I
2 understand.

3 SENATOR COOK: And I could
4 probably spend all afternoon answering it, but I
5 won't do it because Senator Goodman has other
6 things to do this evening.

7 In trying to put this -- put your
8 question into an order here, in the first place
9 recognize that the school district is the one
10 who moves for the finding of educational
11 neglect. So, in other words, it's not going to
12 be someone coming in from the outside and
13 telling the school district, We found, you know,
14 25 of your kids are being neglected and you've
15 got to take on the responsibility for dealing
16 with them. So it really is a tool of the school
17 district.

18 If you read through the various
19 proceedings that take place and think about what
20 is going to occur and recognize that it is
21 really an intention to involve and, yes, to
22 urge, if you will, the parents to be involved
23 but there is implied in there that there's going
24 to be counseling and all the kinds of support
25 things that have to occur.

1 As regard to the issue of someone
2 being imprisoned, that really is nothing
3 different than a contempt of court finding that
4 would happen in any case. A judge has basically
5 said to a parent whatever the judge may say. "I
6 want you to get out of bed at 7:00 o'clock in
7 the morning, feed your kids breakfast, get them
8 dressed and send them to school" and if they
9 find that after a period of time the parent
10 continues to sleep until noon and hope that the
11 parent shows up in school and pay no attention
12 to him for the rest of the day, they, in fact,
13 can then find that the parent is in contempt of
14 the court in realistic terms but, as I said very
15 early on, we envision this as a continuum of
16 possibilities, of options, that the very
17 earliest option, to repeat myself, is simply
18 setting forth rules in which 90 percent of the
19 students will voluntarily comply, the next step
20 being that the teachers have their suspension
21 problems which again will take care of another
22 group and the schools' abilities will take care
23 of another. So really by the time you reach
24 this point, you are dealing with one in 1,000,
25 one in 10,000, perhaps, students. So we're

1 really not envisioning that we're going to have,
2 you know, hundreds and hundreds of parents
3 brought into court under these provisions.

4 SENATOR MONTGOMERY: Thank you,
5 Senator Cook.

6 Mr. President, briefly on the
7 bill.

8 ACTING PRESIDENT MARCELLINO:
9 Senator Montgomery, on the bill.

10 SENATOR MONTGOMERY: I certainly
11 agree with Senator Cook that we're not perhaps
12 talking about large numbers because there would
13 not be a need for this code of conduct if all
14 students in the most ideal world would not be -
15 we would not be required to establish a code of
16 conduct for.

17 However, what essentially is very
18 troubling about this particular approach to the
19 issue of conduct in schools is that we have -
20 it assumes -- it seems to me, Senator Cook,
21 despite every good intention, that once again we
22 are assuming that poor parents are poor because
23 it's their own fault and if they are, for
24 whatever the variety, the millions of possible
25 reasons they are unable to cope successfully

1 with everyday business, it is their fault. They
2 must pay and furthermore, their children must
3 pay also, and that is the problem with all of
4 our direction in terms of providing or looking
5 to address social issues.

6 So I just -- I have a major
7 concern that we establish sanctions which
8 include up to a half a year in jail. We are
9 already looking to sanction families by cutting
10 off part of their public assistance because
11 their children are not in attendance in school
12 on a regular basis and now we're going to
13 further put them in prison and we're going to
14 suspend children up to 10 to 20 days without a
15 fair hearing, and on and on it goes.

16 So this is clearly one of the
17 most punitive and anti-family measures that I've
18 seen, even though it is built as a measure to
19 address the conduct and help young people to
20 behave in a positive and responsible manner. It
21 certainly does not do that. It does not appear
22 that this has been requested by the local boards
23 of education, certainly not by the New York City
24 Board of Education and, as I said, it penalizes,
25 it punishes families, particularly poor

1 families, and I note you mentioned Senator
2 Goodman. Senator Goodman certainly would never
3 be prosecuted under this because he doesn't need
4 a code of conduct, I'm assuming, for his
5 children.

6 So this really is for poor
7 children more. It's not for Senator Goodman,
8 and so I'm going to vote against it because I
9 think that we have to be more concerned about
10 helping families, trying to keep them from
11 falling through the -- whatever the safety nets
12 we have left for them and certainly if they are
13 unable to support their own children, then we
14 must be able to help them in many more ways than
15 we currently have to help them rather than
16 punish them for being poor.

17 So I'm voting no on this
18 legislation, Mr. President.

19 ACTING PRESIDENT MARCELLINO:
20 Senator Leichter.

21 SENATOR LEICHTER: Yes, Mr.
22 President. Would Senator Cook yield?

23 ACTING PRESIDENT MARCELLINO:
24 Senator Cook, do you yield?

25 SENATOR LEICHTER: Senator, I'm

1 not going to -

2 ACTING PRESIDENT MARCELLINO: I
3 believe he does.

4 SENATOR LEICHTER: -- at this
5 time address some of the policy issues and
6 grounds raised by your bill, but I'm concerned
7 about certain provisions, language and certain
8 of the process provided for in the bill.

9 One thing, Senator Montgomery
10 addressed the issue of funding in the bill for
11 the Commissioner of Education. I'm also
12 concerned about the funding for the school
13 boards. I mean, this is a big mandate on the
14 school boards. They've got to come up with the
15 code of conduct. They've got to furnish it to
16 every parent, to the children. They've got to
17 post it. They've got to set up committees.
18 Isn't this what we call an unfunded mandate?

19 SENATOR COOK: Mr. President,
20 Senator, as I think has been said in some of the
21 earlier discussion, the concept of a code of
22 conduct is not a brand new concept and, as a
23 matter of fact, most school districts have a
24 code of conduct and our real purpose in writing
25 this bill is not so much as to create a mandate

1 -- although we think that every school should
2 have a code of conduct and in the event that
3 there are districts, in fact, who aren't doing
4 it, there's an attempt to have the Commissioner
5 make that enforceable indeed, but I don't expect
6 that there's going to be a lot of school
7 districts that are doing anything different from
8 what they're doing now.

9 What there is -- because, for
10 example, student handbooks are provided in most
11 of my school districts to the students when they
12 come in at the beginning of the year and they
13 have the rules of the school in those -- in
14 those handbooks. So it's not something that's
15 brand new to them.

16 What we are attempting to do is
17 -- and I don't know that you were here earlier
18 when I said this -- there have been some
19 commissioner's rulings which have made it very
20 ambiguous as to what can be in those codes of
21 conduct and the thrust of this is more to say
22 that these are the kinds of issues that a code
23 of conduct may address than it is to create a
24 new mandate because we think that mandate, for
25 the most part, is probably already being

1 fulfilled. We don't think it necessarily is
2 being fulfilled very well in some cases.

3 SENATOR LEICHTER: Well, Senator,
4 I have no problem with the rule of conduct. I
5 like that and there are parts of this bill that
6 I think are quite important, and I know overall
7 I want to say it's a good faith effort on your
8 part to deal with this serious problem, but I
9 don't think that you can say that it's not a
10 mandate because, while some school districts may
11 have codes of conducts, I know that many of them
12 do not or at least don't have codes of conduct
13 which meet all the requirements in this bill.
14 They're going to have to print. You also set up
15 committees, and so on. So I think it's fair to
16 say that it's a mandate, but let me move to
17 another area which, frankly, I find somewhat
18 puzzling, and I think hard to comply with, and
19 that's the whole Family Court proceedings that
20 you've set up.

21 First of all, you now provide for
22 something called adjustment services, right?
23 You are seeking to involve at an early stage of
24 the proceeding somebody to intervene and to
25 provide, I guess counseling, help or maybe

1 obviate a formal court proceeding, but I'm not
2 sure that there's -- that we have the agencies
3 available to do that. You provide -- "rules of
4 the court shall authorize to determine the
5 circumstances under which the Family Court in
6 each county may appoint a local probation
7 service or duly incorporated court-appointed
8 special advocate." Let me stop right there
9 because I've asked people. I've looked at it
10 and nobody can find in the law there's presently
11 such a thing as a duly incorporated
12 court-appointed special advocate. What agency,
13 what particular office are you referring to with
14 that?

15 SENATOR COOK: Mr. President,
16 Senator, I'm going to answer that in a couple of
17 different ways and the first is to say that
18 there's an ancillary piece of legislation that
19 we are moving through that deals with the issue
20 of trying to coordinate social human services
21 agencies, including the courts, the Family
22 Courts and the schools and we really see this as
23 one of those things that this coordinated system
24 will do, but I think you have really responded
25 to some of the concerns that Senator Montgomery

1 was raising when she said that we aren't giving
2 any support to the families because, in fact,
3 this legislation does, as you indicate, provide
4 that the court is going to need to have a
5 court-appointed attorney as it does now in any
6 kind of a case for the children but that they
7 also are going to have to provide for counseling
8 services. I don't know what they would do in
9 the city of New York. In my area, they would
10 have either the Child Protective Services of the
11 county or the Probation Department who would be
12 -- in this case, would be referred to by the
13 Family Court.

14 Now, what happened in New York
15 City, I can't tell you but I would assume there
16 is some way in which when they find that a child
17 is being neglected, that there is somebody that
18 they refer it to.

19 We are creating educational
20 neglect but we aren't creating child neglect.
21 That's already in the books and we simply are
22 adding another type of concern to it and saying
23 that it is a responsibility to feed your
24 children, to clothe them, to provide them with
25 shelter and we're adding one more thing, which

1 is also to ensure that they receive an
2 education.

3 SENATOR LEVY: Senator, you're
4 actually going into something that I was going
5 to ask you about later on.

6 ACTING PRESIDENT MARCELLINO:
7 Senator Cook, do you continue to yield?

8 SENATOR COOK: Yes.

9 ACTING PRESIDENT MARCELLINO: He
10 yields.

11 SENATOR LEICHTER: Senator, we do
12 have child neglect proceedings and if you had
13 just provided that one of the basis for finding
14 child neglect is educational neglect, I think it
15 might make a lot of sense. You might still
16 decide to go that way because I think presently
17 this bill is so overloaded with different
18 provisions that I think cause problems that it's
19 just not going to go anywhere but you now have
20 set up a totally different procedure for taking
21 care or at least involving agencies in these
22 educational neglect situations, and I don't
23 believe -- I mean, you say the local probation
24 service. They're not qualified to do this.
25 They don't have the personnel.

1 You provide for a duly
2 incorporated court-appointed special advocate.
3 With all due respect, I don't think they exist,
4 that office. You say there's another bill
5 coming down the road that seems to provide
6 something but all you say, "court-appointed
7 special advocate or other appropriate agency."

8 I guess my question really is,
9 one, how are we going to pay for this? You go
10 down to the probation service and you ask them
11 to take on a totally different function of
12 helping families with their problems with the
13 education of a youngster in that family and how
14 the family is supporting the youngster, and so
15 on. The probation service isn't qualified to do
16 that.

17 SENATOR COOK: Mr. President.

18 ACTING PRESIDENT MARCELLINO:
19 Senator Cook.

20 SENATOR COOK: Senator, I have to
21 keep repeating myself but somehow folks are
22 asking the same question and I give an answer
23 and then somebody else asks the same question
24 that has the same answer, so I have to repeat
25 myself. So please forgive me.

1 SENATOR LEICHTER: Excuse me if I
2 asked the same question.

3 SENATOR COOK: You didn't ask
4 exactly the same question but it really gets the
5 same answer. We are envisioning here a
6 continuum of ways to deal with problems that are
7 being experienced by children.

8 What you are addressing is on the
9 far extreme end of that process in which one
10 percent or one-tenth of one percent or one one
11 hundredth of one percent of the people are going
12 to be involved. I have great faith that the
13 school district, school personnel are going to
14 be dealing with almost all of these problems
15 and, in fact, the sorts of things that you are
16 talking about don't even come into play so as
17 long as the parents come into school and try to
18 work with the school district, none of this
19 happens. None of this gets into the court
20 system at all as long as the parents are working
21 with the school district to deal with these
22 problems their children are experiencing.

23 We only have this section in here
24 to deal with those parents who, in fact, are
25 neglecting their children and who are just

1 saying, "I don't care if they get an education
2 or not," and that is going to be an extremely
3 rare occurrence.

4 So you're not talking about
5 having to set up agencies that are going to deal
6 with thousands and thousands of kids. You're
7 talking about maybe one child will be in the
8 situation out of 100,000 population, not 100,000
9 children, but I'm envisioning in a county
10 similar to what I represent, there may be one
11 child in the whole system that will be involved
12 in this. So it's a matter of -- and I recognize
13 in New York City that probably becomes -- the
14 numbers become larger. So they are, in fact,
15 going to have to refer it, but I would also
16 indicate in the children's protective services,
17 that this is a function that falls very much
18 within the category of protective services, and
19 I think that there are, in fact, people who can
20 deal with these problems of children.

21 Though the educational program
22 continues to be a responsibility of the
23 district, it becomes a responsibility of the
24 protective services to make sure that that
25 educational program is being delivered. That's

1 nothing new.

2 SENATOR LEICHTER: Senator, with
3 all due respect, you're saying I've got to keep
4 on giving the same answer but, frankly, you have
5 one answer fits all questions, but I submit to
6 you respectfully it doesn't fit all questions
7 because you have a bill. You're providing -
8 you're providing now specific duties -- not
9 specific duties, at least the potential of
10 appointing an agency that has no experience in
11 this area and your answer to that is, Oh, well,
12 it isn't going to happen that often. Let me
13 tell you, one percent of the million school
14 children in New York -- and you acknowledge the
15 numbers there become pretty large -- that's
16 10,000 kids. So you are, under your bill,
17 involving different agencies, creating new
18 agencies, and I just want to know what these
19 agencies are. Are they qualified to do this?
20 Are you providing monies for this, and I submit
21 to you that you're not.

22 Let me turn to something else
23 that's not a major point -- it may be major but
24 it concerns me. You've set up a proceeding
25 under the Family Court, as I understand it,

1 which could -- which could result in a six-month
2 jail sentence for educational neglect of a
3 child.

4 You also provide that hearings in
5 the Family Court relating to educational neglect
6 ought to be closed to the public. Are you
7 providing for -- and it seems as if you are
8 providing for court proceedings that could
9 result in jail sentences that are going to be
10 closed to the public.

11 SENATOR COOK: Mr. President.

12 ACTING PRESIDENT MARCELLINO:

13 Senator Cook.

14 SENATOR COOK: Mr. President,
15 obviously I think the civil rights laws would
16 not permit somebody to be sentenced to a jail
17 term in a closed court proceeding but the
18 finding that would be made would be a contempt
19 finding or the equivalent of a contempt finding
20 that, in effect, there would be a recitation
21 that the parent had been presented with certain
22 expectations and the factual finding that the
23 parent had not fulfilled those expectations in
24 response to what the court had said and that
25 portion of it, obviously it has to be a public

1 record but up to that point, I don't think you
2 or anybody else in this room thinks that we
3 ought to have, you know, everybody in the
4 neighborhood being able to show up when a Family
5 Court proceeding is going on dealing with
6 conduct which is basically a matter between the
7 parent and the children.

8 SENATOR LEICHTER: Senator -

9 ACTING PRESIDENT MARCELLINO:

10 Senator, will you continue to yield? Excuse me,
11 Senator Leichter. Senator Cook, do you continue
12 to yield?

13 SENATOR COOK: Yes.

14 ACTING PRESIDENT MARCELLINO: He
15 continues to yield.

16 SENATOR LEICHTER: Senator, you
17 may be absolutely right that these aren't the
18 sort of proceedings that maybe everybody in the
19 neighborhood ought to show up but you put it in
20 the court. You provide for a jail term and we
21 do have standards of openness, which I think are
22 important and obviously you do too and your bill
23 provides really exactly contrary to that basic
24 principle of openness.

25 Let me ask you another thing that

1 just puzzles me, and there's many more but I
2 just wanted to pick one or two. This is on page
3 13, Section 1244, "Supervision". You say the
4 court may place the respondent under the
5 supervision of an adjustment agency. Now, the
6 respondent is a parent, an adult. What does it
7 mean to place an adult under the supervision of
8 an adjustment agency? What can that agency do?
9 What rights, authority, direction may that
10 agency give to somebody? This is an adult. The
11 adult is not in jail. You have an adjustment
12 agency which, as we pointed out before, we're
13 really not clear who that adjustment agency is
14 and whether they have the personnel, the
15 experience. Now they have the supervision of an
16 adult. What do they do?

17 SENATOR COOK: Mr. President.

18 ACTING PRESIDENT MARCELLINO:

19 Senator Cook.

20 SENATOR COOK: Senator, again,
21 responding, I think to some things that Senator
22 Montgomery was raising earlier, you responded to
23 her question. Their purpose is to provide
24 guidance and help and assistance to this parent
25 in dealing with the problems of this child.

1 Now, you're correct. They have
2 no legal sanction but they can help this parent
3 fulfill whatever the mandate of the court is
4 which is to help deal with the problems of the
5 child and they are really there in a counseling
6 function.

7 The whole purpose of this is not
8 to get ever to the point where anybody is going
9 to be ending up in jail or, in fact, even ending
10 up in foster care, hopefully, but -- so we want
11 people who can help prevent that from happening
12 but, of course, at a certain point, either the
13 efforts of the parent are not going to be
14 successful, in which case you're going to have
15 to have, I guess what would be the equivalent of
16 a PINS -- although we're not making it a direct
17 PINS -- or you have a contempt situation in
18 which the parent says, "I just don't care."

19 SENATOR LEICHTER: Senator Cook,
20 with all due respect, you use the language
21 "supervision." I have no problem trying to set
22 up a system whereby you provide counseling
23 assistance and help but you, you're writing a
24 bill. You're writing a statute. You're using
25 certain language. You can't just say, Well, you

1 know, we'll let them do this or let them do
2 that. You use a very disciplined word,
3 "supervision." You now have an adult under the
4 supervision of an adjustment agency. We have no
5 precedent in the law what it means. We know
6 what it means to send an adult to jail, put that
7 adult under probation. You now have an adult
8 under supervision and you certainly have to
9 spell out what the -- what the particular
10 functions are, the rights, the obligations, and
11 I think you fail -- you fail to do that and you
12 also can't escape the language of your bill by
13 saying, Well, we hope we're never going to get
14 there. You have eight pages that deal with when
15 you do get there and granted, it's going to be a
16 small percentage of people, but those are the
17 ones that your bill is really aimed at, the ones
18 who aren't behaving, the ones who are having
19 problems, the ones who are educationally failing
20 and there may be family problems. They may need
21 help. So those are the ones we're focused on,
22 and I don't know what you mean when you say
23 you're putting somebody under supervision of an
24 adjustment agency.

25 SENATOR COOK: Mr. President,

1 Senator, in social work we have supervising case
2 workers, which is a common term, when a case is
3 under the supervision of a given case worker.
4 We utilize that all the time. That doesn't mean
5 that that person has a direct power. It doesn't
6 mean they have a supervisory power in the sense
7 that you're somebody's employer but it means
8 that they are the responsibility -- that that
9 case is a responsibility of a certain person and
10 it basically says to somebody who is a -
11 hopefully a professional but someone who is in a
12 position of taking this situation and trying to
13 work with it and work the family through the
14 problems that they're encountering.

15 SENATOR LEICHTER: Mr. President,
16 on the bill.

17 ACTING PRESIDENT MARCELLINO:
18 Senator Leichter, on the bill.

19 SENATOR LEICHTER: I want to
20 thank Senator Cook for his unfailing willingness
21 to explain his bill and his cooperativeness, and
22 I also want to commend you, Senator Cook.
23 You've tackled a very, very tough problem and
24 one that exists in our society and one that we
25 need to address.

1 I think all of us are concerned
2 about some of the things that are happening in
3 the schools. We would like to see the schools
4 function better, the children better behaved.
5 We would like to see greater discipline,
6 educational success in the schools and you're
7 trying to deal with that and I commend you for
8 that.

9 I think this bill really shows
10 one of the flaws in our procedures. This would
11 have been a wonderful bill to put up in a
12 committee and to mark it up as they do in
13 Congress and to have input from the various
14 members and to raise some of the questions that
15 have been raised here -- because some of the
16 questions that are raised are technical
17 questions that could probably be disposed of by
18 some language changes but what so often happens
19 here is a bill is drafted and then it has the
20 sanctity as if it was part of the Ten
21 Commandments or the Bible. Nobody can change a
22 word of it and it's brought on the floor here
23 and I'm sure of this prediction I make, that
24 this bill in this form is never going to go
25 anywhere because I think it's got too many

1 unanswerd questions, too many problems.

2 While it could have, I think,
3 been worked out in committee and maybe we would
4 have before us something that would be helpful
5 to our school districts and would assist
6 educational behavior throughout the state, I
7 just can't support the bill in the form that it
8 is now, much as I like some of the aim and
9 direction that it goes to.

10 I would make this suggestion to
11 you, Senator Cook. At this point, I think if
12 you just provide for code of conduct without
13 automatic suspensions and things of that sort -
14 but we certainly ought to have every school
15 district in the state have a code of conduct.
16 Every parent should know what it is. Every
17 child should know what it is. As far as dealing
18 with those instances where there's a real
19 educational breakdown, a dysfunctional family,
20 and so on, it may well be that the best thing to
21 do is to make educational failure part of the
22 process that we now have for a child in need and
23 deal with it under the -- within the existing
24 framework because there we have precedents. We
25 have a system. We have institutions that deal

1 with it. They may not deal with it perfectly
2 but at least you've given them grounds to now
3 take another family under the auspices of that
4 whole system to try to deal with the educational
5 neglect that you have in mind.

6 I think that would probably be a
7 much better way to go than to set up this system
8 that you do with the obligations that you place
9 on the courts, that you place on agencies that
10 have no ability to deal with the functions that
11 you're trying to give them as well as having, I
12 think, some procedures here that are very
13 questionable like closed hearings of court
14 proceedings that end up in jail time.

15 So, Senator Cook, maybe this is a
16 good discussion point, but I don't think we've
17 yet reached where we have a bill that we can say
18 this is a workable system. This makes sense for
19 the people of the state.

20 ACTING PRESIDENT MARCELLINO:
21 Senator Lachman.

22 SENATOR LACHMAN: I hesitate to
23 ask Senator Cook to yield -

24 ACTING PRESIDENT MARCELLINO:
25 Senator Cook, do you yield? He yields.

1 SENATOR LACHMAN: -- for a few
2 more questions. Does this legislation have
3 provisions in it in terms of its creation and
4 enforcement to be in consultation with teachers,
5 community members, including parents, next of
6 kin?

7 SENATOR COOK: Mr. President.

8 ACTING PRESIDENT MARCELLINO:
9 Senator Cook.

10 SENATOR COOK: Senator, the whole
11 process is segregated on governmental -
12 (inaudible) repeatedly. If you read that
13 portion, it says that the code of conduct shall
14 be developed in consultation with the various
15 people that you have already cited. You then
16 move into the administration portion.

17 SENATOR LACHMAN: But it does
18 have that provision in it.

19 SENATOR COOK: Yes.

20 SENATOR LACHMAN: Thank you.
21 Will the Senator continue to yield?

22 SENATOR COOK: Yes.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Cook -- excuse me a minute. Senator,
25 have you finished your answer to the previous

1 question?

2 SENATOR COOK: That's fine.

3 ACTING PRESIDENT MARCELLINO:

4 Okay.

5 SENATOR LACHMAN: Does the bill
6 also contain provisions that the code and the
7 enforcement are in compliance with state and
8 federal laws relating to pupils with
9 disabilities?

10 SENATOR COOK: Senator, it does.
11 There are provisions in the bill which specific
12 ally indicate that children with disabilities
13 have to be dealt with and, as you know, within
14 the past couple of weeks, there have actually
15 been some changes and some court rulings that
16 have even changed that. We have not attempted
17 to define that any more than simply stating that
18 whatever happens is in conformity with existing
19 laws.

20 SENATOR LACHMAN: Does the bill
21 also contain provisions that the boards of
22 education shall alert the community to the
23 provisions that will be enacted before they're
24 enacted and after they're enacted to the final
25 provisions?

1 SENATOR COOK: Well, there's -
2 Mr. President and Senator, there's a requirement
3 that we just discussed that, in fact, the parent
4 has to be involved in the creation of this code
5 of conduct and, yes, there is a requirement that
6 the community at-large, as well as the students
7 and the parents be advised of the requirements.

8 Now, the reason for that is
9 something of what Senator Dollinger had
10 indicated, that at basketball games, for
11 example, the code of conduct really applies to
12 everybody who's there.

13 Now, admittedly, if they're not
14 the students, you can't follow the other
15 procedures but it does state -- it could state,
16 for example, that obscene language shall not be
17 shouted at players at athletic events and that
18 would apply to everyone in the room.

19 SENATOR LACHMAN: Does the -- may
20 I continue? Will the Senator continue to
21 yield?

22 ACTING PRESIDENT MARCELLINO:
23 Does the Senator continue to yield? Excuse me,
24 Senator. Please, can we have some order in
25 here.

1 SENATOR LACHMAN: Does the
2 legislation, when it increases from five to ten
3 days the length of time for which a pupil may be
4 suspended, does it include any provisions of
5 informing a parent or next of kin that a child
6 is suspended?

7 SENATOR COOK: Mr. President,
8 Senator, I'm informed -- and to clear that up -
9 that we really follow existing law. We have not
10 changed the law in that regard.

11 SENATOR LACHMAN: The existing
12 law does do that.

13 SENATOR COOK: Yeah.

14 SENATOR LACHMAN: So you will not
15 change the existing law.

16 SENATOR COOK: We are not
17 changing the existing law.

18 SENATOR LACHMAN: If the law says
19 that the parent or the next of kin or the
20 guardian is informed, that will continue and
21 remain.

22 SENATOR COOK: Yes.

23 SENATOR LACHMAN: And will not be
24 changed. Thank you.

25 Does -- is the hearing -- if the

1 existing law -- forgive me. I am guilty of
2 authoring the New York City Board of Education's
3 student suspension provisions as well as the
4 rights and responsibilities of high school
5 students, but it's dated. It's 20 years ago and
6 many things have happened in those 20 years.

7 In the New York City -- in the
8 New York City provision, there is an aspect that
9 does not necessarily involve an adversarial
10 parent, that the parent or guardian or next of
11 kin can bring someone with them, take someone
12 with them to a hearing. If that already exists
13 in law, will this change it?

14 SENATOR COOK: We don't repeal,
15 Senator -- as I indicated before, we have not
16 repealed any existing provisions as it relates
17 to any of these things.

18 SENATOR LACHMAN: Okay. So if
19 that does exist, it will not be changed and the
20 New York City Board of Education will have the
21 authority and the authorization to consult with
22 community groups, with teachers, supervisors and
23 parents before there are any changes.

24 SENATOR COOK: Correct.

25 SENATOR LACHMAN: Thank you.

1 On the bill, Mr. President.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Lachman, on the bill.

4 SENATOR LACHMAN: As I have said,
5 many things have changed in the last 20 years.
6 The bill is not a perfect bill from my point of
7 view but very few things are perfect this side
8 of heaven and even though I would have preferred
9 more time to recommend changes to this bill to
10 make it more perfect, though not perfect, we
11 have to vote as legislators on this bill.

12 Now, many things have changed in
13 the last 24 -- in the last 20 years but one
14 thing remains very important, and that is that
15 no education can take place in an environment
16 that is not secure and this impacts upon all
17 children, whether they're inner city children or
18 outer city children, whether they're minority
19 children or majority children, and at this point
20 in society, we do have to set certain standards
21 but those standards have to conform with due
22 process.

23 Now, you, Senator, have led me to
24 believe that they will conform with due process
25 and they will not contravene existing statutes

1 and laws in the school boards in the state of
2 New York and most specifically in the city of
3 New York.

4 I, therefore, will support the
5 bill.

6 ACTING PRESIDENT MARCELLINO:
7 Read the last section.

8 THE SECRETARY: Section 10. This
9 act shall take effect -

10 ACTING PRESIDENT MARCELLINO:
11 Excuse me one second. Senator Stavisky.

12 SENATOR STAVISKY: Slow roll call
13 is requested.

14 ACTING PRESIDENT MARCELLINO: Do
15 we see five Senators standing? I see five.

16 SENATOR SKELOS: Can you ring the
17 bells.

18 ACTING PRESIDENT MARCELLINO:
19 Ring the bells, the chimes. Call them from the
20 halls, the hills and the valleys. Then read the
21 last section.

22 THE SECRETARY: Section 10. This
23 act shall take effect January 1.

24 ACTING PRESIDENT MARCELLINO:
25 Call the roll very slowly.

1 THE SECRETARY: Senator Abate.
2 SENATOR ABATE: No.
3 THE SECRETARY: Senator Alesi.
4 SENATOR ALESI: Yes.
5 THE SECRETARY: Senator Breslin.
6 (There was no response.)
7 Senator Bruno.
8 (Affirmative indication)
9 Senator Connor.
10 (Negative indication)
11 Senator Cook.
12 SENATOR COOK: Yes.
13 THE SECRETARY: Senator
14 DeFrancisco.
15 SENATOR DeFRANCISCO: Yes.
16 THE SECRETARY: Senator
17 Dollinger.
18 SENATOR DOLLINGER: Yes.
19 THE SECRETARY: Senator Farley.
20 (There was no response.)
21 Senator Gentile.
22 (There was no response.)
23 Senator Gold.
24 (There was no response.)
25 Senator Gonzalez.

1 (There was no response.)
2 Senator Goodman.
3 SENATOR GOODMAN: Aye.
4 THE SECRETARY: Senator Hannon.
5 (There was no response.)
6 Senator Hoffmann, excused.
7 Senator Holland.
8 SENATOR HOLLAND: Yes.
9 THE SECRETARY: Senator Johnson.
10 SENATOR JOHNSON: Aye.
11 THE SECRETARY: Senator Kruger.
12 SENATOR KRUGER: Yes.
13 THE SECRETARY: Senator Kuhl.
14 SENATOR KUHL: Aye.
15 THE SECRETARY: Senator Lachman.
16 SENATOR LACHMAN: Aye.
17 THE SECRETARY: Senator Lack.
18 SENATOR LACK: Aye.
19 THE SECRETARY: Senator Larkin.
20 SENATOR LARKIN: Aye.
21 THE SECRETARY: Senator LaValle.
22 SENATOR LAVALLE: Aye.
23 THE SECRETARY: Senator Leibell.
24 SENATOR LEIBELL: Aye.
25 THE SECRETARY: Senator Leichter.

1 SENATOR LEICHTER: To explain my
2 vote, Mr. President.

3 ACTING PRESIDENT MARCELLINO:
4 Senator Leichter, to explain his vote.

5 SENATOR LEICHTER: You know, let
6 me just say to my colleagues here, we're dealing
7 with specific legislation. It isn't enough to
8 get up and say we need the discipline in the
9 schools. We need a code of conduct.

10 Senator Lachman, my good friend,
11 is absolutely correct but you still got a bill
12 that you got to look at and you got to look at
13 the provisions and see if they make sense, if
14 they're workable. There are provisions in here
15 that are utterly unworkable. There are
16 provisions in here that are probably
17 unconstituional. There are provisions in here
18 that deny students due process. There are
19 unfunded mandates in there. There's obligations
20 put on agencies.

21 ACTING PRESIDENT MARCELLINO:
22 Excuse me, Senator. Ladies and gentlemen, can
23 we please hold it down so we can hear the
24 explanation.

25 SENATOR LEICHTER: There are

1 agencies that are given functions here that have
2 neither the funding, the capacity, the
3 experience in dealing with it. Read the bill.
4 That's what you're voting on.

5 If all we're engaged in -- and
6 unfortunately often we are -- in making public
7 statements, we don't need a bill. Just put out
8 a press release, but if you want to deal with
9 legislation, then you've got to make sure that
10 it works. This, unfortunately, does not.

11 I vote in the negative.

12 ACTING PRESIDENT MARCELLINO:

13 Continue the roll call.

14 THE SECRETARY: Senator Levy.

15 SENATOR LEVY: Aye.

16 THE SECRETARY: Senator Libous.

17 SENATOR LIBOUS: Aye.

18 THE SECRETARY: Senator Maltese.

19 (There was no response.)

20 Senator Marcellino.

21 SENATOR MARCELLINO: Aye.

22 THE SECRETARY: Senator Marchi.

23 (There was no response.)

24 Senator Markowitz.

25 SENATOR MARKOWITZ: No.

1 THE SECRETARY: Senator Maziarz.
2 SENATOR MAZIARZ: Yes.
3 THE SECRETARY: Senator Meier.
4 SENATOR MEIER: Yes.
5 THE SECRETARY: Senator Mendez.
6 SENATOR MENDEZ: No.
7 THE SECRETARY: Senator
8 Montgomery.
9 SENATOR MONTGOMERY: No.
10 THE SECRETARY: Senator Nanula.
11 SENATOR NANULA: No.
12 THE SECRETARY: Senator Nozzolio.
13 SENATOR NOZZOLIO: Aye.
14 THE SECRETARY: Senator Onorato.
15 SENATOR ONORATO: No.
16 THE SECRETARY: Senator
17 Oppenheimer.
18 SENATOR OPPENHEIMER: Explain my
19 vote.
20 ACTING PRESIDENT MARCELLINO:
21 Senator Oppenheimer, to explain her vote.
22 SENATOR OPPENHEIMER: A case can
23 be made on both sides of this issue. I have
24 before me the memo from the School Boards
25 Association and they say that state law already

1 requires school districts to promulgate codes of
2 conduct and to enforce them. That's from the
3 School Boards Association and I happen to know
4 that we have strict codes in most of my school
5 districts.

6 In fact, we had an uprising from
7 the students in one case and they won their
8 point and had the code of conduct in that
9 particular school district ameliorated. It
10 wasn't quite as harsh as when it was first put
11 together by the school board. The students had
12 a say in it and they reduced some of the
13 requirements but -- so on the one hand we see
14 that codes are required now and the School Board
15 Association says that, as we have been
16 discussing, that the rights of students, their
17 due process rights constitutionally protected
18 will be impaired and, therefore, there will be
19 plenty of legal action against the school boards
20 and they don't like to have to defend actions.
21 So they suggest a no vote.

22 On the other hand, here we see
23 the school administrators of New York State
24 saying yes, this is essential because if we
25 don't have a safe school environment, there

1 can't be any learning going on and it has to be
2 enforced and they think that the multiple
3 provisions here provide consistency, that the
4 statewide discipline plan would maintain local
5 controls over specific codes of conducts. I
6 mean, here we have the two administrative heads
7 not even seeing eye to eye.

8 I applaud what you're trying to
9 do. I'm not sure this would stand constitution
10 al challenge. I'm quite sure it probably won't,
11 but because I do like the thrust of this, I'm
12 going to vote yes and hope that this can be
13 modified so that it would be able to meet the
14 challenge.

15 ACTING PRESIDENT MARCELLINO:
16 Senator Oppenheimer in the affirmative.
17 Continue the roll call.

18 THE SECRETARY: Senator Padavan.

19 SENATOR PADAVAN: Yes.

20 THE SECRETARY: Senator Paterson.

21 SENATOR PATERSON: Mr. President,
22 to explain my vote.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Paterson, to explain his vote.

25 SENATOR PATERSON: The thrust of

1 this legislation, as I think has been pointed
2 out by some other speakers, is certainly quite
3 admirable and the issue of school violence, as
4 Senator Lachman pointed out earlier, is
5 certainly a lot more paramount today than it was
6 a score of years ago.

7 However, because of the dangers
8 of oversimplifying the response and almost con
9 fining school authorities when we are involved
10 with very young people by strict, rigid inter
11 pretations of the statute cause me to ask the
12 sponsor to go back and take another look at it
13 in conjunction with our -- the other legislative
14 body here and come up with a bill that will
15 really be achievable and provide protections for
16 teachers. Also it will create an atmosphere
17 where there would be additional responses to -
18 on a case-by-case basis.

19 Therefore, I vote no, Mr.
20 President.

21 ACTING PRESIDENT MARCELLINO:
22 Senator Paterson will be recorded in the
23 negative. Continue the roll call.

24 THE SECRETARY: Senator Present.
25 (Affirmative indication)

1 Senator Rath.
2 (There was no response.)
3 Senator Rosado.
4 ACTING PRESIDENT MARCELLINO:
5 Senator Rosado -- Senator Rosado, how do you
6 vote?
7 (There was no verbal response.)
8 THE SECRETARY: Senator Saland.
9 SENATOR SALAND: Aye.
10 THE SECRETARY: Senator Sampson.
11 SENATOR SAMPSON: No.
12 THE SECRETARY: Senator Santiago.
13 SENATOR SANTIAGO: No.
14 THE SECRETARY: Senator Seabrook.
15 SENATOR SEABROOK: No.
16 THE SECRETARY: Senator Seward.
17 (There was no response.)
18 Senator Skelos.
19 SENATOR SKELOS: Aye.
20 THE SECRETARY: Senator Smith.
21 SENATOR SMITH: No.
22 THE SECRETARY: Senator Spano.
23 SENATOR SPANO: Aye.
24 THE SECRETARY: Senator
25 Stachowski.

1 SENATOR STACHOWSKI: Mr.
2 President, very briefly to explain my vote.

3 ACTING PRESIDENT MARCELLINO:
4 Senator Stachowski, to explain his vote.

5 SENATOR STACHOWSKI: I commend
6 Senator Cook on his leadership in this area.
7 However, until the bill is cleaned up and may be
8 workable with the other house, I at this time
9 will have to vote in the negative.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Stachowski in the negative. Continue
12 the roll.

13 THE SECRETARY: Senator Stafford.
14 (There was no response.)
15 Senator Stavisky.

16 SENATOR STAVISKY: Any time the
17 school boards and the teachers and the youth
18 advocacy groups and the Conference of Big City
19 Boards of Education, without my former -
20 without the former president of the board and
21 the New York City Board of Education is in
22 opposition to a measure, it is not a matter of
23 what Senator Cook promises will be in the bill.
24 It is a vote on what this bill does or does not
25 do.

1 Under these circumstances, I am
2 voting in the negative.

3 ACTING PRESIDENT MARCELLINO:
4 Senator Stavisky will be recorded in the
5 negative.

6 Continue to call the roll.

7 THE SECRETARY: Senator Trunzo.

8 SENATOR TRUNZO: Yes.

9 THE SECRETARY: Senator Tully.

10 SENATOR TULLY: Aye.

11 THE SECRETARY: Senator Velella.

12 (There was no response.)

13 Senator Volker.

14 (Affirmative indication)

15 THE SECRETARY: Senator Waldon.

16 (There was no response.)

17 Senator Wright.

18 (There was no response.)

19 ACTING PRESIDENT MARCELLINO: Can
20 we call the absentees.

21 THE SECRETARY: Senator Breslin.

22 (There was no response.)

23 Senator Farley.

24 (There was no response.)

25 Senator Gentile.

1 SENATOR GENTILE: Yes.
2 THE SECRETARY: Senator Gold.
3 SENATOR GOLD: No.
4 THE SECRETARY: Senator Gonzalez.
5 (There was no response.)
6 Senator Hannon.
7 (Affirmative indication)
8 THE SECRETARY: Senator Maltese.
9 SENATOR MALTESE: Aye.
10 THE SECRETARY: Senator Marchi.
11 SENATOR MARCHI: Aye.
12 THE SECRETARY: Senator Rath.
13 SENATOR RATH: Aye.
14 THE SECRETARY: Senator Seward.
15 (There was no verbal response.)
16 Senator Stafford.
17 (There was no response.)
18 THE SECRETARY: Senator Velella.
19 SENATOR VELELLA: Yes.
20 THE SECRETARY: Senator Wright.
21 Senator Wright.
22 SENATOR WRIGHT: Aye.
23 ACTING PRESIDENT MARCELLINO:
24 Announce the results, please.
25 THE SECRETARY: Ayes 38, nays 17.

1 ACTING PRESIDENT MARCELLINO: The
2 bill is passed.

3 SENATOR SKELOS: Mr. President.

4 ACTING PRESIDENT MARCELLINO:
5 Senator Skelos.

6 SENATOR SKELOS: Mr. President,
7 would you take up Calendar Number 632, by
8 Senator Spano.

9 ACTING PRESIDENT MARCELLINO: The
10 Secretary will read.

11 THE SECRETARY: Calendar Number
12 632, by Senator Spano, Senate Print 4077, an act
13 to amend the Public Health Law, in relation to
14 the establishment of regional Emergency Medical
15 Services councils.

16 SENATOR PATERSON: Explanation.

17 ACTING PRESIDENT MARCELLINO:
18 There is a home rule message present at the desk
19 on this particular piece of legislation.
20 Senator Spano, an explanation has been asked
21 for.

22 A VOICE: Oh, a Spano bill? Can I
23 ask questions?

24 SENATOR SPANO: Thank you, Mr.
25 President. This bill would allow Westchester

1 County to adopt its own EMS Council, Emergency
2 Services Council. Right now, Westchester is a
3 part of a seven-county EMS Council. Westchester
4 County makes up 45 percent of the population of
5 that council, and the creation of a separate EMS
6 region for Westchester will allow for
7 Westchester County to more readily and
8 adequately meet the medical needs of the
9 citizens of Westchester.

10 ACTING PRESIDENT MARCELLINO:
11 Gentlemen, can we please hold it down so we can
12 hear the debate.

13 SENATOR PATERSON: O.K.

14 ACTING PRESIDENT MARCELLINO:
15 Read the last section.

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

18 ACTING PRESIDENT MARCELLINO:
19 Call the roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 60.

22 ACTING PRESIDENT MARCELLINO: The
23 bill is passed.

24 Senator Skelos.

25 SENATOR SKELOS: Mr. President,

1 would you call up Calendar Number 886.

2 ACTING PRESIDENT MARCELLINO:

3 Secretary will read Calendar Number 886.

4 THE SECRETARY: Calendar Number
5 886, by Senator Goodman, Senate Print 3651, an
6 act to amend the Alcoholic Beverage Control Law,
7 in relation to permitting the State Liquor
8 Authority.

9 SENATOR STACHOWSKI:

10 Explanation.

11 ACTING PRESIDENT MARCELLINO:

12 Senator Goodman, an explanation has been asked
13 for.

14 SENATOR SKELOS: Lay the bill
15 aside for the day.

16 ACTING PRESIDENT MARCELLINO: Lay
17 the bill aside for the day at the request of the
18 sponsor.

19 SENATOR SKELOS: Mr. President,
20 call up Calendar Number 889, by Senator Goodman.

21 ACTING PRESIDENT MARCELLINO: We
22 will call Calendar Number 889; the Secretary
23 will read.

24 THE SECRETARY: Calendar Numer
25 889, by Senator Goodman, Senate Print 3682, an

1 act to amend the Alcoholic Beverage Control Law,
2 in relation to entering an unpaid civil penalty.

3 SENATOR GOLD: Explanation.

4 SENATOR SKELOS: Lay it aside for
5 the day.

6 ACTING PRESIDENT MARCELLINO: Lay
7 the bill aside for the day.

8 SENATOR SKELOS: Is there any
9 housekeeping at the desk?

10 ACTING PRESIDENT MARCELLINO:
11 Yes, there is, Senator. Secretary will read a
12 substitution.

13 THE SECRETARY: Senator Bruno
14 moves to discharge from the Committee on Rules
15 Assembly Bill Number 7989 and substitute it for
16 the identical Third Reading Calendar 1071.

17 ACTING PRESIDENT MARCELLINO:
18 Substitution is ordered.

19 Senator Tully is recognized.

20 SENATOR TULLY: Yes, Mr.
21 President. On behalf of Senator Levy, please
22 place a sponsor's star on Calendar Number 1018.

23 ACTING PRESIDENT MARCELLINO:
24 Sponsor's star will be placed on Calendar Number
25 1018.

1 Senator Skelos.

2 SENATOR SKELOS: Is there any
3 other housekeeping?

4 ACTING PRESIDENT MARCELLINO: I
5 think the house is clean, sir.

6 SENATOR SKELOS: There being no
7 further business, I move we adjourn until
8 Wednesday, May 21st at 10:00 a.m., sharp.

9 ACTING PRESIDENT MARCELLINO:
10 There being no further business, the Senate is
11 adjourned until Wednesday, 10:00 a.m. sharp.

12 (Whereupon at 5:10 p.m., the
13 Senate adjourned.)

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