ALBANY, NEW YORK

May 20, 1997

10:05 a.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

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 adjournment. 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.

Communications and reports from state officers.

Motions and Resolutions.

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

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

(Response of "Aye.")

Those opposed?

SENATOR DOLLINGER: Nay.

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

Senator Bruno.

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

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

Thank you, Madam President.

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

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

SENATOR BRUNO: Make your substitution, Madam President.

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

THE PRESIDENT: The Secretary will read.

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

and substitute it for the identical Third Reading Calendar 337.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Substitution ordered.

Senator Dollinger.

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

THE PRESIDENT: We have 32, Senator Dollinger.

The Secretary will read.

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

THE PRESIDENT: Read the last section please.

SENATOR PATERSON: On the vote,

Madam President.

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

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

SENATOR BRUNO: Party vote in the affirmative.

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

THE PRESIDENT: Good morning.

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

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

SENATOR GOLD: Good. I feel

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

THE PRESIDENT: That's good to hear.

Bill 190 was laid aside. The Secretary will read.

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

SENATOR GOLD: Madam President.

THE PRESIDENT: I'm sorry. Senator Gold.

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

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

SENATOR GOLD: Oh.

THE PRESIDENT: Senator Bruno laid the bill aside.

SENATOR DOLLINGER: The roll call was withdrawn?

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President,

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

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

SENATOR BRUNO: Thank you.

THE PRESIDENT: The Secretary will read.

SENATOR GOLD: Madam President.

THE PRESIDENT: Senator Gold.

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

THE PRESIDENT: That's right.

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

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

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

THE PRESIDENT: Senator Bruno.

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

THE PRESIDENT: The Senate will stand at ease.

SENATOR BRUNO: Thank you, Senator Gold.

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

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

find their chairs, the staff to find their places.

Senator Skelos.

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

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

Senator Trunzo, why do you rise?

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

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

Thank you, Senator Trunzo.

SENATOR TRUNZO: Thank you.

ACTING PRESIDENT KUHL: Senator Skelos.

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

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

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

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

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President.

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

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

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

SENATOR FARLEY: Oh, I don't -

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

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

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

did. I'm sure you do.

SENATOR GOODMAN: Mr. President.

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

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

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

SENATOR PATERSON: Mr. President.

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

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

ACTING PRESIDENT KUHL: Senator

Skelos, do you wish to be heard on that?

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

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

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

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

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

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

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

THE SECRETARY: Senator Abate.

(There was no response.)

Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Breslin.

(There was no audible response.)

Senator Bruno.

(There was no audible response.)
Senator Connor.
(There was no audible response.)
Senator Cook.
SENATOR COOK: Here.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Here.
THE SECRETARY: Senator Dollinger.
(There was no response.)
Senator Farley.
SENATOR FARLEY: Here.
THE SECRETARY: Senator Gentile.
(There was no response.)
Senator Gold.
SENATOR GOLD: Here.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
SENATOR GOODMAN: Here.
THE SECRETARY: Senator Hannon.
(There was no response.)
Senator Hoffmann.
(There was no response.)

Senator Holland.
(There was no response.)
Senator Johnson.
SENATOR JOHNSON: Here.
THE SECRETARY: Senator Kruger.
(There was no response.)
Senator Kuhl.
SENATOR KUHL: Here.
THE SECRETARY: Senator Lachman.
(There was no response.)
Senator Lack.
SENATOR LACK: Here.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
(There was no response.)
Senator Leibell.
SENATOR LEIBELL: Here.
THE SECRETARY: Senator Leichter.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Libous.
(There was no response.)
Senator Maltese.

SENATOR MALTESE: Present.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Here.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Present.
THE SECRETARY: Senator Markowitz.
(There was no response.)
Senator Maziarz.
(There was no response.)
Senator Meier.
SENATOR MEIER: Here.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
(There was no response.)
Senator Nanula.
SENATOR NANULA: Here.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Present.
THE SECRETARY: Senator Onorato.
(There was no response.)
Senator Oppenheimer.
SENATOR OPPENHEIMER: Here.

THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: Here.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: Here.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Here.
THE SECRETARY: Senator Rath.
(There was no response.)
Senator Rosado.
(There was no response.)
Senator Saland.
SENATOR SALAND: Here.
THE SECRETARY: Senator Sampson.
(There was no response.)
Senator Santiago.
SENATOR SANTIAGO: Present.
THE SECRETARY: Senator Seabrook.
(There was no response.)
Senator Seward.
SENATOR SEWARD: Here.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Here.
ACTING PRESIDENT KUHL: Senator Paterson, I'm informed by the Secretary that there is a quorum present.

SENATOR PATERSON: Thank you, Mr. President.

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

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

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

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

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

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

I recommend and support his nomination.

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

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

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

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

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Farley.

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

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

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

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

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

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

SENATOR SANTIAGO: Thank you, Mr. President.

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

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

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

with which national banks are receiving.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

really is a refreshing situation.

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

ACTING PRESIDENT KUHL: Senator Marchi, on the nomination.

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

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

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

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

ACTING PRESIDENT KUHL: Senator Stafford.

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

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

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

ACTING PRESIDENT KUHL: Senator Larkin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

SENATOR DOLLINGER: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

With all of the comments that

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

Thank you very much.

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

(There was no response.)

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is unanimously confirmed.

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

The Secretary will continue to read.

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

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

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

SENATOR STAFFORD: Thank you, Mr. President.

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

SENATOR FARLEY: I'm going to yield.

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

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

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

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

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

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

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

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

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

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

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

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

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

Maureen, congratulations and Godspeed.

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

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

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

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

ACTING PRESIDENT KUHL: Senator Hannon, on the nomination.

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Saland, on the nomination.

SENATOR SALAND: Thank you, Mr. President.

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

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

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

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

ACTING PRESIDENT KUHL: Senator Gold, on the nomination.

SENATOR GOLD: Thank you, Mr. President.

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

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

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

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

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

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

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

(There was no response.)

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is unanimously confirmed.

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

Maureen, congratulations. Good luck. (Applause)

The Secretary will continue to

read.

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

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

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

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

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

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

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

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

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

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

(There was no response.)

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

following nomination:

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

SENATOR SKELOS: Move the nomination.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Maltese, on the nomination.

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

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

(There was no response.)

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

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

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

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

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

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

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

Senator Marchi, my colleague, has

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

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

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

(There was no response.)

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

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

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

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

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

Thank you.

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

(There was no response.)

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

(Response of "Aye".)

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

SENATOR DOLLINGER: Mr.

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

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

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

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

I'll be voting in the negative.

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

The nominee is confirmed.

The Chair recognizes Senator Skelos.

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

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

Senator Lachman, why do you rise?

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

like to say a few words.

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

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

Thank you.

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

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

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

SENATOR SKELOS: Move the nomination.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

SENATOR SKELOS: Move the nomination.

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

the nomination signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to

read.

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

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

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

(There was no response.)

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

(Response of "Aye".)

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

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

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

Thank you.

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

The nominees are confirmed.

The Secretary will continue to read.

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

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

SENATOR SKELOS: Move the nomination.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

SENATOR SKELOS: Move the nomination.

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

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

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

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

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

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

(There was no response.)

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

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

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

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

Senator Dollinger, on the nomination.

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

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

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is confirmed.

Senator Skelos.

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

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

The Chair recognizes Senator

Alesi.

SENATOR ALESI: Thank you, Mr. President.

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

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

Senator Alesi.

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

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

Senator Skelos, that brings us to the calendar.

SENATOR SKELOS: If we could take

up the non-controversial calendar.

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

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR STACHOWSKI: Lay it aside.

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

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

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

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

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

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

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

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

ACTING PRESIDENT KUHL: For the day?

SENATOR SKELOS: Yes.

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

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill side.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR SKELOS: Lay the bill aside for the day.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR STACHOWSKI: Lay it aside.

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

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: The Secretary -

SENATOR LEICHTER: Lay the bill aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

657, by Senator Volker, Senate Print 3617 -

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 661, by Senator Volker, Senate Print 3792, an act to amend the Penal Law, in relation to determining whether a prior conviction.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 673, by Senator Levy, Senate Print 4178-A, an act to amend the Vehicle and Traffic Law, in relation to civil penalties.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: The Sec...

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

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

SENATOR STACHOWSKI: Lay it aside.

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

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT KUHL: The bill is passed.

Senator Saland.

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

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

Senator Leichter also in the negative on Calendar Number 723?

(Senator Leichter nods head.)

Without objection, hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 723.

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

Johnson in the negative on Calendar Number 723.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Mr. President.

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

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

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

SENATOR GOLD: Yes, sir.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill

is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

Section 6 of Article V.

SENATOR SKELOS: Lay it aside for the day.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

THE SECRETARY: Calendar Number

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR SKELOS: Lay it aside for the day.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: The Secretary will -

SENATOR LEICHTER: Lay the bill aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

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

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

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill

is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 987, by Senator Maziarz -

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

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

in relation to the resale.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Lay the bill aside.

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

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

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

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

Senator Skelos.

SENATOR SKELOS: Take up the controversial calendar, please.

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Yes, Senator Leichter.

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

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

ACTING PRESIDENT KUHL: Senator Abate.

(There was no response.)
Senator Alesi.
SENATOR ALESI: Here.
THE SECRETARY: Senator Breslin.
(There was no response.)
Senator Bruno.
(There was no response.)
Senator Connor.
SENATOR CONNOR: Here.
THE SECRETARY: Senator Cook.
(There was no response.)
Senator DeFrancisco.
(There was no response.)
Senator Dollinger.
SENATOR DOLLINGER: Here.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Here.
THE SECRETARY: Senator Gentile.
SENATOR GENTILE: Here.
THE SECRETARY: Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)

Senator Hannon.
(There was no response.)
Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Here.
THE SECRETARY: Senator Johnson.
(There was no response.)
Senator Kruger.
(There was no response.)
Senator Kuhl.
SENATOR KUHL: Present.
THE SECRETARY: Senator Lachman.
(There was no response.)
Senator Lack.
(There was no response.)
Senator Larkin.
SENATOR LARKIN: Present.
SENATOR STAFFORD: Can you call my name out of order?
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Here.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Here.
THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Here.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: Present.
THE SECRETARY: Senator Levy.
(There was no response.)
Senator Libous.
(There was no response.)
Senator Maltese.
(There was no response.)
Senator Marcellino.
SENATOR MARCELLINO: Here.
THE SECRETARY: Senator Marchi.
(There was no response.)
Senator Markowitz.
SENATOR MARKOWITZ: Present.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Present.
THE SECRETARY: Senator Meier.
SENATOR MEIER: Here.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
SENATOR MONTGOMERY: Present.
THE SECRETARY: Senator Nanula.

(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Present.
THE SECRETARY: Senator Onorato.
(There was no response.)
Senator Oppenheimer.
(There was no response.)
Senator Padavan.
(There was no response.)
Senator Paterson.
(There was no response.)
Senator Present.
SENATOR PRESENT: Yeah.
THE SECRETARY: Senator Rath.
(There was no response.)
Senator Rosado.
(There was no response.)
Senator Saland.
SENATOR SALAND: Here.
THE SECRETARY: Senator Sampson.
(There was no response.)
Senator Santiago.
SENATOR SANTIAGO: Present.
THE SECRETARY: Senator Seabrook.
(There was no response.)

Senator Seward.

SENATOR SEWARD: Here.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Here.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Present.

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

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

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

SENATOR LEICHTER: Explanation.

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR LEICHTER: Explanation.

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR LEICHTER: Explanation.

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

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

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

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

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

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Explanation.

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

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

ACTING PRESIDENT KUHL: Senator Holland, do you yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, let

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

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

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

SENATOR HOLLAND: Senator

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

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

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

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

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

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

continue to yield?

SENATOR LEICHTER: Yes, Mr. President.

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

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

SENATOR LEICHTER: You are increasing the penalties.

SENATOR HOLLAND: No.

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

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

SENATOR LEICHTER: Really?
SENATOR HOLLAND: Yeah.
SENATOR LEICHTER: There's no change as far as that's concerned?
SENATOR HOLLAND: No, there's not.
SENATOR LEICHTER: Okay. The memo I have indicates otherwise, but I certainly accept your word on it.
Let me ask you one other question.
ACTING PRESIDENT KUHL: Senator Holland, do you continue to yield?
SENATOR HOLLAND: Yes, sir.
ACTING PRESIDENT KUHL: The Senator continues to yield.
SENATOR LEICHTER: I see that your memorandum in support of the bill says - and I'm quoting -- "clearly when the system is experiencing massive losses as a result of the illegal discounting of food stamps for cash" - can you tell us what the amount of the losses are?
SENATOR HOLLAND: We've had testimony on that, Senator, a while back but I

cannot tell you exactly what that is, no.

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

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

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

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

SENATOR LEICHTER: Yes, please.

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

SENATOR HOLLAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: You used the

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

SENATOR HOLLAND: No, sir, not specifically.

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

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

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

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

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

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

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

I yield to Senator Lack.

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

SENATOR LACK: Thank you.

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

a federally funded program.

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

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

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

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

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

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

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

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

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

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

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

SENATOR HOLLAND: Yes, sir.

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

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

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

SENATOR HOLLAND: No, sir. I

wouldn't think so.

SENATOR DOLLINGER: Again through you, Mr. President.

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

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

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

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

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

SENATOR DOLLINGER: Again through you, Mr. President.

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

chamber if you have to talk, members.

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

Senator Dollinger.

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

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

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

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

SENATOR HOLLAND: Correct.

SENATOR DOLLINGER: No change then.

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

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

SENATOR HOLLAND: The district attorney, Senator.

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

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

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

SENATOR DOLLINGER: Again through you, Mr. President.

SENATOR HOLLAND: I'm not an attorney.

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

SENATOR DOLLINGER: Again through you, Mr. President -

ACTING PRESIDENT KUHL: Senator continues -

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

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

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

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

SENATOR LACK: Mr. President -

SENATOR HOLLAND: I yield to my counsel.

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

SENATOR LACK: Thank you, Mr. President.

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

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

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

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

SENATOR LACK: Yeah.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

A VOICE: One or two.

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

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

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

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

SENATOR LACK: Sure.

ACTING PRESIDENT KUHL: Senator continues to -

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

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

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

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

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

SENATOR HOLLAND: Yes, sir.

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

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

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

SENATOR DOLLINGER: O.K.

SENATOR HOLLAND: It's not in the bill.

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

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

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

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

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

ACTING PRESIDENT KUHL: Senator Holland.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President -

-- regular order.

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

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

SENATOR GOLD: Can we have just a second?

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

SENATOR LARKIN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR GOLD: Explanation.

SENATOR LARKIN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR DOLLINGER: Explanation.

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

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

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

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

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

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

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

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

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

Thank you.

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

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: Senator yields.

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

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

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

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

SENATOR JOHNSON: That's correct.

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

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

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

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

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

SENATOR JOHNSON: Yes.

SENATOR DOLLINGER: O.K.

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

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

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

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

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

SENATOR DOLLINGER: Yes, I am, Mr.

President.

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

SENATOR DOLLINGER: I concur, Mr. President.

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

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

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

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

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

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

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

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

prior to the President issuing his determination of germaneness?

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

SENATOR DOLLINGER: I appreciate that, Mr. President.

ACTING PRESIDENT KUHL: (talking over-unintelligible).

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

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

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

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

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

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

any place in this state.

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator

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

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

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

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

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

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

SENATOR PATERSON: Slow roll call, Mr. President.

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

THE SECRETARY: Senator Abate.

SENATOR ABATE: Yes.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: No.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.
THE SECRETARY: Senator Bruno.
(Negative indication.)
THE SECRETARY: Senator Connor.
(Affirmative indication.)
Senator Cook.
(There was no response.)
Senator DeFrancisco.
SENATOR DeFRANCISCO: No.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: Yes.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: No.
THE SECRETARY: Senator Gentile.
SENATOR GENTILE: Yes.
THE SECRETARY: Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
(There was no response.)
Senator Hoffmann excused.

Senator Holland.
SENATOR HOLLAND: No.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: No.
THE SECRETARY: Senator Kruger.
(There was no response.)
Senator Kuhl.
SENATOR KUHL: No.
THE SECRETARY: Senator Lachman.
(There was no response.)
Senator Lack.
SENATOR LACHMAN: Yes.
ACTING PRESIDENT KUHL: Wait. He's in the back, saying yes.
THE SECRETARY: Did not answer, so Lachman is yes.
Senator Larkin.
SENATOR LARKIN: No.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: No.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: Yes.

THE SECRETARY: Senator Levy.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: No.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: No.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: No.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: No.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: Yes.
THE SECRETARY: Senator Maziarz.
(There was no response.)
Senator Meier.
SENATOR MEIER: No.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
SENATOR MONTGOMERY: Yes.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: Yes.
THE SECRETARY: Senator

Nozzolio.

(There was no response.)

Senator Onorato.

(There was no response.)

Senator Oppenheimer.

SENATOR OPPENHEIMER: Yes.

THE SECRETARY: Senator Padavan.

(There was no response.)

Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: No.

THE SECRETARY: Senator Rath.

(There was no response.)

Senator Rosado.

(There was no response.)

Senator Saland.

SENATOR SALAND: No.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Yes.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Seabrook.

(There was no response.)

Senator Seward.
SENATOR SEWARD: No.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: No.
THE SECRETARY: Senator Smith.
SENATOR SMITH: Yes.
THE SECRETARY: Senator Spano.
SENATOR SPANO: No.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Yes.
THE SECRETARY: Senator Stafford.
(There was no response.)
Senator Stavisky.
(There was no response.)
Senator Trunzo.
SENATOR TRUNZO: No.
THE SECRETARY: Senator Tully.
SENATOR TULLY: No.
THE SECRETARY: Senator Velella.
(There was no response.)
Senator Volker.
SENATOR VOLKER: No.
THE SECRETARY: Senator Waldon.

SENATOR WALDON: Aye.
THE SECRETARY: Senator Wright.
SENATOR WRIGHT: No.
ACTING PRESIDENT KUHL: Call the absentees.
THE SECRETARY: Senator Cook.
SENATOR COOK: No.
THE SECRETARY: Senator Gold.
SENATOR GOLD: Definitely.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
(There was no response.)
Senator Kruger.
(There was no response.)
Senator Lack.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Maziarz.
SENATOR MAZIARZ: No.
THE SECRETARY: Senator Mendez.

(There was no response.)

Senator Nozzolio.

SENATOR NOZZOLIO: No.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Yes.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Rath.

(There was no response.)

Senator Lack.

SENATOR LACK: No.

THE SECRETARY: Senator Rosado.

(There was no response.)

Senator Santiago.

(There was no response.)

Senator Seabrook.

SENATOR SEABROOK: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: No.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Yes.

THE SECRETARY: Senator Velella.

(There was no response.)

Senator Levy.

SENATOR LEVY: No.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 21, nays 31.

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

On debate.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

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

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

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

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

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

Senator Leichter.

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

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

SENATOR JOHNSON: Senator.

A VOICE: We have the answer. Why do we say that?

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

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

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

A VOICE: Reasonable suspicion.

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

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

SENATOR LACK: The intent to commit a crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR LEICHTER: Yes, I yield to Senator Lack.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator yields.

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

SENATOR LEICHTER: Go ahead.

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

that come before this house.

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

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

The fact of the presence of the

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

SENATOR LEICHTER: Senator, would this -

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

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

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

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

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

SENATOR LACK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

the school district.

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

SENATOR LACK: Sure.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

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

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

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

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

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

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

SENATOR LACK: I will.

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

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

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

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

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

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

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

with 2.

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

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

and I know Senator Johnson does, that we want to safeguard those constitutional protections. Whether we do or not, the courts are going to do it anyhow, but I don't think we want to be in a situation where we pass legislation that I think flies in the face of the Constitution and how the courts have interpreted the Constitution.

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

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

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

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

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

Senator Gold.

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

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

SENATOR LACK: I'm happy to yield

to Senator Johnson's noble effort.

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

SENATOR LACK: Yes, Senator.

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

(Senator Lack nods head.)

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

ACTING PRESIDENT KUHL: Senator Lack, do you yield?

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

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

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

ACTING PRESIDENT KUHL: Senator Montgomery.

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

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

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

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

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

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

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

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

SENATOR MONTGOMERY: So the

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

SENATOR JOHNSON: Yes.

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

SENATOR JOHNSON: That is true.

SENATOR MONTGOMERY: Thank you, Mr. President.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Ayes 59, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Stavisky, why do you rise?

SENATOR STAVISKY: Mr. President, I understand that 561 was voted on previously, am I correct?

ACTING PRESIDENT KUHL: No, that bill was laid aside, Senator.

SENATOR STAVISKY: Oh, still laid aside.

ACTING PRESIDENT KUHL: Still laid aside.

SENATOR STAVISKY: Thank you.

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

SENATOR GOODMAN: I wish to make a brief announcement with the permission of the Majority Leader.

Mr. President, this evening from 6:00 to 8:00 p.m., at the State Museum in the West Gallery, there will be an exhibit of Winslow Homer art, brought to Albany by the Metropolitan Museum of Art. This is the first in a series of loan exhibitions which have been arranged to make available great works of art from the leading institutions in the city of New

York for the benefit of the Albany community in the State Museum, and I'd like to urge every member within the sound of my voice, as well as staff members and guests, to come to the State Museum from 6:00 to 8:00 for a gala reception in honor of the Metropolitan Museum and those who have made this exhibition possible.

I think I can promise you both cultural elevation and gastronomic sustenance. Please join us. We'd be happy to see you.

ACTING PRESIDENT KUHL: Senator Meier.

SENATOR MEIER: Mr. President, may I now ask that the Senate stand at ease for a few moments.

ACTING PRESIDENT KUHL: The Senate will stand at ease for a few moments.

(At 2:20 p.m., the Senate stood at ease briefly.)

ACTING PRESIDENT WRIGHT: Senator Holland.

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

ACTING PRESIDENT WRIGHT: There

will be an immediate meeting of the Rules Committee in Room 332 of the Capitol.

SENATOR HOLLAND: And could we return to the reading of the calendar, please.

ACTING PRESIDENT WRIGHT: My bill.

ACTING PRESIDENT LIBOUS: Secretary will read.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT LIBOUS: Senator Maltese, an explanation has been asked for.

SENATOR MALTESE: Mr. President, with the proliferation of child pornography and the universal condemnation of such, we have attempted not only in this state Legislature but in every state Legislature in the country and at the national level, to prevent these obscene, indecent and absolutely outrageous performances, and with a renewed interest in preventing child abuse and the unlawful use and improper use, certainly improper use of children, we have attempted to close the door and close the cell

doors on the pornographers and those that would spread and encourage and promote this terrible activity, and yet as we attempt to close one door and attempt to make one aspect of the conduct unlawful, we have to face ever renewed efforts on the part of profit-making demons who would attempt to use our children to their nefarious purposes.

This bill is an extension of prior legislation which seeks to make unlawful the use of children, this terrible use of children under 16 years of age, and this particular legislation which is co-sponsored by 13 of my colleagues and which is sponsored in the Assembly by Assemblyman Seminerio, would amend the Labor Law and the Penal Law in relation to the employment of minors under 16 years of age and prohibits the viewing and possession of certain obscene materials involving such minors.

What the specific wording is, any play, motion picture, dance or other exhibition in which such minor engages in sexual conduct as such term is defined in subdivision 3 of section 263 of the Penal Law -- so we have cited section

263 exactly, and section 263, Mr. President, specifically defines sexual conduct, so that the case would withstand constitutional scrutiny by our state courts and by the United States Supreme Court.

In addition, the phrase which is "harmful to said minor", the term "harmful to said minor" specifically within the legislation states, "shall have the same meaning as the term 'harmful to minors' as defined in subdivision 6 of section 235.20 of the Penal Law," and 235.20 of the Penal Law specifically recites "harmful to minors" which means "that quality of any description or representation in whatever form of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which when considered as a whole appeals to the prurient interest and sex of minors; and (b) and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and (c) considered as a whole lacks serious artistic, literary, political and scientific value for minors."

What we are attempting to do, Mr. President, is bring ourselves under the most

recent United States Supreme Court case which is Clyde Osborn vs. The State of Ohio, and Clyde Osborn was convicted in the Court of Common Pleas in Ohio and his conviction was appealed to the Court of Appeals in Ohio and then appealed on certiorari and then went to the United States Supreme Court which ruled, in a 6 to 3 decision, that -- Justice White: "Prohibition against possession and viewing of child pornography complies with the First Amendment and is not unconstitutionally overbroad."

The court recites the interest of society in protecting our children and in preventing this heinous practice, and the statute in Ohio, as a matter of fact, lacks any mens rea language. Our proposed statute specifically recites which is harm -- "which is harmful to said minor," but in addition in -- on line 16 and 17, requires, quote, "knowing the character and content thereof." I'll read the whole sentence.

A person is guilty of illegal possession or viewing of material containing obscene depictions of the nudity of a child or of obscene sexual performance by a child if,

quote, "knowing the character and content thereof he possesses any material or views any performance which contains any obscene sexual performance by a child less than 16 years of age or depicts nudity involving lewd exhibition or graphic focus on the genitals of such a child."

So what we have sought to do here is protect children and at the same time bring our statute within the limitations imposed by both case and statute law as defined by the United States Supreme Court.

ACTING PRESIDENT LIBOUS: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Maltese would yield for a question.

SENATOR MALTESE: Yes.

ACTING PRESIDENT LIBOUS: Senator Maltese, would you yield for a question? Yes, he will, sir.

SENATOR PATERSON: Senator, we, meaning that I'm concerned and I know that you're concerned about the freedoms granted under the First Amendment, so, therefore, you must have considered it when you wrote the

legislation, and not as much on the sexual performance by a minor, but on viewing the information and the fact that we attach an "E" felony to it, tell me and please explain to those who you'd like to join with you in supporting this bill, how you feel this doesn't violate the protections granted under the First Amendment.

SENATOR MALTESE: Well, I think that what we're after is the definition of "sexual performance", the definition of "sexual conduct". We've recited that it's only children under 16. In other words, what we have attempted to do is follow the dictates set down by Osborn, and Osborn specifically as, in Justice White's decision, he states -- and, as I say, the Ohio statute lacked any mens rea language, and even at that, they upheld it and stated: "The Ohio statute is not constitution ally overbroad. Although on its face, the statute purports to prohibit constitutionally protected depictions of nudity, it is doubtful that any overbreadth would be substantial under this court's cases in light of the statutory exemptions and proper purposes provisions.

"In any event, the statute as construed by the Ohio Supreme Court plainly provides overbreadth scrutiny by limiting the statute's operation to nudity that constitutes lewd exhibition or focuses on genitals," just as ours does. "The court avoided penalizing persons for viewing or possessing innocuous photographs of naked children and thereby rendered the nudity language permissible."

ACTING PRESIDENT LIBOUS: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator would yield for another question.

SENATOR MALTESE: Yes.

ACTING PRESIDENT LIBOUS: Senator Maltese, will you continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT LIBOUS: He will, sir.

SENATOR PATERSON: Now, turning to the issue of enforcement, it would not seem very difficult for someone that might want to avoid observing this kind of conduct to become

victimized just by the exposition in that it might not be clear whether or not the performer is 16 years of age or under, and also there is just a matter of one doesn't know, it could come to us over the Internet, it could come to us in some kind of performance, but that the individual doesn't know what the next scene is going to be, and I'm just saying that to attach as strong a punishment as you have in the legislation, what would be the kind of exculpatory evidence in which the individual might make it clear that they disapprove of the conduct as much as anyone else but, unfortunately, came into possession of it, I mean it can be in a book, it can be anywhere, and under your legislation, I would imagine it would put the individual that holds it, it would make them liable for prosecution.

SENATOR MALTESE: Mr. President, as I've stated, the provision specifically within the four corners of the legislation states "knowing the character and content thereof," and with reference to my good colleague's statement as to the age of the defendants or the, I'm sorry, the age of the

participants as whether or not ascertainable by the defendants, I believe there are specific exclusions under 262 of the Penal Law which is specifically alluded to here, which would bring it under the exceptions that the -- the exceptions as to -- would have some basis, some reasonable basis of ascertaining the age of the participants.

Obviously, in some of these loathesome performances, it would be absolutely evident, the children participating are infants or close to infants, obviously pre-puberty and that would be certainly prima facie. In a close case or close situation, you would, I believe, have the criminal statute strictly construed and you would be able to fight the case effectively.

So I think, and since it brings it under 263, which is also specifically enumerated in the statute, you would have the normal sexual conduct and as sexual conduct is spelled out, it means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, so we're not

talking about statues, marble statues of David or some scientific treatise or some innocent - innocent nude of September morn. We're talking about hard core child pornography.

ACTING PRESIDENT LIBOUS: Senator Paterson.

SENATOR PATERSON: Mr. President, not only am I going to vote for Senator Maltese's bill, but I think we also should limit the discussion of all these subjects as too exciting.

ACTING PRESIDENT LIBOUS: Read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT LIBOUS: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to the reports of standing

committees for a report from the Rules Committee, please.

ACTING PRESIDENT LIBOUS: Secretary will read the report of the Rules Committee.

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

Senate Print 5296, by Senator Trunzo, an act to amend Chapter 41 of the Laws of 1997 providing a retirement incentive to certain public employees;

5337, by the Senate Committee on Rules, an act to amend Chapter 708 of the Laws of 1992; and

5345, by Senator Velella, an act to amend the Insurance Law, in relation to home owners insurance catastrophe coverage.

ACTING PRESIDENT LIBOUS: All bills reported directly to third reading.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return and take up Calendar 1072, please.

ACTING PRESIDENT LIBOUS:

Secretary will read Calendar Number 1072.

THE SECRETARY: Senator Velella moves to discharge from the Committee on Rules, Assembly Bill Number 8005 and substitute it for the identical Third Reading Calendar 1072.

ACTING PRESIDENT LIBOUS: Substitution ordered.

SENATOR HOLLAND: Is there a message of necessity at the desk, please?

ACTING PRESIDENT LIBOUS: Secretary will read.

THE SECRETARY: Calendar Number 1072, by the Assembly Committee on Rules, Assembly Print 8005, an act to amend the Insurance Law, in relation to homeowners insurance catastrophe coverage.

ACTING PRESIDENT LIBOUS: Yes, there's a message at the desk.

SENATOR HOLLAND: Move to accept the message.

ACTING PRESIDENT LIBOUS: All those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT LIBOUS: The bill is passed.

SENATOR HOLLAND: Mr. President, can we do Calendar 1070, please.

ACTING PRESIDENT LIBOUS: Calendar 1070.

THE SECRETARY: Calendar Number 1070, by Senator Trunzo, Senate Print 5296, an act to amend Chapter 41 of the Laws of 1997, providing a retirement incentive for certain public employees.

ACTING PRESIDENT LIBOUS: Read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT LIBOUS: The bill is passed.

SENATOR HOLLAND: Can we return to -

ACTING PRESIDENT LIBOUS: Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to the regular order of the calendar, please.

ACTING PRESIDENT LIBOUS: Secretary will read. Regular order. Secretary will read.

THE SECRETARY: Calendar Number 571, by Senator Wright, Senate Print 3560-A, an act to amend the Environmental Conservation Law, in relation to muzzle loading firearm big game seasons.

ACTING PRESIDENT LIBOUS: I'm sorry, Senator Paterson. Did you ask for an explanation?

SENATOR PATERSON: I'm sorry. Yes.

ACTING PRESIDENT LIBOUS: Senator

Paterson has asked Senator Wright for an explanation. Senator Wright, Senator Paterson has respectfully asked for an explanation of your bill.

SENATOR WRIGHT: Thank you, Mr. President.

Were Senator Lack in the chambers, I would yield to him to assist me in this noble effort, but since he's not, I guess I'll have to explain the bill as the sponsor.

We are amending -- proposing an amendment to the Environmental Conservation Law that would modify the duration of the season for muzzle loading firearms and big game seasons in the northern zone for the deer hunting season in New York State.

This proposal has been developed over the last several years in consultation with the local sportsmen community, after a series of public meetings in the region, talking with sportsmen, farmers and other individuals in the community, and working with DEC officials, each of the last two years, most recent community meetings being held within the last two months within the region, and the alternative being

advanced is to grant DEC in the northern zone only the latitude to extend the season from the current 7 days to 16, that they be granted the flexibility to extend it either prior to or subsequent to the regular deer season based upon deer population and other factors and criteria that the Department would utilize.

ACTING PRESIDENT LIBOUS: Senator Paterson.

SENATOR PATERSON: Explanation satisfactory, Mr. President.

SENATOR WRIGHT: Thank you, Senator Paterson.

ACTING PRESIDENT LIBOUS: Read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT LIBOUS: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number

586 by Senator Velella, Senate Print 20, an act to amend the Insurance Law, in relation to agent termination reporting requirements.

SENATOR PATERSON: Explanation.

SENATOR HOLLAND: Lay aside.

ACTING PRESIDENT LIBOUS: Lay that bill aside.

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

ACTING PRESIDENT LIBOUS: Senator Paterson, we'll give you an explanation as soon as we can get somebody up in the Chair.

ACTING PRESIDENT MARCELLINO: Senator Libous, an explanation has been requested.

SENATOR LIBOUS: Thank you, Mr. President, and Senator Paterson. I know that last year we also discussed this.

Basically what this legislation will do is, it teaches some responsibilities to minors, basically those under the age of 18 possessing tobacco, can be fined with a violation. The violation could mean up to a $50

fine and 30 hours of community service. We discussed this bill, I believe, last year at great length, and the purpose for the bill is - what we're trying to do is teach some responsibility. At the same time we also look at the situation with tobacco, cigarette products, other tobacco products. Obviously Washington, D.C. has done a number of things in recent months, and we feel that this just complements some of the laws that were actually passed right here in this chamber back in 1992 when we restricted the sale of tobacco products in vending machines and strengthened penalties against retailers who violated the law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -- those recorded in the negative on Calendar Number 606 are Senators Maltese, Markowitz, Montgomery and

Waldon. Ayes 56, nays 4. Also Senator Leichter. Ayes 55, nays 5.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 620, by Senator Stafford, Senate Print 3765, an act to amend the Executive Law, in relation to standardizing and improving state agency permit applications.

SENATOR SKELOS: Lay it aside for the day, please, at the request of the sponsor.

THE SECRETARY: 632 -- Calendar Number 632, by Senator Spano, Senate Print 4077, an act to amend the Public Health Law, in relation to establishment of regional emergency medical services councils.

SENATOR SKELOS: Lay aside temporarily.

ACTING PRESIDENT MARCELLINO: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 647 by Senator Seward, Senate Print 4279, an act to amend the Public Service Law, in relation to elimination of the mandate.

SENATOR SKELOS: Lay it aside

temporarily.

ACTING PRESIDENT MARCELLINO: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 657, by Senator Volker, Senate Print 3617, an act to amend the Civil Practice Law and Rules, in relation to motions addressed prior orders.

ACTING PRESIDENT MARCELLINO: Senator Volker, an explanation has been asked for by Senator Paterson.

SENATOR VOLKER: This was a bill that was proposed to us by the Office of Court Administration and supported by the Association of the Bar of the city of New York. It attempts to codify a number of court cases that, although most of them have gone in basically the same direction, there have been some that have gone in different directions on the issue of re-argument of motions and motions for leave to renew pursuant to -- pursuant to decision.

It's an attempt to codify and settle case law and under the present case law re-argument would be denied where there's no showing to the court of overlooked or mis apprehended relevant facts or misapplied

controlling law. What this would allow is to do a re-argument basically only where there is some sort of new -- new evidence, or some sort of new material that would actually allow the court not to be in a situation where you would be merely rearguing the same points that were argued in the motion before.

What they're trying to do here is develop some sort of certainty if there is actually good reason to reargue or to renew the motion, then that would be allowed specifically under this section but, if not, then it would be denied as not being applicable.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of January.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

six seventy -

SENATOR SKELOS: Mr. President, can you take up Calendar Number 190 now by Senator Volker.

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar Number 190, by Senator Volker.

THE SECRETARY: On page 7, Calendar Number 190, by Senator Volker, Senate Print 2336, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, what's your pleasure?

SENATOR SKELOS: Regular order. Please take up Calendar Number 678, by Senator

Maltese.

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar Number 678, by Senator Maltese.

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

ACTING PRESIDENT MARCELLINO: Read the last section.

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

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MARCELLINO: I hear a faint cry for an explanation out there? Senator Maltese, will you give an explanation of this bill, please?

SENATOR MALTESE: Mr. President, this bill was previously introduced in this house -- I was its prime sponsor -- in 1993. It passed 58 to zero. In 1994, it passed 56 to 1. It was on the non-controversial calendar. The Assembly sponsor is Assemblyman Crowley in the Assembly.

The bill permits the Department

of Social Services to have access to the criminal history record of any person seeking approval to become an operator, administrator or receiver of an adult care facility, in addition, any person seeking recertification as an operator, administrator or receiver of an adult care facility. This occurs every four years.

All requests must be accompanied by -

ACTING PRESIDENT MARCELLINO: Senator Maltese, your explanation has been deemed satisfactory. Can we read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Secretary will read Calendar Number 647, by Senator Seward.

THE SECRETARY: Calendar Number 647, by Senator Seward, Senate 4279, an act to

amend the Public Service Law, in relation to the elimination of the mandate.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MARCELLINO: Before we have an explanation, can we have some order in the house, please, so we can hear the explanation by Senator Seward. Senator Seward.

SENATOR SEWARD: Thank you, Mr. President.

This bill passed the Senate last year (inaudible-microphone inoperative) electric and gas utilities with annual revenues in excess of $200 million which, in fact, are all seven of the major utilities and two gas corporations.

The idea behind this legislation is that, as the utilities are beginning to restructure and move to more of a market-based competitive era, the need for these regular management audits has diminished. Originally, they were in place to improve the efficiency and reduce the costs of the utility for the ratepayers under the traditional rate of return regulation, but in a more market-based competitive era, the marketplace will, in fact, take care of this in terms of bringing out

efficiencies in the utilities.

But we do -- we do maintain under this legislation the PSC does have the authority to come in with one of these audits, not on an every five-year basis but on a -- it's at their discretion so that if there are any problems that may arise or a number of complaints that may come in that such an audit could be conducted at that point to take care of the problems that may be there.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Tully is no.

THE SECRETARY: Ayes 59, nays one, Senator Tully recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 688, by member of the Assembly Greene, Assembly

Print 5470, an act to amend the Banking Law, in relation to junior mortgages.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Farley, there's been an explanation called for on the bill.

SENATOR FARLEY: I will be most happy to do the explanation. Now, pay attention.

This is a bill that would decrease the minimum loan amount that is required for a line of credit on a junior lien mortgage, also known as an open end home equity loan from the current minimum of 7,500 to 2500.

This bill was passed unanimously in the Assembly on March 24th. The existing $7500 minimum was established for financial institutions and licensed lenders in 1983 when open ended lines of credit secured by a junior lien mortgage were a brand new product in New York State.

Now that the consumers have become more educated on the benefits and risks associated with these loans, there is no need for such a high and arbitrary minimum loan

amount. The proposed minimum of 2500 is consistent with the statutes and lending practices in almost all the other states. Furthermore, under New York law, no similar minimum exists for closed end home equity loans. There's no need to maintain such a different standard for these two types of home equity loan. Closed end loans often carry a higher interest rate, and open ended loans do not offer the borrower the flexibility to access a revolving line of credit as the need arises.

The bill would give borrowers a greater ability to decide which type of loan best suits their needs. By lowering this minimum, home owners with low equity in their homes will be given more financial options, in other words, young home owners. Home equity loans are a popular source of money for home owners because the proceeds can be used to meet various needs such as home improvements, debt consolidation and education costs. Incident ally, home owners who really need this money will get it one way or the other, but home equity loans are generally the most cost effective way to get it, and interest rates on

these open-ended home equity loans are much lower than unsecured loans and on credit cards and, incidentally, the interest that is paid is tax deductible.

Is that more than you wanted to know?

SENATOR GOLD: Will the Senator yield to a question, please?

ACTING PRESIDENT MARCELLINO: Senator Farley, will you yield?

SENATOR FARLEY: Yeah.

ACTING PRESIDENT MARCELLINO: Senator Farley yields, sir.

SENATOR GOLD: Senator, I would like to clarify this for myself. I hear this all the time. You said that the interest is tax deductible, is that correct, sir?

SENATOR FARLEY: That's my understanding.

SENATOR GOLD: Well, Senator, if somebody borrows on a home equity loan, let's say $5,000, and they spend the next two weeks in London on that money, are you saying to me that that loan is -- the interest on that loan is tax deductible?

SENATOR FARLEY: It's my understanding, yes.

Incidentally, let's just address that loan for a minute. If somebody is borrowing $5,000 to go to London, I think, I'm not sure, I don't make loans, but the bank would want to know why they're making this loan. If it's for home improvement, they're perhaps more apt to get it. If it is for education improvement, that sort of thing, but I mean you gave an example that might not -- and incidentally they couldn't get a $5,000 loan because the minimum is 7500 now.

SENATOR GOLD: But not under your bill, Senator.

SENATOR FARLEY: Under my bill, it would be 2500.

SENATOR GOLD: Well, under your bill, they could get a loan to go to London.

SENATOR FARLEY: Actually, it's Assemblywoman Greene's bill.

SENATOR GOLD: Oh. Will the Senator yield to one more question?

ACTING PRESIDENT MARCELLINO: Senator, will you yield to one more question?

SENATOR FARLEY: I would be delighted.

ACTING PRESIDENT MARCELLINO: He will be delighted.

SENATOR GOLD: Senator, you have a home owner that's got a lot of credit card debt out there at a high interest rate and they borrow 25-, $30,000, take a home equity loan. They pay off the credit card. That's all they do is pay off the credit card. Is it your understanding, sir, that that interest is tax deductible?

SENATOR FARLEY: I think it is and I think it's a -- that's a good way to do it because they'd be paying 18 to 20-some-odd percent on these credit cards and these loans are much lower.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Yes, sir.

SENATOR GOLD: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold, on the bill.

SENATOR GOLD: Oh, I'm sorry.

With Senator Farley's permission, could I ask one more question?

ACTING PRESIDENT MARCELLINO: Senator Farley, do you yield for one more question?

SENATOR FARLEY: I'd like to know who that is up in the balcony.

ACTING PRESIDENT MARCELLINO: It's a person imitating Senator Dollinger.

SENATOR GOLD: Point of order, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: I thought that the other side would be thrilled to have him up in the balcony. I don't know why you're encouraging him to come back down.

SENATOR FARLEY: Mr. President, how long do we get to keep him there?

ACTING PRESIDENT MARCELLINO: That's what the guard at the door is for.

SENATOR GOLD: Now, would Senator Farley yield to a question?

ACTING PRESIDENT MARCELLINO: Senator Farley.

SENATOR FARLEY: Senator Farley would be delighted to yield.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR GOLD: Senator Farley, in order to get the home equity loan, my under standing is they are secured by a mortgage or a lien.

SENATOR FARLEY: Second mortgage.

SENATOR GOLD: Are there closing costs?

A VOICE: They could be waived.

ACTING PRESIDENT MARCELLINO: Excuse me. I know I got you on that one.

SENATOR GOLD: As the attorney for the reporter, I -

ACTING PRESIDENT MARCELLINO: Senator Gold, thank you.

SENATOR FARLEY: It was my opinion, and I have been corroborated in that. They're almost always waived.

SENATOR GOLD: They're waived?

SENATOR FARLEY: Almost always. It's a competitive market.

SENATOR GOLD: O.K. On the bill,

Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold, on the bill.

SENATOR GOLD: Yeah, Mr. President. I don't want to state something as a fact that I'm not a hundred percent sure of, but I think, Senator Farley, that you might be interested in just checking this out because I think there has been some misleading advertising.

My understanding, and I'd like to be corrected if I'm wrong, Senator Farley, that if you own a piece of real estate, a home, and you want to put an addition on your home or fix up your home and you get a home equity loan, there's no doubt that that interest is tax deductible, but if you get a home equity loan for a vacation or to pay off credit cards or to do something unrelated to the property, I do not believe that that is tax deductible, and what bothers me, Senator, is I respect you very much as a law professor, and if I'm right and you're wrong, it just shows how the average citizen can be misled if I am right.

Am I right, Senator?

SENATOR FARLEY: You're partially right.

SENATOR GOLD: O.K.

SENATOR FARLEY: You're properly right -

ACTING PRESIDENT MARCELLINO: (Hitting gavel) excuse me -

SENATOR FARLEY: -- or nobly right. Let me just say -

ACTING PRESIDENT MARCELLINO: Excuse me.

SENATOR GOLD: Yeah, I saw the Senator rise, Mr. President, so I would yield if he wants to respond if you don't mind, Mr. President.

ACTING PRESIDENT MARCELLINO: Do you wish to ask Senator Gold a question, Senator Farley?

SENATOR FARLEY: I -- I will - I'll respond to his question. I thought he asked me -

ACTING PRESIDENT MARCELLINO: (Talking over) Well, actually -

SENATOR FARLEY: -- a question.

ACTING PRESIDENT MARCELLINO: -

let Senator Gold finish his statement and then you can respond afterwards.

SENATOR GOLD: Well, Mr. President -

ACTING PRESIDENT MARCELLINO: (Talking over) because just to get some order in the house so we don't have (unintelligible).

SENATOR GOLD: I know you want to get some order and I admire you.

ACTING PRESIDENT MARCELLINO: Thank you.

SENATOR GOLD: So let me stop my remarks. Senator Farley, would you like to amend the answer?

SENATOR FARLEY: Yes, you're right in the respect that if you go in and say, Gee, I want to get a loan to go to Las Vegas, or something, that that is not tax deductible. This has been a very controversial question. Generally speaking, when somebody gets a home equity loan, the reason has got to be a little bit more substantial, or they won't get the loan or it won't be tax deductible. But I once had a professor in law school, of course, I did not go -- in taxation that says if there is any doubt

claim it. You know, I mean I'm not going to prescribe that, but generally speaking almost always, it's my understanding -- I'm not an accountant even though I do teach them -- that almost all home equity loans are tax deductible whereas an unsecured loan is not, so consequently it's a better way to consolidate your debts and a few other things.

SENATOR GOLD: Mr. President, thank you and thank you, Senator Farley.

Senator Farley, I appreciate that comment, but Senator Farley, I got to go at it again. I don't think you're right, Senator. I think that, as a matter of fact, the lending institutions that advertise down around in the city of New York say exactly that. They say, you know, and besides which it will be tax deductible, and then at the end of the commer cial, they all say, as to the deductibility you may want to consult your tax adviser; so that's their hook, I guess, not to get sued, but Senator, there is a misapprehension, and I believe that it is our responsibility particularly, Senator, if you want to change the eligibility and open it up to more and more

people, we're going to have more and more people being audited, more and more people getting in trouble.

I believe, Senator Farley, that if it's the intent to make these tax deductible and we want to do it, then let's do it but under existing law, Senator Farley, and I know it's something that concerns you, under existing law, I believe we are misleading people, because I believe that unless the loan's purpose is to improve the real estate, it is not tax deductible and when you say, Senator, it's not tax deductible if you go to Las Vegas, well, I don't think it's tax deductible if you go to Las Vegas on your credit card, if you buy a motorcycle on your credit card, if you do any other things on your credit card and then pay off your credit card. Since those purposes were not related to the reality, I do not believe it's tax deductible, and all I'm saying to you, Senator Farley, is you can do a service to the public if we either demand that the banks do not make this claim or let's change the law and make it deductible, but I don't think we should allow the banking institutions to sell a product to

people on the basis that they're gaining a tax deduction if they are not.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard? Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58, nays 2, Senators Marchi and Stavisky recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 701, by Senator Maziarz, Senate Print 2805, an act to authorize Adam C. Mesiti to apply for retroactive membership.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect on the first day of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 742, by Senator Trunzo, Senate Print 1523-A.

SENATOR TRUNZO: Will you lay it aside.

ACTING PRESIDENT MARCELLINO: Lay that bill aside at the request of the sponsor.

THE SECRETARY: Calendar Number 806 by Senator Velella, Senate Print 3494, an act to amend the General Business Law, in relation to permitting the sale.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Velella, an explanation has been requested.

SENATOR VELELLA: Under the current law, pawnbrokers are only allowed to offer up items that aren't redeemed at public

auction. This bill, which we passed last year, would allow them to offer up items that haven't been reclaimed in a private sale.

The Governor vetoed the bill last year and asked that we put the provision in that under this bill all aspects of any private sale must meet the standard of being commercially reasonable, so that some type of a private in house deal could not be made. Pawnbrokers in the state have been operating under this law which makes them go by public auction and very often it's costly to hold a public auction with the advertising and with the auctioneer fees.

This would make them be able to have private sales which would be measured by a commercially responsible standard.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR PATERSON: Mr. President.

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

SENATOR PATERSON: If Senator Velella will yield for one question.

ACTING PRESIDENT MARCELLINO:

Senator Velella, do you yield?

SENATOR PATERSON: Senator, there was an issue which caused the Governor to veto this legislation relating to the unscrupulous activities of pawnbrokers, and my question simply is do you feel you have addressed this in the new legislation because I know the Governor would want me to ask you that.

SENATOR VELELLA: You know, thank God we have a very reasonable, intelligent Governor, and he picked up a defect that previous governors would not have picked up, I'm sure, so that commercial -- commercially reasonable was at his request, and I think it improves the bill tremendously. Thank God for his leadership.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Stavisky. You're no, I'm sorry. Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 30th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays 1, Senator Stavisky recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Would you call up Senator Velella's bill, Calendar Number 232.

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar Number 232.

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

ACTING PRESIDENT MARCELLINO: Read -- Senator Velella, an explanation.

SENATOR VELELLA: Yes, this is a technical bill which will put New York State on an even level with our neighboring states.

Currently excess line brokers in New Jersey, Connecticut and Pennsylvania are permitted to bind coverages, while New York brokers are not allowed to. Basically what will happen is a broker will call for an excess lines placement of a policy. He cannot tell the client that the policy is bound until he

receives a copy of the binder, whereas a Jersey or a Connecticut broker can be -- can receive a binder over the phone and can issue a binder directly.

This will put our brokers on an even level with brokers in the other states. It will help to retain jobs in New York because the excess line brokers will stay in New York and not jump over the line to Jersey or to Connecticut. It's supported by the Excess Line Association in New York, the Professional Insurance Wholesalers Association, and there is no known opposition to the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

A VOICE: Explanation satisfactory.

SENATOR PATERSON: The explanation is satisfactory.

ACTING PRESIDENT MARCELLINO: He is overwhelmed by the explanation, as we all are. Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 180 days.

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator.

SENATOR DOLLINGER: I was out of the chamber when Calendar 714 and 715 were voted on. May I ask unanimous consent to be recorded in the negative on both of those. I was elsewhere in the chamber.

ACTING PRESIDENT MARCELLINO: No objection, your recorded vote will be -- excuse me. 714 I don't think we did yet, but we're checking.

A VOICE: It's not on the active list.

ACTING PRESIDENT MARCELLINO: Not even on the active list.

SENATOR DOLLINGER: Well, then just on Number 715.

ACTING PRESIDENT MARCELLINO: 715

has passed, yes.

SENATOR DOLLINGER: Thank you.

SENATOR SKELOS: Mr. President, would you call up Senator Velella's bill, Calendar Number 586.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 586, by Senator Velella, an act to amend the Insurance Law, in relation to agent termination reporting requirements.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Explanation has been asked for, Senator Velella.

SENATOR VELELLA: Under the present system, when a company wants to terminate a broker, they just simply send in a termination report that the broker is not going to be writing business for them any more. That does not provide a system for some type of analysis as to the reason behind why the broker may have been terminated.

This will give immunity to a company and require them to file a statement

with the Insurance Department telling them the reason why, and giving a copy to the broker. The broker will then be able to respond and seek legal redress. The immunity provision here is very simply the company may say that this person's issued bad checks. This person's defaulted on payments to the company and if, in fact, that is not true they would be held liable. We'd rather have an adversarial proceeding where that person can go in and deny the claim and prove them wrong without the question of liability attaching. Other states do it, and I think it will improve the working conditions for brokers.

SENATOR PATERSON: Mr. President, if Senator Volker would yield -- sorry, I mean if Senator Velella would yield for a question.

SENATOR VELELLA: Yeah.

ACTING PRESIDENT MARCELLINO: Senator Velella, do you yield? He yields.

SENATOR PATERSON: Senator Velella, if truth is an affirmative defense, then why would there be a necessity to establish immunity in this particular case? In other words, if the insurance company is saying this

about the broker and it's correct, why would we want to limit the opportunity for there to be any court intervention here?

SENATOR VELELLA: Two reasons that I can think of immediately, Senator, the first reason being the congestion in the courts and the ability for the courts to deal with this issue over a long period of time while a broker's livelihood may depend on it. It may take him four, five or six years to get the proper litigation and, secondly, it would be less costly to a broker and to a company to bring this matter as a disciplinary or as an administrative proceeding before the Insurance Department rather than go through the costly litigation of lawsuits for libel, slander and then pleading the affirmative defense, having the case established, establishing the affirmative defense. It would take a long period of time, at which point the broker might not have the opportunity to place business and, secondly, it would cost them money to retain counsel and jam up the court system with a lot of unneeded litigation.

SENATOR PATERSON: Then, Mr.

President, if Senator Velella would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Velella, do you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT MARCELLINO: He does.

SENATOR PATERSON: Then, Senator Velella, it would appear, based on your statement, that what we're really saying is that the Insurance Department rather than the courts would be the one that would be most apt to judge these types of situations.

SENATOR VELELLA: Well, I don't think we're going to be in complicated legal problems. I think a company will file a notice that an agent has been terminated. They will give the reason. The agent now will get a copy of that which he -- which he never gets -- which he never got under existing law, and he will be able to respond, and the Insurance Department will be able to intervene and try to negotiate a settlement of the issue.

You always have the right to sue them for some wrongful act if it's an outrageous

act that you feel that you want to litigate. I don't think that this should be binding on them only if they made some kind of a remark that might be determined to be libelous or slanderous. It is confidential, by the way, does not go out to the public. Could be discovered in a judicial proceeding but not as a public release or a public item.

SENATOR PATERSON: If Senator Velella would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR VELELLA: Yes.

SENATOR PATERSON: I understand that, Senator, but the only problem I have in this particular situation is that by keeping it within the Department, some of the allegations that might be made theoretically might be slanderous or libel and, therefore, to establish immunity in that particular case are in those types of situations, in my opinion, denies the aggrieved some of the options they otherwise would have, and what is actually binding them in this case is their own professional duty, and so I'm just wondering if this is really a question

in which the entity that would make the final decision really understands the actual civil action as much as they understand insurance and, if they don't, then that would put the plaintiff at some -- in some position where, in my opinion, they wouldn't -- they wouldn't perhaps be receiving justice.

SENATOR VELELLA: That might not be an ideal solution to a problem, but right now the broker is left with no recourse at all. The company merely states that they terminate the relationship. The broker is not given a reason. The broker is not told why; they are just simply terminated and there is no recourse. This will at least require that the company give a reason. Now, a company might want to say, this fellow stole a lot of money from us. They would not be able to say that if they would have to then go through a long legal battle and possibly win their case, because they can prove that he stole money but wind up in litigation for years.

The Department would be the place to resolve that, and while it may have not be perfect, it does provide the broker an

opportunity to stop large companies from cancelling brokers and agents agreements.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Sponsor yield to a couple questions?

ACTING PRESIDENT MARCELLINO: Senator Velella, do you yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DOLLINGER: So I understand this through you, Mr. President, the current law simply provides that an insurance company must file its statement with the Department of Insurance of the reasons for termination, is that correct?

SENATOR VELELLA: No, they - they don't have to file a detailed statement. They simply say we are cancelling the agency with Guy Velella, a broker of ours, and they can give a vague answer like we're reducing our field operations, we're making corporate cut backs. The agent is never given any opportunity to try and change that, and I'm sure you're

aware some companies, not all but one or two that may be not dealing with 100 percent good faith have cancelled agencies and tried to directly write business that brokers had developed and, therefore, cut them out of the commission -- or agencies had developed, cut them out of the commission, and this will at least give them an opportunity to give a statement as to why. Clearly if the person was dishonest, fine. Then they can have the opportunity, the agent or the broker can have the opportunity to respond to that and bring it to the attention of the Insurance Department. It will also help to flush out the fact that maybe some companies are trying not to write business in certain areas and not write business with certain brokers who have less than perfect claim records.

SENATOR DOLLINGER: Again through you, Mr. President, but that's current law. Your -- this bill doesn't affect the current law which is that the state, upon termination of an agency, the insurance carrier must file, shall file, with the Superintendent of Insurance a statement which says the facts relative to such

termination and the cause thereof; that's current law.

SENATOR VELELLA: What it is is that the problem comes up because the notices that are filed are extremely sanitized. They are vague, nondescript statements. Hopefully with this, with the person getting -- the person involved that's been cancelled, the agent not the policyholder, the agent being canceled will get a notice of what the company is doing and be able to see and counteract that by filing his own statement back.

SENATOR DOLLINGER: O.K. Again through you, Mr. President. The reason why I ask -

ACTING PRESIDENT MARCELLINO: Senator Velella, do you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT MARCELLINO: He continues.

SENATOR DOLLINGER: The reason why I ask this question is I'm trying to figure out what this bill does, as far as amending subdivision (d) of section 212 of the Insurance Law. What exactly will it do to promote more

information from the insurer to the agent? What, as I understand, this says is that if you don't -- if there's no evidence of fraud, no evidence of bad faith, no evidence of gross negligence, but the statement ends up being untrue for some reason or inaccurate for some reason, there's no cause of action.

This creates a qualified immunity for the insurance company making the report, is that correct?

SENATOR VELELLA: Yes. Let me try to explain it from the other end of the coin. You're talking about the broker who is victimized by the company.

SENATOR DOLLINGER: Right.

SENATOR VELELLA: Let's talk about the broker who may not be the most honorable broker around. Right now companies will not put any specific statement as to what he's done in there because they feel that they may be sued for libel or slan... libel. With this law, in the absence of bad faith, fraud or gross negligence, they will be able to better call to the attention of the Insurance Department those acts which a broker committed

that have caused them to cancel him.

Now, that broker then has the opportunity to come in and we are approaching it from giving the broker his fair day in court. Right now companies will not file any details about it because they're afraid of the possibility of law suits, so it works from both ends. Depends which end you're looking at.

SENATOR DOLLINGER: O.K. Again, through you, Mr. President, just to clarify for me, what do you mean by the phrase "bad faith"?

SENATOR VELELLA: Not good faith.

SENATOR DOLLINGER: Again, through you, Mr. President, the reason why I ask that question is, is it bad faith to put a fact in a report that you know may not be true or that you don't have any evidence to support and then aren't you right back in the problem that we described a minute ago?

SENATOR VELELLA: No, Senator, I don't believe so, because you're probably closer to the judicial future than I am, but let me - let me say that the courts are constantly determining what is a good faith effort, what is

reasonable, a variety of legislative terms that we use that we can't specifically define every single act and every single condition, so we have to depend on our judiciary to make those kinds of decisions and in many cases our agencies to determine what is a good faith effort, what is reasonable, what is the degree that would be required, and I think reasonable intelligent minds can arrive at some type of a conclusion as to what is an obviously bad faith statement -- totally without fact, totally with a disregard for the truth. I don't mean to limit the means of determining bad faith but merely to outline some of the provisions that a person adjudicating that would have to look at. Is it just a total disregard of the facts as you know them? Those are the kinds of things that I'm sure you're familiar with.

SENATOR DOLLINGER: O.K. Thank you, Mr. President.

Just on the bill, briefly. I'm not -

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate

Senator Velella's interpretation of the term "bad faith" but, quite frankly, I think bad faith could be just the kinds of things that created liability in the first place, knowing misrepresentation of the facts, knowing statement of something that they don't believe is truth or that they can't support by evidence. If that's the case, then you're triggering the same kind of liability and I don't think you're so much changing the qualified immunity that already exists. I also find it interesting, and I'm not sure about the number of people that have sued under this provision, but I find it unusual if somebody could maintain much of a damage action against an insurance company for the contents of that report when that report is a privileged communication; that is, it's not dispersed by the insurance company.

The report comes in, says Rick Dollinger, broker, has made X number of mistakes, never disclosed to anyone. I'm not sure what kind of defamation action. I'm also concerned because the Professional Insurance Agents seem to be against this bill. I've read

their memo. I think they make some -- they're concerned, perhaps overly so, about some of these factors and, frankly, I'll listen to the rest of the debate before I figure out how I'm going to to vote.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 586 are Senators Abate, Connor, Dollinger, Gold, Gonzalez, Paterson, Sampson, Seward, Smith and Waldon; also Senator Leichter; also Senator Montgomery. Ayes 48, nays 12.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Calendar Numbers 987 and 988, by Senator Maziarz, were inadver tently laid aside. If we could call them up at this time.

ACTING PRESIDENT MARCELLINO: Secretary will read the inadvertent bills.

THE SECRETARY: Calendar Number 987, by Senator Maziarz, Senate Print 3945, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT MARCELLINO: Read the last -- call the roll.

Last section, I'm sorry. Senator Maziarz.

SENATOR MAZIARZ: I would like to explain my vote. I thought you said call the roll.

ACTING PRESIDENT MARCELLINO: Well -- can you read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

Senator Maziarz.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: This is on 987,

correct?

ACTING PRESIDENT MARCELLINO: Yes.

SENATOR MAZIARZ: Mr. President, this legislation will designate the tri-way bridge in the city of Lockport after a near and dear friend of mine who happened to be on the other side of the political fence. That's why I was somewhat surprised when my colleagues on the other side of the aisle laid this bill aside.

Mayor Rotondo served for several years as the mayor of Lockport and as an alder man in the city of Lockport, did an excellent job during his tenure. The city of Lockport grew, and also this bridge, the tri-way bridge, which is the widest bridge along the entire canal system, was constructed largely due to the efforts of Mayor Tom Rotondo.

So, Mr. President, I stand in support of this legislation. I think it's a great tribute to a great public servant.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Maziarz in the affirmative. Can you read the results of the vote?

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 988, by Senator Maziarz, Senate Print 3946, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Maziarz, Senator Paterson has asked for an explanation.

SENATOR MAZIARZ: I'm sorry, Mr. President. I was engaged in some conversation with my colleague, Senator Alesi. That was an explanation of Calendar Number 988?

ACTING PRESIDENT MARCELLINO: Yes, sir.

SENATOR MAZIARZ: Okay. Senator Paterson, William Gregory piloted the space shuttle Endeavor in March of 1995 and also during his trip, shall we say, he made special arrangements to talk via satellite to students in the Lockport High School, where he graduated back in the early 1970s -- or mid-1970s, I

should say.

After his tour with the astronaut corps for NASA, he has come back to Lockport, spoken to high school students and elementary school students numerous times, Senator Paterson, and is probably the greatest ambassador for science and space exploration in Western New York.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Yes, Mr. President and Senator Maziarz, Senator Lachman had some questions on these bills and he's out of the chamber on a very busy day on other assignments and I have been unable to figure out what the questions he might have asked were. Perhaps on this bill, he thought maybe this was a bypass that you've created for Republicans that don't want to go over the bridge you just named for a Democrat, but other than that, I can't think of any reason and, hopefully, your explanation is satisfactory.

ACTING PRESIDENT MARCELLINO: It's certainly satisfactory to me.

SENATOR MAZIARZ: Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Senator Alesi's bill, Calendar Number 809.

ACTING PRESIDENT MARCELLINO: Will the Secretary reluctantly read Calendar Number 809.

THE SECRETARY: Calendar Number 809, by Senator Alesi, Senate Print 4371, an act to amend the Agriculture and Markets Law, in relation to removing the unit pricing exemption for standardized packaging.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Alesi, an explanation has been asked

for.

SENATOR ALESI: Thank you, Mr. President.

This bill preserves the exemption for certain unit priced commodities by transferring them from regulation to statute.

Thank you very much.

ACTING PRESIDENT MARCELLINO: Read the last section.

Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator Alesi, do you yield?

SENATOR ALESI: Yes.

ACTING PRESIDENT MARCELLINO: He is happy to, sir.

SENATOR PATERSON: What I don't understand, Senator, is why is this necessary now that I know what you're doing? I don't understand why there needs to be any change.

SENATOR ALESI: It's not changing it in any way, shape or form, Senator. It's simply streamlining it and making it more efficient to move this from the Ag' and Markets

Law directly into the Unit Pricing Law where it's only now referred to.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Senator Leichter, excuse me.

SENATOR LEICHTER: I'm sorry, Mr. President. If Senator Alesi would try to yield. I'm trying to understand this bill.

ACTING PRESIDENT MARCELLINO: Senator Alesi, would you yield to Senator Leichter?

SENATOR LEICHTER: I'm always interested when people say, you know, "This bill really doesn't do anything." It's three pages long. Yours isn't quite three pages.

Senator, did I hear you say that all your bill does is move a provision from one chapter of the law into the other chapter of the law? I apologize. I wasn't really paying that careful attention. For that, I apologize.

SENATOR ALESI: That's all right, Senator. I'm not sure I was either for that

matter. It takes -- the items in question that are specifically mentioned as exempt from unit pricing, such as a quart of this and a gallon of that, currently specifically delineated in the Ag' and Markets Law, in the Unit Pricing Law, they are only referred to and this simply takes them out of Ag' and Markets and specifically refers to them in Unit Pricing.

SENATOR LEICHTER: Okay. Just, again, so I understand, Senator, with your indulgence -- you're good enough to answer the question. You're not eliminating unit pricing for the items listed in your bill, am I -- do I understand that correctly?

SENATOR ALESI: The items listed in the bill, Senator, with all respect are exempt from unit pricing because they are the standard by which we measure against for unit pricing. In other words, we use a gallon. We use a quart. We use a half pint, five pounds, ten pounds as those standard units of measure. They are exempt from unit pricing because they are the benchmark aainst which we do comparative shopping.

SENATOR LEICHTER: Again, if you

would continue to yield, please. Is that also true for ice cream, sherbert, sorbet, frozen yogurts? I guess they're sold in pints and half pints, and so on.

SENATOR ALESI: If you had said yogurt, Senator, you would have had me but, yes, it's also true for those items you mentioned. No longer true for yogurt.

SENATOR LEICHTER: Why is that?

SENATOR ALESI: Because yogurt is no longer sold in half pints, pints, quarts or gallons. It's now sold in a different unit.

SENATOR LEICHTER: But what happens if somebody decides to put sorbet into units other than pints or half pints, and so on?

SENATOR ALESI: Well, then it would be -- then it would be unit priced and it would not be exempt under the bill that we're talking about here and that would be good for the consumers because then they'd have a measure of unit against which to compare.

SENATOR LEICHTER: But, as I look at the bill -- I'm reading it quickly -- why didn't it just say that any product that is sold

other than in a quart or, I guess in one - yeah, I guess you start off pint, quart, half gallon, one gallon, one half liter, will be subject to unit pricing?

SENATOR ALESI: Senator, I'm sorry. Would you just repeat the question for me.

SENATOR LEICHTER: Well, I want to be sure that when you say that if somebody, to get around a unit pricing, puts his sorbet into a container which is not one of the sizes you mention, that that product will still be in that different container, now will still be subject to unit pricing.

SENATOR ALESI: That's exactly what the bill does, Senator, because if it is not in any one of those units of measure that are specifically mentioned and in Unit Pricing Law that we're proposing, then it would have to be unit priced.

SENATOR LEICHTER: All right. So this is -- in no respect, you're assuring us will eliminate unit pricing but what you're saying is that actually this will ensure that unit pricing will occur when somebody uses other

than the standard packaging sizes.

SENATOR ALESI: Not only can I assure you that, I can tell you what the confusion stems from because initially it says we're repealing it from the Ag' and Markets Law, and I think that that's probably the initial confusion, if there is any. It's simply being done to transfer it over into the Unit Pricing Law to streamline it and make it more efficient.

SENATOR LEICHTER: All right. Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 856, by Senator Skelos, Senate Print 3504, an act to amend the Civil Practice Law and Rules,

in relation to privileged communications.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Skelos, an explanation has been requested.

SENATOR SKELOS: Mr. President, this bill was introduced at the request of the committee on Civil Practice Law and Rules of the New York State Bar Association and is really intended to recognize that electronic media, such as E-mail, is here to stay as an integral part of our lives.

CPLR, Article 45, concerns certain privileged -- privileges for confidential communications between certain classes of people, such as lawyers and clients, doctors and patients, spouses, clergy, and so forth.

Apparently communication by E-mail has raised a significant concern with practitioners. On one hand, an E-mail message, even one that is intended to remain private, can remain on the server of various computer systems. Although no case has addressed it, there is a significant issue as to whether such

commun...

SENATOR LEICHTER: Explanation satisfactory.

SENATOR SKELOS: Thank you very much.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Would you please call up Senator Cook's bill, Calendar Number 561.

ACTING PRESIDENT MARCELLINO: The Secretary will read Calendar Number 561 by Senator Cook.

THE SECRETARY: Calendar Number

561, by Senator Cook, Senate Print 955, an act to amend the Education Law and the Family Court Act, in relation to reducing school violence.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Cook, an explanation has been asked for.

SENATOR COOK: Mr. President, thank you very much.

This is an effort to codify, if you will, some standardized -- some standards relative to our codes of conduct in schools, to establish procedures by which those codes can be enforced, to require that the provisions of the code be circulated to parents and students and the general public. It relates to conduct not only in school buildings, but in school buses, facilities that may be owned by the school district, and it provides for a procedure whereby the parents are brought into the process and, in fact, ultimately and if the parent refuses absolutely to participate in dealing with whatever problems the child may have, to actually hold the parent accountable in Family Court under educational neglect.

To just quickly run through the provisions, the first provision sets out a general outline of what the code of conduct needs to be, and it does this for the reason that the present regulations are somewhat ambiguous. That is, there are already regulations relative to codes of conducts but there are commissioner's rulings which, in some cases, have overruled portions of codes of conduct of certain school districts and the school districts have been left to wonder in some cases exactly what they are empowered to cover and, in fact, some of the commissioner's rulings have specifically said that the reason they have overruled the provision of a code of conduct at a school district has been that there is no statutory authority for them to do it.

So, in effect, we are giving them statutory authority. We are mandating that we have -- that they have a code of conduct, that the code of conduct be filed with the Commissioner of Education as a means of ensuring that the code has been adopted and we are specifying the things that may be included within the code of conduct so that that question

of legislative authority is answered, but we are not mandating the form or nature of the code of conduct.

The second issue, we are extending the times by which a student may be suspended from the classroom or from the school. There are some concerns on the part of teachers in particular that they are not being -- they are not getting an adequate response from the administration, that they in some cases repeatedly refer students to the administration for discipline. The administration does not respond, simply sends the student back to the classroom.

This provides that every school district shall have either a committee or as many committees as it may need in different buildings to adjudicate cases where teachers feel that the administration is not responding in the case of a given student, and that is a board or a committee that is made up equally of members of the administration and of the faculty so that a teacher can bring a case directly to this appeals committee and have a decision made. The decision, of course, cannot be

legally binding until adopted by the adminis tration because the -- this is not an official board and, therefore, they can't take official action, but it does make a finding. That finding then is referred to the administration and a report of it has to be referred to the Board of Education so the Board of Education would be advised, for example, if there was an administrator who repeatedly was refusing to deal with discipline problems in a school and the teachers -- the faculty felt that the administration was not seriously -- was not taking the issue seriously.

It gets into the issues of violence and some of the issues that relate to weapons in schools and makes it clear that where there is a criminal charge that can be levied - either is or could be levied against a student, that the school may immediately suspend the student.

Now, this is somewhat related to the discussion that was held earlier on Senator Johnson's bill.

ACTING PRESIDENT MARCELLINO: Excuse me, Senator Cook. Gentlemen, if we could

have a little order in the house so we can hear the Senator.

SENATOR COOK: It somewhat relates to the earlier discussion on Senator Johnson's bill, in that you do not have to have found, in fact, through the criminal procedure, that the child was guilty of whatever charge, whatever criminal charge may have been brought against him as long as there's a prima facie finding, an initiation of an investigation. The school can, in fact, suspend the student, the reason being that it is our concern that the real purpose of the school administration is to protect the safety of the other students in the school and that since the criminal investigation might take some period of time, we want it clear that the administrative proceeding can move ahead and the suspension can take place by the school administration in order to protect the other students.

It also provides and reiterates that when there is a suspension from school or from the classroom, whichever the case may be, that the educational program of the student is required to be continued. Our basic concern in

this is that the requirements of the Education Law be fulfilled and that is the students be provided with an educational program. So we reiterate that if there is a suspension that there is still responsibility to provide the educational program for the student.

We finally in the last analysis -- and let me indicate, Mr. President, that we envision this as a progressive situation; in other words, a series of steps, and we assume that most of the problems that might arise with the student will be handled at the earlier steps and those -- and that only a smaller - continuously smaller number of cases would continue through this process, but we do reach the point ultimately where the parents are to be involved in the process. Hopefully that is sufficient to help deal with whatever problems the child may be having, but if the parent absolutely refuses to participate in dealing with the problems of the child, there is a provision called educational neglect which may be filed with the Family Court and all of the remedies which exist for neglect -- for child neglect can be applied through educational

neglect, that is, working -- intense case work with the family. If that doesn't work, the potential actually of removing the child from the home for a period of time.

All of these are done with required review periods so that this doesn't simply become a process where you bring a child out and forget them, but you continuously - continually review the situation with them and with their family, and it's really, as I indicated, an effort to bring together into one place in the law a continuum of steps that can be taken to deal with discipline problems being experienced by a child within the school system.

ACTING PRESIDENT MARCELLINO: Senator Stavisky.

SENATOR STAVISKY: Mr. President, I will not ask the sponsor to yield to a question but simply wish to point out certain provisions of the legislation which concern me.

ACTING PRESIDENT MARCELLINO: Senator Stavisky, on the bill.

SENATOR STAVISKY: It increases from five to ten days the length of time for which a pupil may be suspended without a fair

hearing. What kind of procedure is this, to increase from five to ten days, which means two weeks, where a pupil may be suspended without a fair hearing?

It also provides that students may be suspended for 20 days.

ACTING PRESIDENT MARCELLINO: Senator Stavisky, one second, please.

Gentlemen, can we take the conversations outside, please? Can we close that door, please?

I'm sorry, Senator.

SENATOR STAVISKY: The bill also provides that students may be suspended for 20 days and the hearing requirements stayed where a request for the filing of a juvenile delinquency petition is submitted to a principal or superintendent. 20 days without a hearing, that's a month. That is a substantial period of time during which there is no requirement for proof. There's no requirement for certainty. There is, again, an expulsion of the student.

I want to emphasize I am not in favor of coddling. I am not in favor of turning your back on serious offenses. I believe that

they may be -- must be dealt with in order that there shall be a climate for learning in the school system but there is no climate for learning if we suspend for large periods of time these students without a fair hearing simply as a means of trying to cover the problem.

Why would -- if I may cite this -- why would the New York State School Boards Association be opposed to this bill? Why would the New York Educators Association, the NEANY, be opposed to this bill? Why would the Conference of Big Five School Districts be opposed to this bill? Why would the New York City Board of Education also express its opposition to this legislation? Because in an effort to contain problem cases, you have gone too far and you have done it in what may be - I'll leave it to Senator Leichter to determine whether he views it as a constitutional infringement, but I view it as an educational infringement. It means that the opportunity for a child to be placed in supervision, to be continued in education can be brushed aside and that's wrong, dead wrong. It means that there is an abandonment of responsibility, not an

acceptance of responsibility.

There are certain situations where, if a student misbehaves and it is easy enough to get that kid out of the classroom, there are people who would say, let us suspend from five to ten days. Let us suspend for 20 days, but that begs the question -- it does not answer the issue of how do you control the uncontrollable, nor does it answer the question of how you create a climate for learning in the school system.

Expulsion from class is not an answer. Failure to provide an opportunity to continue the education is not an answer, and I think that there is sufficient reason when statewide youth advocates, when the New York State School Boards Association and the NEA, and the Conference of Big Five School Districts and the New York City Board of Education put aside their opposition to each other on other issues and coalesce around the notion that this is not the way to go.

I hope that the Senator would consider holding his bill further for further consultation and not pushing for the adoption of

this bill in this unseemly manner.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Cook yield to a couple of questions, please?

ACTING PRESIDENT MARCELLINO: Senator Cook, do you yield?

SENATOR COOK: Sure.

ACTING PRESIDENT MARCELLINO: Senator Cook yields.

SENATOR DOLLINGER: Senator, these may sounds like very technical questions but on page 2 of the bill when it talks about the contents of a school code of conduct, it says that "the stipulation upon the filing, bringing or entering of a criminal complaint upon -- based upon an alleged criminal act of a student, the student shall immediately be removed from the classroom." Do you intend that that language include criminal offenses that occur off school grounds?

SENATOR COOK: Mr. President, I think if there is a situation in which a student has been involved in something which has involv ed -- which has caused a criminal investigation

to be begun, there is certainly an indication that there is reason why that student can be removed -- should be removed.

Now, Senator, recognize that removal can be extremely temporary and, if the criminal charge is determined to be something that is basically irrelevant, that doesn't mean they have to be suspended permanently but it does, in fact -- the real thing we're envisioning here is when a student is charged with being involved in a violent act and you continue to leave them in the classroom under some provision or some assumption that you have to prove that they're guilty of that act before you can remove them from the classroom, that endangers the other children that are in the school, and we really are attempting to make sure that the school is able to protect the other children.

We're not, after all, dealing with an isolated situation where one by one people exist. They are in a societal situation in which 20 or 30 kids are in a classroom and everyone in that classroom is potentially impacted by the conduct of this student and it

really is the rights of those 20 or 30 other people that we have to be concerned about in that kind of a setting as well as the individual who may be directly involved in the situation.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Cook will yield.

ACTING PRESIDENT MARCELLINO: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT MARCELLINO: He does.

SENATOR DOLLINGER: Suppose the criminal complaint is not brought by a district attorney but brought by complaining witnesses. In other words, someone accuses John Q. Student of beating him up on the school grounds or off school grounds. A criminal complaint is filed. Despite the fact that John Q. Student says, "I didn't beat him up", would he be required to be suspended under this provision? After all, there would be a criminal complaint filed consistent with the language here.

SENATOR COOK: Yeah. Mr. President, according to the language, yes, but again, I repeat, that that doesn't mean they

have to be kept out permanently. If the school board -- if the school administration -- in other words, there's a hearing. There's a complaint. I guess you're saying that on the way home last night this student -

SENATOR DOLLINGER: Let me give you a better example. I'll give you an example that occurred in Senator Volker's district, which I'm intimately familiar with since I represent the seven members of the school district who happened to get into a fight after a basketball game. A melee breaks out. There are more people throwing punches and fighting than you could want to throw a -- shake a stick at. Eight of them are -- there are criminal complaints filed against eight of the students. Those eight students are charged with various forms of assault. They're all heard in the local criminal courts. Are they all immediately removed from school even though this had nothing to do with their classroom participation?

SENATOR COOK: Removed - Senator, removed until such -- pending some further action on the part of the school. Now, if the school decided in your case that, yeah,

there were 25 kids all involved in throwing punches at each other and that there wasn't any continued endangerment, then that suspension obviously can be one day or part of a day until such time as that -- as that hearing or decision is made, the point being, however, that under the present law, without this language there, there are those who have contended, as you heard earlier, that you can't really remove the person from the classroom until the guilt or innocence has been determined in the Criminal Court which is obviously not an appropriate thing.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Cook will yield.

ACTING PRESIDENT MARCELLINO: Senator Cook, do you yield? He yields.

SENATOR DOLLINGER: My question is, are you -- is the school district going to have to make an independent adjudication of their guilt or innocence as part of its suspension?

SENATOR COOK: No. It has to make its -

SENATOR DOLLINGER: How does it deal with the fact that there is a complaint

filed and the student may be accused of a violent crime?

SENATOR COOK: Senator -- Mr. President, Senator, it has to make a decision based on the fact as to whether having a student back in the classroom constitutes an endangerment to other students or to the teacher.

Now, if the finding is that whatever happened was something totally unrelated to anything that's apt to ever continue in the classroom, they don't have to do it.

Let me point out -- and this really relates to something that Senator Stavisky said. School districts are not going to be anxious to remove kids from classrooms for a simple reason. They have to continue an alternate educational program.

SENATOR DOLLINGER: Right.

SENATOR COOK: So the inclination is going to be to keep that student in the classroom so they don't have to get tutors or they don't have special classes or they don't have to do the other kinds of things to continue

the educational program. So the kind of situation that you're talking about, the school is going to be more than anxious to try to make a finding that, in fact, whatever occurred did not constitute endangerment to other students.

SENATOR DOLLINGER: One final question, Mr. President.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR COOK: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DOLLINGER: Section 3214 of the Education Law currently provides that if a student is suspended for less than five days, the school district must give the parent or the person in parental relation to the child notice of the intention to suspend and an opportunity for the parent or the guardian to confront the complaining witnesses prior to the issuance of the suspension less than ten days. What it's called -- and I'm sure you're familiar with it -- it's not the full due process protections of a full-blown hearing with an impartial decision maker and the production of evidence by

attorneys under oath but instead it's a minimal due process protection that provides some ability for the parents to go in and contest the ground for the suspension when it's less than five days.

There is nothing in the code that you describe on pages 1 and 2 -- that is 2801 of the code on school -- on school district property. There is nothing that suggests that the parent gets notice and an opportunity to be heard or an opportunity to question before the suspensions occur. It seems to me that that's a marked departure from 3214 and one that is - seems to me is ill-advised if our goal is to get the parents involved in the disciplining of their child, so that they know before the suspension occurs, they have an opportunity not for a full trial but simply to go in and say to the principal, "Who accuses my son of this particular offense?" Is it your intention to make that substantive change?

SENATOR COOK: Mr. President, we have not repealed the section of the law to which you refer. Please note that there's a difference between removing from a classroom and

suspending from a school, and if you read page 2, you'll note that it's a matter of being removed from the classroom which, of course, can be done any time, any day of the week if the administration feels that there is reason to remove the student from the classroom.

Let me indicate that the teachers union, in fact, has submitted some legislation which would unilaterally give teachers authority to remove students from the classroom. This is an attempt at a middle ground to respond to the concerns which the teachers unions have expressed to us and that is the fact that students continue to be in the classroom and they have to deal with the disruption and the possible endangerment of the other students under those circumstances.

So this is really a middle ground. It doesn't change the suspension portion but it does permit the immediate removal from the classroom.

SENATOR DOLLINGER: Thank you, Mr. Chairman.

Senator Cook, I appreciate your responses. I voted for this bill last year.

I'm going to vote again for it this year. My hope is that it goes to a Conference Committee and you look carefully at the issue of a code of conduct in a school district, what notice the parents get prior to suspending for less than ten days.

I think Senator Stavisky properly points out, it will go from five to ten days. It seems to me that the code of conduct of the school district, we should tell them that as part of that code of conduct, before you can issue a suspension for less than ten days, before you can punish this child, not to trigger their full due process protections, the parents should have the right to go and ssay to the superintendent or the building principal, "What did my child do and what is he accused of and can I talk to the person who is accusing him of this particular act of violence?"

By doing that and giving the parent just an opportunity to be satisfied that there is wisdom, sustenance and evidence that supports the determination of school district personnel, I think we'll go a long way to improving people's confidence in their school

district administrators, in the decisions that they make and bring the families and the parents into the school process of disciplining their children.

In the case that I talked about, the school district did not do that. It engendered terrible feelings in the community because the parents felt that they were cut out of the discipline of their children. They acknowledged that their children had done wrong. They acknowledged that they should be disciplined. What they wanted was a chance to go in and talk to the school administrators about what the discipline should be, who accused them of it and how they reached the decision.

By doing that, by facilitating parents to come in for those kinds of disciplines, I think we'll go a long way to building the infrastructure of parent/administrator/teacher cooperation necessary to make our schools truly safe.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I wonder if Senator Cook would yield

for a couple of questions.

ACTING PRESIDENT MARCELLINO: Senator Cook, do you yield? Senator Cook yields.

SENATOR MONTGOMERY: Thank you.

Senator Cook, the current law - I'm looking at a memo which states that the current law provides that all school boards shall adopt rules and regulations for the maintenance of public order on school property and provide for their enforcement. If that is the law as it is -- as it exists now, where does the request for this legislation come from since they already seem to have the statute which allows them to do this?

SENATOR COOK: Senator -- Mr. President, Senator, the piece that you have recited is -- I guess I would have to call it a necessary precedent to follow. In other words, we wanted to recite what this would -- what would be included in this code of conduct. That begs the question, if you're going to have a code of conduct, how do you get it in place in the first place and that's really the question -- that's really the answer to your question.

What we are really attempting to do is respond to some issues that have arisen around the state in which, in specific instances, as I said earlier, the commissioner has told school districts that particular provisions of their code of conduct could not be enforced because there was no statutory authority and our real intent is to outline those kinds of issues that can be addressed in the code of conduct and so we aren't really intending to change the legal authority of the Board of Education, of the school board -- or of the school board, depending on which case you're talking about, to adopt a code of conduct. What we are trying to say is these are the elements that may be included within a code of conduct that is adopted.

SENATOR MONTGOMERY: I'm a little bit confused, Mr. President. If I can continue along that line of questioning. It says "under Article 55 of the Education Law", so does that mean, Senator, that you're trying to establish for those school boards a code of conduct -

SENATOR COOK: No.

SENATOR MONTGOMERY: -- since

they have not done so themselves? Is that what we're trying to do today?

SENATOR COOK: Mr. President, really two things. One is to kind of ensure that there is a code of conduct, that people pay some attention to this, that being true, but more importantly, what I stated earlier, is that it sets some legal parameters so that when people are adopting a code of conduct, they can look at this law and say, well, these are things that we are -- that we can legally include within a code of conduct and they won't be subject to legal challenges based on the fact that there is no statutory authority.

SENATOR MONTGOMERY: All right. Mr. President, if Senator Cook would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Cook, do you continue to yield? He yields.

SENATOR MONTGOMERY: There is another section of the bill, Senator Cook, where you talk about instructing the Commissioner to develop an interpersonal violence prevention education resource for grades kindergarten

through 12 which resource may consist of student pamphlets, parent pamphlets, videotapes and other informative materials to be distributed, as well as teacher lesson plans, videotapes for teachers and other informative materials to be distributed to the school districts by the Commissioner of state Ed.

Does -- is there in the legislation, Senator Cook, anywhere where we propose that the state will pay for the development of these materials by the Commissioner to be distributed in the local school districts? I didn't see where we proposed any budget allocation for that particular activity.

SENATOR COOK: Mr. President, Senator, there is no budgetary appropriation in this bill. So obviously there's nothing included within -- within the budget for that.

I would have to indicate that I would assume that the Commissioner is going to proceed at that point and -- and to submit as a part of the Education Departmental budget a request for whatever personnel and printing may be necessary to do that. I recognize your point

that, in fact, this can't be done out of thin air, but we don't provide for that money because, quite frankly, I don't know -- I don't really have a ball park figure even as to what it might cost.

SENATOR MONTGOMERY: All right. I appreciate that, Senator Cook.

Now, Senator -- Mr. President, if I may just ask one further question of Senator Cook, if he would continue to yield.

One section of -- another section of the legislation adds a new Article 12 to the Family Court Act which sanctions parents of children who fail to attend school and it's the educational neglect proceedings -- it establishes the educational neglect proceedings and it creates a Family Court process to determine whether a child is educationally neglected and what, if anything, must be done. Potential outcomes range from dismissal of the petition where no neglect is found to six months in jail where the parent willfully violates a judge's order of supervision.

Now, I understand that, Senator Cook, you are intending to force parental

involvement in decisions regarding the education of their children.

The question that I have for you is -- I think you've in some ways already answered it, but certainly where do we provide for some support to school districts who - whose families in this particular kind of situation may need some support, may need some assistance and that school district is not able at this point in time to provide such a range of services and, two, you establish prosecution essentially of poor parents because we would naturally assume that most of the cases in this category would probably involve poor or working poor families and their children.

What do we do with the rest of the family in cases where you're going to end up prosecuting parents for child neglect and what are we doing to support those families so that -- so that the issue of prosecution becomes rather an opportunity to provide supports and where do we get the money for that vis-a-vis this legislation?

SENATOR COOK: Senator, that's a complicated question.

SENATOR MONTGOMERY: Yes. I understand.

SENATOR COOK: And I could probably spend all afternoon answering it, but I won't do it because Senator Goodman has other things to do this evening.

In trying to put this -- put your question into an order here, in the first place recognize that the school district is the one who moves for the finding of educational neglect. So, in other words, it's not going to be someone coming in from the outside and telling the school district, We found, you know, 25 of your kids are being neglected and you've got to take on the responsibility for dealing with them. So it really is a tool of the school district.

If you read through the various proceedings that take place and think about what is going to occur and recognize that it is really an intention to involve and, yes, to urge, if you will, the parents to be involved but there is implied in there that there's going to be counseling and all the kinds of support things that have to occur.

As regard to the issue of someone being imprisoned, that really is nothing different than a contempt of court finding that would happen in any case. A judge has basically said to a parent whatever the judge may say. "I want you to get out of bed at 7:00 o'clock in the morning, feed your kids breakfast, get them dressed and send them to school" and if they find that after a period of time the parent continues to sleep until noon and hope that the parent shows up in school and pay no attention to him for the rest of the day, they, in fact, can then find that the parent is in contempt of the court in realistic terms but, as I said very early on, we envision this as a continuum of possibilities, of options, that the very earliest option, to repeat myself, is simply setting forth rules in which 90 percent of the students will voluntarily comply, the next step being that the teachers have their suspension problems which again will take care of another group and the schools' abilities will take care of another. So really by the time you reach this point, you are dealing with one in 1,000, one in 10,000, perhaps, students. So we're

really not envisioning that we're going to have, you know, hundreds and hundreds of parents brought into court under these provisions.

SENATOR MONTGOMERY: Thank you, Senator Cook.

Mr. President, briefly on the bill.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I certainly agree with Senator Cook that we're not perhaps talking about large numbers because there would not be a need for this code of conduct if all students in the most ideal world would not be - we would not be required to establish a code of conduct for.

However, what essentially is very troubling about this particular approach to the issue of conduct in schools is that we have - it assumes -- it seems to me, Senator Cook, despite every good intention, that once again we are assuming that poor parents are poor because it's their own fault and if they are, for whatever the variety, the millions of possible reasons they are unable to cope successfully

with everyday business, it is their fault. They must pay and furthermore, their children must pay also, and that is the problem with all of our direction in terms of providing or looking to address social issues.

So I just -- I have a major concern that we establish sanctions which include up to a half a year in jail. We are already looking to sanction families by cutting off part of their public assistance because their children are not in attendance in school on a regular basis and now we're going to further put them in prison and we're going to suspend children up to 10 to 20 days without a fair hearing, and on and on it goes.

So this is clearly one of the most punitive and anti-family measures that I've seen, even though it is built as a measure to address the conduct and help young people to behave in a positive and responsible manner. It certainly does not do that. It does not appear that this has been requested by the local boards of education, certainly not by the New York City Board of Education and, as I said, it penalizes, it punishes families, particularly poor

families, and I note you mentioned Senator Goodman. Senator Goodman certainly would never be prosecuted under this because he doesn't need a code of conduct, I'm assuming, for his children.

So this really is for poor children more. It's not for Senator Goodman, and so I'm going to vote against it because I think that we have to be more concerned about helping families, trying to keep them from falling through the -- whatever the safety nets we have left for them and certainly if they are unable to support their own children, then we must be able to help them in many more ways than we currently have to help them rather than punish them for being poor.

So I'm voting no on this legislation, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. Would Senator Cook yield?

ACTING PRESIDENT MARCELLINO: Senator Cook, do you yield?

SENATOR LEICHTER: Senator, I'm

not going to -

ACTING PRESIDENT MARCELLINO: I believe he does.

SENATOR LEICHTER: -- at this time address some of the policy issues and grounds raised by your bill, but I'm concerned about certain provisions, language and certain of the process provided for in the bill.

One thing, Senator Montgomery addressed the issue of funding in the bill for the Commissioner of Education. I'm also concerned about the funding for the school boards. I mean, this is a big mandate on the school boards. They've got to come up with the code of conduct. They've got to furnish it to every parent, to the children. They've got to post it. They've got to set up committees. Isn't this what we call an unfunded mandate?

SENATOR COOK: Mr. President, Senator, as I think has been said in some of the earlier discussion, the concept of a code of conduct is not a brand new concept and, as a matter of fact, most school districts have a code of conduct and our real purpose in writing this bill is not so much as to create a mandate

-- although we think that every school should have a code of conduct and in the event that there are districts, in fact, who aren't doing it, there's an attempt to have the Commissioner make that enforceable indeed, but I don't expect that there's going to be a lot of school districts that are doing anything different from what they're doing now.

What there is -- because, for example, student handbooks are provided in most of my school districts to the students when they come in at the beginning of the year and they have the rules of the school in those -- in those handbooks. So it's not something that's brand new to them.

What we are attempting to do is -- and I don't know that you were here earlier when I said this -- there have been some commissioner's rulings which have made it very ambiguous as to what can be in those codes of conduct and the thrust of this is more to say that these are the kinds of issues that a code of conduct may address than it is to create a new mandate because we think that mandate, for the most part, is probably already being

fulfilled. We don't think it necessarily is being fulfilled very well in some cases.

SENATOR LEICHTER: Well, Senator, I have no problem with the rule of conduct. I like that and there are parts of this bill that I think are quite important, and I know overall I want to say it's a good faith effort on your part to deal with this serious problem, but I don't think that you can say that it's not a mandate because, while some school districts may have codes of conducts, I know that many of them do not or at least don't have codes of conduct which meet all the requirements in this bill. They're going to have to print. You also set up committees, and so on. So I think it's fair to say that it's a mandate, but let me move to another area which, frankly, I find somewhat puzzling, and I think hard to comply with, and that's the whole Family Court proceedings that you've set up.

First of all, you now provide for something called adjustment services, right? You are seeking to involve at an early stage of the proceeding somebody to intervene and to provide, I guess counseling, help or maybe

obviate a formal court proceeding, but I'm not sure that there's -- that we have the agencies available to do that. You provide -- "rules of the court shall authorize to determine the circumstances under which the Family Court in each county may appoint a local probation service or duly incorporated court-appointed special advocate." Let me stop right there because I've asked people. I've looked at it and nobody can find in the law there's presently such a thing as a duly incorporated court-appointed special advocate. What agency, what particular office are you referring to with that?

SENATOR COOK: Mr. President, Senator, I'm going to answer that in a couple of different ways and the first is to say that there's an ancillary piece of legislation that we are moving through that deals with the issue of trying to coordinate social human services agencies, including the courts, the Family Courts and the schools and we really see this as one of those things that this coordinated system will do, but I think you have really responded to some of the concerns that Senator Montgomery

was raising when she said that we aren't giving any support to the families because, in fact, this legislation does, as you indicate, provide that the court is going to need to have a court-appointed attorney as it does now in any kind of a case for the children but that they also are going to have to provide for counseling services. I don't know what they would do in the city of New York. In my area, they would have either the Child Protective Services of the county or the Probation Department who would be -- in this case, would be referred to by the Family Court.

Now, what happened in New York City, I can't tell you but I would assume there is some way in which when they find that a child is being neglected, that there is somebody that they refer it to.

We are creating educational neglect but we aren't creating child neglect. That's already in the books and we simply are adding another type of concern to it and saying that it is a responsibility to feed your children, to clothe them, to provide them with shelter and we're adding one more thing, which

is also to ensure that they receive an education.

SENATOR LEVY: Senator, you're actually going into something that I was going to ask you about later on.

ACTING PRESIDENT MARCELLINO: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR LEICHTER: Senator, we do have child neglect proceedings and if you had just provided that one of the basis for finding child neglect is educational neglect, I think it might make a lot of sense. You might still decide to go that way because I think presently this bill is so overloaded with different provisions that I think cause problems that it's just not going to go anywhere but you now have set up a totally different procedure for taking care or at least involving agencies in these educational neglect situations, and I don't believe -- I mean, you say the local probation service. They're not qualified to do this. They don't have the personnel.

You provide for a duly incorporated court-appointed special advocate. With all due respect, I don't think they exist, that office. You say there's another bill coming down the road that seems to provide something but all you say, "court-appointed special advocate or other appropriate agency."

I guess my question really is, one, how are we going to pay for this? You go down to the probation service and you ask them to take on a totally different function of helping families with their problems with the education of a youngster in that family and how the family is supporting the youngster, and so on. The probation service isn't qualified to do that.

SENATOR COOK: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Cook.

SENATOR COOK: Senator, I have to keep repeating myself but somehow folks are asking the same question and I give an answer and then somebody else asks the same question that has the same answer, so I have to repeat myself. So please forgive me.

SENATOR LEICHTER: Excuse me if I asked the same question.

SENATOR COOK: You didn't ask exactly the same question but it really gets the same answer. We are envisioning here a continuum of ways to deal with problems that are being experienced by children.

What you are addressing is on the far extreme end of that process in which one percent or one-tenth of one percent or one one hundredth of one percent of the people are going to be involved. I have great faith that the school district, school personnel are going to be dealing with almost all of these problems and, in fact, the sorts of things that you are talking about don't even come into play so as long as the parents come into school and try to work with the school district, none of this happens. None of this gets into the court system at all as long as the parents are working with the school district to deal with these problems their children are experiencing.

We only have this section in here to deal with those parents who, in fact, are neglecting their children and who are just

saying, "I don't care if they get an education or not," and that is going to be an extremely rare occurrence.

So you're not talking about having to set up agencies that are going to deal with thousands and thousands of kids. You're talking about maybe one child will be in the situation out of 100,000 population, not 100,000 children, but I'm envisioning in a county similar to what I represent, there may be one child in the whole system that will be involved in this. So it's a matter of -- and I recognize in New York City that probably becomes -- the numbers become larger. So they are, in fact, going to have to refer it, but I would also indicate in the children's protective services, that this is a function that falls very much within the category of protective services, and I think that there are, in fact, people who can deal with these problems of children.

Though the educational program continues to be a responsibility of the district, it becomes a responsibility of the protective services to make sure that that educational program is being delivered. That's

nothing new.

SENATOR LEICHTER: Senator, with all due respect, you're saying I've got to keep on giving the same answer but, frankly, you have one answer fits all questions, but I submit to you respectfully it doesn't fit all questions because you have a bill. You're providing - you're providing now specific duties -- not specific duties, at least the potential of appointing an agency that has no experience in this area and your answer to that is, Oh, well, it isn't going to happen that often. Let me tell you, one percent of the million school children in New York -- and you acknowledge the numbers there become pretty large -- that's 10,000 kids. So you are, under your bill, involving different agencies, creating new agencies, and I just want to know what these agencies are. Are they qualified to do this? Are you providing monies for this, and I submit to you that you're not.

Let me turn to something else that's not a major point -- it may be major but it concerns me. You've set up a proceeding under the Family Court, as I understand it,

which could -- which could result in a six-month jail sentence for educational neglect of a child.

You also provide that hearings in the Family Court relating to educational neglect ought to be closed to the public. Are you providing for -- and it seems as if you are providing for court proceedings that could result in jail sentences that are going to be closed to the public.

SENATOR COOK: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Cook.

SENATOR COOK: Mr. President, obviously I think the civil rights laws would not permit somebody to be sentenced to a jail term in a closed court proceeding but the finding that would be made would be a contempt finding or the equivalent of a contempt finding that, in effect, there would be a recitation that the parent had been presented with certain expectations and the factual finding that the parent had not fulfilled those expectations in response to what the court had said and that portion of it, obviously it has to be a public

record but up to that point, I don't think you or anybody else in this room thinks that we ought to have, you know, everybody in the neighborhood being able to show up when a Family Court proceeding is going on dealing with conduct which is basically a matter between the parent and the children.

SENATOR LEICHTER: Senator -

ACTING PRESIDENT MARCELLINO: Senator, will you continue to yield? Excuse me, Senator Leichter. Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR LEICHTER: Senator, you may be absolutely right that these aren't the sort of proceedings that maybe everybody in the neighborhood ought to show up but you put it in the court. You provide for a jail term and we do have standards of openness, which I think are important and obviously you do too and your bill provides really exactly contrary to that basic principle of openness.

Let me ask you another thing that

just puzzles me, and there's many more but I just wanted to pick one or two. This is on page 13, Section 1244, "Supervision". You say the court may place the respondent under the supervision of an adjustment agency. Now, the respondent is a parent, an adult. What does it mean to place an adult under the supervision of an adjustment agency? What can that agency do? What rights, authority, direction may that agency give to somebody? This is an adult. The adult is not in jail. You have an adjustment agency which, as we pointed out before, we're really not clear who that adjustment agency is and whether they have the personnel, the experience. Now they have the supervision of an adult. What do they do?

SENATOR COOK: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Cook.

SENATOR COOK: Senator, again, responding, I think to some things that Senator Montgomery was raising earlier, you responded to her question. Their purpose is to provide guidance and help and assistance to this parent in dealing with the problems of this child.

Now, you're correct. They have no legal sanction but they can help this parent fulfill whatever the mandate of the court is which is to help deal with the problems of the child and they are really there in a counseling function.

The whole purpose of this is not to get ever to the point where anybody is going to be ending up in jail or, in fact, even ending up in foster care, hopefully, but -- so we want people who can help prevent that from happening but, of course, at a certain point, either the efforts of the parent are not going to be successful, in which case you're going to have to have, I guess what would be the equivalent of a PINS -- although we're not making it a direct PINS -- or you have a contempt situation in which the parent says, "I just don't care."

SENATOR LEICHTER: Senator Cook, with all due respect, you use the language "supervision." I have no problem trying to set up a system whereby you provide counseling assistance and help but you, you're writing a bill. You're writing a statute. You're using certain language. You can't just say, Well, you

know, we'll let them do this or let them do that. You use a very disciplined word, "supervision." You now have an adult under the supervision of an adjustment agency. We have no precedent in the law what it means. We know what it means to send an adult to jail, put that adult under probation. You now have an adult under supervision and you certainly have to spell out what the -- what the particular functions are, the rights, the obligations, and I think you fail -- you fail to do that and you also can't escape the language of your bill by saying, Well, we hope we're never going to get there. You have eight pages that deal with when you do get there and granted, it's going to be a small percentage of people, but those are the ones that your bill is really aimed at, the ones who aren't behaving, the ones who are having problems, the ones who are educationally failing and there may be family problems. They may need help. So those are the ones we're focused on, and I don't know what you mean when you say you're putting somebody under supervision of an adjustment agency.

SENATOR COOK: Mr. President,

Senator, in social work we have supervising case workers, which is a common term, when a case is under the supervision of a given case worker. We utilize that all the time. That doesn't mean that that person has a direct power. It doesn't mean they have a supervisory power in the sense that you're somebody's employer but it means that they are the responsibility -- that that case is a responsibility of a certain person and it basically says to somebody who is a - hopefully a professional but someone who is in a position of taking this situation and trying to work with it and work the family through the problems that they're encountering.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Leichter, on the bill.

SENATOR LEICHTER: I want to thank Senator Cook for his unfailing willingness to explain his bill and his cooperativeness, and I also want to commend you, Senator Cook. You've tackled a very, very tough problem and one that exists in our society and one that we need to address.

I think all of us are concerned about some of the things that are happening in the schools. We would like to see the schools function better, the children better behaved. We would like to see greater discipline, educational success in the schools and you're trying to deal with that and I commend you for that.

I think this bill really shows one of the flaws in our procedures. This would have been a wonderful bill to put up in a committee and to mark it up as they do in Congress and to have input from the various members and to raise some of the questions that have been raised here -- because some of the questions that are raised are technical questions that could probably be disposed of by some language changes but what so often happens here is a bill is drafted and then it has the sanctity as if it was part of the Ten Commandments or the Bible. Nobody can change a word of it and it's brought on the floor here and I'm sure of this prediction I make, that this bill in this form is never going to go anywhere because I think it's got too many

unanswered questions, too many problems.

While it could have, I think, been worked out in committee and maybe we would have before us something that would be helpful to our school districts and would assist educational behavior throughout the state, I just can't support the bill in the form that it is now, much as I like some of the aim and direction that it goes to.

I would make this suggestion to you, Senator Cook. At this point, I think if you just provide for code of conduct without automatic suspensions and things of that sort - but we certainly ought to have every school district in the state have a code of conduct. Every parent should know what it is. Every child should know what it is. As far as dealing with those instances where there's a real educational breakdown, a dysfunctional family, and so on, it may well be that the best thing to do is to make educational failure part of the process that we now have for a child in need and deal with it under the -- within the existing framework because there we have precedents. We have a system. We have institutions that deal

with it. They may not deal with it perfectly but at least you've given them grounds to now take another family under the auspices of that whole system to try to deal with the educational neglect that you have in mind.

I think that would probably be a much better way to go than to set up this system that you do with the obligations that you place on the courts, that you place on agencies that have no ability to deal with the functions that you're trying to give them as well as having, I think, some procedures here that are very questionable like closed hearings of court proceedings that end up in jail time.

So, Senator Cook, maybe this is a good discussion point, but I don't think we've yet reached where we have a bill that we can say this is a workable system. This makes sense for the people of the state.

ACTING PRESIDENT MARCELLINO: Senator Lachman.

SENATOR LACHMAN: I hesitate to ask Senator Cook to yield -

ACTING PRESIDENT MARCELLINO: Senator Cook, do you yield? He yields.

SENATOR LACHMAN: -- for a few more questions. Does this legislation have provisions in it in terms of its creation and enforcement to be in consultation with teachers, community members, including parents, next of kin?

SENATOR COOK: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Cook.

SENATOR COOK: Senator, the whole process is segregated on governmental - (inaudible) repeatedly. If you read that portion, it says that the code of conduct shall be developed in consultation with the various people that you have already cited. You then move into the administration portion.

SENATOR LACHMAN: But it does have that provision in it.

SENATOR COOK: Yes.

SENATOR LACHMAN: Thank you. Will the Senator continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT MARCELLINO: Senator Cook -- excuse me a minute. Senator, have you finished your answer to the previous

question?

SENATOR COOK: That's fine.

ACTING PRESIDENT MARCELLINO: Okay.

SENATOR LACHMAN: Does the bill also contain provisions that the code and the enforcement are in compliance with state and federal laws relating to pupils with disabilities?

SENATOR COOK: Senator, it does. There are provisions in the bill which specific ally indicate that children with disabilities have to be dealt with and, as you know, within the past couple of weeks, there have actually been some changes and some court rulings that have even changed that. We have not attempted to define that any more than simply stating that whatever happens is in conformity with existing laws.

SENATOR LACHMAN: Does the bill also contain provisions that the boards of education shall alert the community to the provisions that will be enacted before they're enacted and after they're enacted to the final provisions?

SENATOR COOK: Well, there's - Mr. President and Senator, there's a requirement that we just discussed that, in fact, the parent has to be involved in the creation of this code of conduct and, yes, there is a requirement that the community at-large, as well as the students and the parents be advised of the requirements.

Now, the reason for that is something of what Senator Dollinger had indicated, that at basketball games, for example, the code of conduct really applies to everybody who's there.

Now, admittedly, if they're not the students, you can't follow the other procedures but it does state -- it could state, for example, that obscene language shall not be shouted at players at athletic events and that would apply to everyone in the room.

SENATOR LACHMAN: Does the -- may I continue? Will the Senator continue to yield?

ACTING PRESIDENT MARCELLINO: Does the Senator continue to yield? Excuse me, Senator. Please, can we have some order in here.

SENATOR LACHMAN: Does the legislation, when it increases from five to ten days the length of time for which a pupil may be suspended, does it include any provisions of informing a parent or next of kin that a child is suspended?

SENATOR COOK: Mr. President, Senator, I'm informed -- and to clear that up - that we really follow existing law. We have not changed the law in that regard.

SENATOR LACHMAN: The existing law does do that.

SENATOR COOK: Yeah.

SENATOR LACHMAN: So you will not change the existing law.

SENATOR COOK: We are not changing the existing law.

SENATOR LACHMAN: If the law says that the parent or the next of kin or the guardian is informed, that will continue and remain.

SENATOR COOK: Yes.

SENATOR LACHMAN: And will not be changed. Thank you.

Does -- is the hearing -- if the

existing law -- forgive me. I am guilty of authoring the New York City Board of Education's student suspension provisions as well as the rights and responsibilities of high school students, but it's dated. It's 20 years ago and many things have happened in those 20 years.

In the New York City -- in the New York City provision, there is an aspect that does not necessarily involve an adversarial parent, that the parent or guardian or next of kin can bring someone with them, take someone with them to a hearing. If that already exists in law, will this change it?

SENATOR COOK: We don't repeal, Senator -- as I indicated before, we have not repealed any existing provisions as it relates to any of these things.

SENATOR LACHMAN: Okay. So if that does exist, it will not be changed and the New York City Board of Education will have the authority and the authorization to consult with community groups, with teachers, supervisors and parents before there are any changes.

SENATOR COOK: Correct.

SENATOR LACHMAN: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Lachman, on the bill.

SENATOR LACHMAN: As I have said, many things have changed in the last 20 years. The bill is not a perfect bill from my point of view but very few things are perfect this side of heaven and even though I would have preferred more time to recommend changes to this bill to make it more perfect, though not perfect, we have to vote as legislators on this bill.

Now, many things have changed in the last 24 -- in the last 20 years but one thing remains very important, and that is that no education can take place in an environment that is not secure and this impacts upon all children, whether they're inner city children or outer city children, whether they're minority children or majority children, and at this point in society, we do have to set certain standards but those standards have to conform with due process.

Now, you, Senator, have led me to believe that they will conform with due process and they will not contravene existing statutes

and laws in the school boards in the state of New York and most specifically in the city of New York.

I, therefore, will support the bill.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 10. This act shall take effect -

ACTING PRESIDENT MARCELLINO: Excuse me one second. Senator Stavisky.

SENATOR STAVISKY: Slow roll call is requested.

ACTING PRESIDENT MARCELLINO: Do we see five Senators standing? I see five.

SENATOR SKELOS: Can you ring the bells.

ACTING PRESIDENT MARCELLINO: Ring the bells, the chimes. Call them from the halls, the hills and the valleys. Then read the last section.

THE SECRETARY: Section 10. This act shall take effect January 1.

ACTING PRESIDENT MARCELLINO: Call the roll very slowly.

THE SECRETARY: Senator Abate.
SENATOR ABATE: No.
THE SECRETARY: Senator Alesi.
SENATOR ALESI: Yes.
THE SECRETARY: Senator Breslin.
(There was no response.)
Senator Bruno.
(Affirmative indication)
Senator Connor.
(Negative indication)
Senator Cook.
SENATOR COOK: Yes.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: Yes.
THE SECRETARY: Senator Farley.
(There was no response.)
Senator Gentile.
(There was no response.)
Senator Gold.
(There was no response.)
Senator Gonzalez.

(There was no response.)
Senator Goodman.
SENATOR GOODMAN: Aye.
THE SECRETARY: Senator Hannon.
(There was no response.)
Senator Hoffmann, excused.
Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: Yes.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Aye.
THE SECRETARY: Senator Lachman.
SENATOR LACHMAN: Aye.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: To explain my vote, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter, to explain his vote.

SENATOR LEICHTER: You know, let me just say to my colleagues here, we're dealing with specific legislation. It isn't enough to get up and say we need the discipline in the schools. We need a code of conduct.

Senator Lachman, my good friend, is absolutely correct but you still got a bill that you got to look at and you got to look at the provisions and see if they make sense, if they're workable. There are provisions in here that are utterly unworkable. There are provisions in here that are probably unconstituional. There are provisions in here that deny students due process. There are unfunded mandates in there. There's obligations put on agencies.

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Ladies and gentlemen, can we please hold it down so we can hear the explanation.

SENATOR LEICHTER: There are

agencies that are given functions here that have neither the funding, the capacity, the experience in dealing with it. Read the bill. That's what you're voting on.

If all we're engaged in -- and unfortunately often we are -- in making public statements, we don't need a bill. Just put out a press release, but if you want to deal with legislation, then you've got to make sure that it works. This, unfortunately, does not.

I vote in the negative.

ACTING PRESIDENT MARCELLINO: Continue the roll call.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

(There was no response.)

Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

(There was no response.)

Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Yes.
THE SECRETARY: Senator Meier.
SENATOR MEIER: Yes.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: No.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: No.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: Explain my vote.
ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, to explain her vote.
SENATOR OPPENHEIMER: A case can be made on both sides of this issue. I have before me the memo from the School Boards Association and they say that state law already

requires school districts to promulgate codes of conduct and to enforce them. That's from the School Boards Association and I happen to know that we have strict codes in most of my school districts.

In fact, we had an uprising from the students in one case and they won their point and had the code of conduct in that particular school district ameliorated. It wasn't quite as harsh as when it was first put together by the school board. The students had a say in it and they reduced some of the requirements but -- so on the one hand we see that codes are required now and the School Board Association says that, as we have been discussing, that the rights of students, their due process rights constitutionally protected will be impaired and, therefore, there will be plenty of legal action against the school boards and they don't like to have to defend actions. So they suggest a no vote.

On the other hand, here we see the school administrators of New York State saying yes, this is essential because if we don't have a safe school environment, there

can't be any learning going on and it has to be enforced and they think that the multiple provisions here provide consistency, that the statewide discipline plan would maintain local controls over specific codes of conducts. I mean, here we have the two administrative heads not even seeing eye to eye.

I applaud what you're trying to do. I'm not sure this would stand constitution al challenge. I'm quite sure it probably won't, but because I do like the thrust of this, I'm going to vote yes and hope that this can be modified so that it would be able to meet the challenge.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer in the affirmative. Continue the roll call.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

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

ACTING PRESIDENT MARCELLINO: Senator Paterson, to explain his vote.

SENATOR PATERSON: The thrust of

this legislation, as I think has been pointed out by some other speakers, is certainly quite admirable and the issue of school violence, as Senator Lachman pointed out earlier, is certainly a lot more paramount today than it was a score of years ago.

However, because of the dangers of oversimplifying the response and almost con fining school authorities when we are involved with very young people by strict, rigid inter pretations of the statute cause me to ask the sponsor to go back and take another look at it in conjunction with our -- the other legislative body here and come up with a bill that will really be achievable and provide protections for teachers. Also it will create an atmosphere where there would be additional responses to - on a case-by-case basis.

Therefore, I vote no, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson will be recorded in the negative. Continue the roll call.

THE SECRETARY: Senator Present.

(Affirmative indication)

Senator Rath.

(There was no response.)

Senator Rosado.

ACTING PRESIDENT MARCELLINO: Senator Rosado -- Senator Rosado, how do you vote?

(There was no verbal response.)

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: No.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: No.

THE SECRETARY: Senator Seward.

(There was no response.)

Senator Skelos.

SENATOR SKELOS: Aye.

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, very briefly to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: I commend Senator Cook on his leadership in this area. However, until the bill is cleaned up and may be workable with the other house, I at this time will have to vote in the negative.

ACTING PRESIDENT MARCELLINO: Senator Stachowski in the negative. Continue the roll.

THE SECRETARY: Senator Stafford.

(There was no response.)

Senator Stavisky.

SENATOR STAVISKY: Any time the school boards and the teachers and the youth advocacy groups and the Conference of Big City Boards of Education, without my former - without the former president of the board and the New York City Board of Education is in opposition to a measure, it is not a matter of what Senator Cook promises will be in the bill. It is a vote on what this bill does or does not do.

Under these circumstances, I am voting in the negative.

ACTING PRESIDENT MARCELLINO: Senator Stavisky will be recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

(There was no response.)

Senator Volker.

(Affirmative indication)

THE SECRETARY: Senator Waldon.

(There was no response.)

Senator Wright.

(There was no response.)

ACTING PRESIDENT MARCELLINO: Can we call the absentees.

THE SECRETARY: Senator Breslin.

(There was no response.)

Senator Farley.

(There was no response.)

Senator Gentile.

SENATOR GENTILE: Yes.
THE SECRETARY: Senator Gold.
SENATOR GOLD: No.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Hannon.
(Affirmative indication)
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Seward.
(There was no verbal response.)
Senator Stafford.
(There was no response.)
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Yes.
THE SECRETARY: Senator Wright.
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT MARCELLINO:
Announce the results, please.
THE SECRETARY: Ayes 38, nays 17.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Mr. President, would you take up Calendar Number 632, by Senator Spano.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 632, by Senator Spano, Senate Print 4077, an act to amend the Public Health Law, in relation to the establishment of regional Emergency Medical Services councils.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: There is a home rule message present at the desk on this particular piece of legislation. Senator Spano, an explanation has been asked for.

A VOICE: Oh, a Spano bill? Can I ask questions?

SENATOR SPANO: Thank you, Mr. President. This bill would allow Westchester

County to adopt its own EMS Council, Emergency Services Council. Right now, Westchester is a part of a seven-county EMS Council. Westchester County makes up 45 percent of the population of that council, and the creation of a separate EMS region for Westchester will allow for Westchester County to more readily and adequately meet the medical needs of the citizens of Westchester.

ACTING PRESIDENT MARCELLINO: Gentlemen, can we please hold it down so we can hear the debate.

SENATOR PATERSON: O.K.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President,

would you call up Calendar Number 886.

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar Number 886.

THE SECRETARY: Calendar Number 886, by Senator Goodman, Senate Print 3651, an act to amend the Alcoholic Beverage Control Law, in relation to permitting the State Liquor Authority.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Goodman, an explanation has been asked for.

SENATOR SKELOS: Lay the bill aside for the day.

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

SENATOR SKELOS: Mr. President, call up Calendar Number 889, by Senator Goodman.

ACTING PRESIDENT MARCELLINO: We will call Calendar Number 889; the Secretary will read.

THE SECRETARY: Calendar Numer 889, by Senator Goodman, Senate Print 3682, an

act to amend the Alcoholic Beverage Control Law, in relation to entering an unpaid civil penalty.

SENATOR GOLD: Explanation.

SENATOR SKELOS: Lay it aside for the day.

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

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: Yes, there is, Senator. Secretary will read a substitution.

THE SECRETARY: Senator Bruno moves to discharge from the Committee on Rules Assembly Bill Number 7989 and substitute it for the identical Third Reading Calendar 1071.

ACTING PRESIDENT MARCELLINO: Substitution is ordered.

Senator Tully is recognized.

SENATOR TULLY: Yes, Mr. President. On behalf of Senator Levy, please place a sponsor's star on Calendar Number 1018.

ACTING PRESIDENT MARCELLINO: Sponsor's star will be placed on Calendar Number 1018.

Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping?

ACTING PRESIDENT MARCELLINO: I think the house is clean, sir.

SENATOR SKELOS: There being no further business, I move we adjourn until Wednesday, May 21st at 10:00 a.m., sharp.

ACTING PRESIDENT MARCELLINO: There being no further business, the Senate is adjourned until Wednesday, 10:00 a.m. sharp.

(Whereupon at 5:10 p.m., the Senate adjourned.)