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ALBANY, NEW YORK

June 4, 1997

11:05 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

## 1 P R O C E E D I N G S

2 ACTING PRESIDENT KUHL: The  
3 Senate will come to order. Ask the members to  
4 find their chairs, the staff to find their  
5 places. I would ask everybody in the chamber to  
6 rise and join me in saying the Pledge of  
7 Allegiance to the Flag.

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

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

12 (A moment of silence was  
13 observed.)

14 Reading of the Journal.

15 THE SECRETARY: In Senate,  
16 Tuesday, June 3rd. The Senate met pursuant to  
17 adjournment. The Journal of Monday, June 2nd,  
18 was read and approved. On motion, the Senate  
19 adjourned.

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

23 Presentation of petitions.

24 Messages from the Assembly.

25 Messages from the Governor.

1 Reports of standing committees.  
2 Reports of select committees.  
3 Communications and reports from  
4 state officers.

5 Motions and resolutions.

6 The Chair recognizes Senator  
7 Maziarz.

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

10 On behalf of Senator Rath, please  
11 remove the sponsor's star from Calendar Number  
12 823.

13 ACTING PRESIDENT KUHL: The star  
14 is removed from Calendar Number 823 at the  
15 request of the sponsor.

16 Senator Maziarz.

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

19 On behalf of Senator Levy, could  
20 you please call up Bill Number 100 having passed  
21 both houses and not delivered to the Governor.

22 ACTING PRESIDENT KUHL: The  
23 Secretary will read.

24 THE SECRETARY: By Senator Levy,  
25 Senate Print 100, an act to amend Chapter 312 of

1 the Laws of 1994.

2 ACTING PRESIDENT KUHL: Senator  
3 Maziarz.

4 SENATOR MAZIARZ: Mr. President,  
5 I now move to reconsider the vote by which this  
6 bill was passed and ask that the bill be  
7 restored to the order of third reading.

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

10 (The Secretary called the roll on  
11 reconsideration.)

12 THE SECRETARY: Ayes 38.

13 ACTING PRESIDENT KUHL: The bill  
14 is restored to the order of third reading.

15 Senator Johnson.

16 SENATOR JOHNSON: Mr. President,  
17 please place a sponsor's star on my two  
18 following calendar Bills, number 111 -- 1111 and  
19 1112.

20 Thank you.

21 ACTING PRESIDENT KUHL: Calendars  
22 Number 1111 and 1112 will be starred at the  
23 request of the sponsor.

24 I'll ask the Secretary to read  
25 the substitution that's at the desk.

1 THE SECRETARY: Senator Holland  
2 moves to discharge from the Committee on Rules  
3 Assembly Bill Number 6588 and substitute it for  
4 the identical Senate bill Third Reading 1123.

5 ACTING PRESIDENT KUHL: The  
6 substitution is ordered.

7 The Chair would like to make the  
8 notation that the motion that was made by  
9 Senator Maziarz had an error included in it.  
10 The motion called for a bill that had passed  
11 both houses being recalled to this house and the  
12 bill had only passed the Assembly. So the  
13 record should reflect that the motion made by  
14 Senator Maziarz to recall the bill that passed  
15 the Assembly is now reordered to third reading.

16 Senator Skelos.

17 SENATOR SKELOS: Mr. President, I  
18 believe there's a -- Resolution 1529 sponsored  
19 by Senator Libous which was previously adopted  
20 is at the desk. May we have it read in its  
21 entirety and then if you would recognize Senator  
22 Libous.

23 ACTING PRESIDENT KUHL: Senator  
24 Skelos.

25 SENATOR SKELOS: Yes. If we

1       could read Resolution 1530 first in its  
2       entirety.

3                   ACTING PRESIDENT KUHL:   The  
4       Secretary will read Resolution 1530 by Senator  
5       Libous in its entirety.

6                   THE SECRETARY:   By Senator  
7       Libous, Legislative Resolution commemorating  
8       Wednesday, June 4th, 1997 as Legislative  
9       Disability Awareness Day at the state Capitol in  
10      Albany, New York;

11                   WHEREAS, New York State Senate  
12      Select Committee on the Disabled in conjunction  
13      with the New York State Assembly Task Force on  
14      People with Disabilities is sponsoring the 17th  
15      Annual Legislative Disability Awareness Day.

16                   It is the sense of this  
17      legislative body that persons with disabilities  
18      merit our recognitions as they realize the goals  
19      of inclusion and equality in our communities and  
20      society at large.

21                   It is the intent of this  
22      legislative body to recognize persons with  
23      disabilities accentuating, in turn, the benefit  
24      to New York State of their contributions to our  
25      economic, educational and social growth.

1                   Legislative Disability Awareness  
2           Day so clearly labors the positive and salutary  
3           definition of the communities of the state of  
4           New York.

5                   Legislative Disability Awareness  
6           Day will conclude with this legislative body  
7           considering legislation significant to persons  
8           with disabilities.

9                   Legislative Disability Awareness  
10          Day provides individuals with an opportunity to  
11          acknowledge and understand the legislative  
12          process; now, therefore, be it

13                   RESOLVED, that this legislative  
14          body pause in its deliberations to commemorate  
15          Wednesday, June 4th, 1997 as Legislative  
16          Disability Awareness Day at the state Capitol,  
17          Albany, New York, fully confident that such  
18          procedure mirrors our shared commitment to the  
19          efflorescence of human dignity; and be it  
20          further

21                   RESOLVED, that copies of this  
22          resolution, suitably engrossed, be transmitted  
23          to selected representatives of persons with  
24          disabilities.

25                   ACTING PRESIDENT KUHL:   The Chair

1 recognizes Senator Libous, on the resolution.

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

4 ACTING PRESIDENT KUHL: Senator  
5 Libous, excuse me just a minute before you  
6 start. It seems to be rather noisy in the  
7 chamber. If we could have the members please  
8 take their chairs and the staff to take their  
9 chairs.

10 Thank you, Senator Libous.  
11 Senator Libous, on the resolution.

12 SENATOR LIBOUS: Thank you, Mr.  
13 President.

14 Today is the 17th Annual  
15 Legislative Disability Awareness Day in the  
16 Capitol and we have a full day. Earlier this  
17 morning at 10:30 we had Senator Bruno address a  
18 group and we honored Eric and we'll talk about  
19 Eric in the next resolution, but I just want to  
20 comment on the purpose of this day and first let  
21 me say thank you to my colleagues here in the  
22 Senate chamber and particularly thank you to  
23 Senator Stachowski who serves as the Minority  
24 member on the Select Committee for the Disabled  
25 for his assistance in today.

1                   What we're trying to do today is  
2                   make the people of New York State, along with  
3                   members of this house, aware of the fact that  
4                   there are people in New York State with dis  
5                   abilities and that because of their disabilities  
6                   -- and most often those disabilities are not  
7                   something that an individual asks for during his  
8                   or her life -- they have to change their life  
9                   and their life style.

10                   We try to make people in New York  
11                   State aware of that, that we have to pass  
12                   legislation and later this morning this house  
13                   will pass a number of pieces of this legislation  
14                   that will be passed also by the Assembly and  
15                   will go to the Governor for his signature, in an  
16                   ongoing effort to recognize the fact that we  
17                   need to do everything that we can in helping  
18                   people in New York State who have disabilities.

19                   Now, today is a full day at the  
20                   Capitol. As I said, we had the opening ceremony  
21                   and we were pleased to have the Majority Leader  
22                   speak at that ceremony and in the Legislative  
23                   Office Building, if some of you can show up  
24                   there a little bit later in the day, we have 45  
25                   organizations from across New York State who

1        have come to the state Capitol to show exhibits  
2        to talk about different techniques, different  
3        programs, different rehabilitative techniques  
4        that are being used to help people with  
5        disabilities throughout New York State. So I  
6        would ask to my colleagues if they could stop by  
7        there today, I think it would be very, very  
8        important.

9                                The last thing that I would like  
10        to mention on this resolution, Mr. President, is  
11        that I would like to say thank you to your  
12        interpreter today, Trudy Gilbert, who has joined  
13        us in the chamber for this morning's ceremonies.

14                              ACTING PRESIDENT KUHL: This  
15        resolution was previously adopted by the  
16        Legislature.

17                              Senator Marcellino.

18                              SENATOR MARCELLINO: Yes, Mr.  
19        President. I believe Resolution 1529 also  
20        sponsored by Senator Libous which was also  
21        previously adopted is at the desk and may we  
22        please have it read in its entirety.

23                              ACTING PRESIDENT KUHL: The  
24        Secretary will read Resolution 1529 by Senator  
25        Libous in its entirety.

1 THE SECRETARY: By Senator  
2 Libous, Legislative Resolution honoring Eric  
3 Emerick upon the occasion of his designation as  
4 Guest of Honor at the 17th Annual Legislative  
5 Disability Awareness Day, June 4th, 1997.

6 WHEREAS, it is the sense of this  
7 legislative body that individuals with  
8 disabilities merit our recognition as they  
9 realize goals that serve to lift barriers and  
10 expand choices for all persons with  
11 disabilities.

12 It is the intent of this  
13 legislative body to acknowledge individuals with  
14 disabilities who have risen above those  
15 conditions which might otherwise hinder a  
16 purposeful life of achievement and fulfillment,  
17 demonstrating that the barriers to success for  
18 the disabled come more commonly from prevailing  
19 attitudes and opportunities than the physical  
20 limitations of the disability.

21 A ten-year journey led from  
22 Colonie to such destinations as Texas and  
23 England before Eric Emerick came back to the  
24 capital region from California with the United  
25 States Open Wheelchair Tennis Title.

1                   15 years ago, Eric Emerick was  
2                   the star on Colonie High School's football  
3                   team. He earned a degree at Hudson Valley  
4                   Community College and took a job at a nuclear  
5                   power company near Houston, Texas.

6                   In 1986, he was involved in a  
7                   traumatic automobile accident and his life  
8                   changed forever.

9                   As he mended, he heard about a  
10                  clinic for wheelchair tennis being staged during  
11                  the OTB Open in Schenectady that was run by area  
12                  coach Bill Yaiser.

13                  It took a year for Eric Emerick  
14                  and Bill Yaiser to get together but when they  
15                  did, a union was formed that led to the national  
16                  championship.

17                  Eric Emerick competes in the  
18                  Quadriplegic Division of Wheelchair Tennis. He  
19                  trains with Bill Yaiser and his Second Chance  
20                  Sports and Fitness Program and is one of eight  
21                  regular wheelchair tennis players in the capital  
22                  region.

23                  Eric Emerick is very determined  
24                  and his disability has never stopped him. He  
25                  travels by himself to tournaments and when he's

1 not on the court, he is at his home -- office at  
2 home operating a desk top publishing company.

3 Whether throwing touchdown passes  
4 for Colonie High or ripping forehands down the  
5 line, Eric Emerick has proven that he's a  
6 champion.

7 Upon the occasion of Legislative  
8 Disability Awareness Day, this legislative body  
9 is proud to publicly proclaim and commend Eric  
10 Emerick for the edification and emulation of  
11 others; now, therefore, be it

12 RESOLVED, that this legislative  
13 body pause in its deliberations to honor Eric  
14 Emerick, recognizing his courageous endeavors,  
15 outstanding achievements and unparalleled con-  
16 tributions on behalf of the disabled and their  
17 cause for increased awareness and opportunity,  
18 upon the occasion of his designation as Guest of  
19 Honor at the 17th Annual Legislative Disability  
20 Awareness Day at the state Capitol in Albany,  
21 New York, to be held on Wednesday, June 4th,  
22 1997; and be it further

23 RESOLVED, that a copy of this  
24 resolution, suitably engrossed, be transmitted  
25 to Eric Emerick.

1                   ACTING PRESIDENT KUHL: The Chair  
2 recognizes Senator Libous on the resolution.

3                   SENATOR LIBOUS: Thank you, Mr.  
4 President, and it is indeed an honor to have  
5 Eric who is by my side here in the chamber with  
6 us this morning.

7                   I got to know Eric actually about  
8 three hours ago. We taped a television program  
9 downstairs and just within a 15-minute time  
10 period, I feel as if I've known him for half of  
11 my life.

12                  Eric has that kind of personality  
13 that, when you spend a few minutes with him, you  
14 feel extremely comfortable and you feel as if  
15 he's been your friend for almost all of your  
16 life.

17                  Eric's story is the kind of story  
18 that is very similar to people with disabilities  
19 or people who have what I would like to term as  
20 changes in their life and he was, as it was  
21 mentioned in the reading of the resolution  
22 honoring him, he was a star athlete when he was  
23 in high school, a very good athlete, a  
24 quarterback, punter, place kicker.

25                  He then graduated from school,

1       went on with his life, moved to Texas and,  
2       unfortunately, had a very dramatic accident, the  
3       kind of thing that could happen to any one of us  
4       in this chamber, anybody in this room at any  
5       time in our lives and when that happens to us,  
6       we have to really look from within to make that  
7       change in our life. Not only is it very  
8       difficult for people -- peoples' families and  
9       making changes, whether it be for rehabilitation  
10      or whatever road to recovery must take place  
11      when someone is either mentally or physically  
12      disabled, but the individual needs to reach deep  
13      from within and make some decisions on how they  
14      might want to change their life.

15                   Eric has done that. We talked  
16      about that this morning. He reached deep from  
17      within and said, I must go on with my life and I  
18      must do it in a different way.

19                   Because of his athletic ability,  
20      he met a gentleman by the name of Bill Yaiser.  
21      Bill is here with us today. Bill is his coach,  
22      and I see that Bill is employed by the Senate at  
23      least temporarily with his new jacket on, but  
24      his coach Bill and Eric worked together for a  
25      number of years and Eric became the U.S. Open

1 Wheelchair Tennis Champion.

2 Now, just saying those words it  
3 might not mean an awful lot to anybody in this  
4 chamber, but I watched some footage earlier this  
5 morning, over 300 participants in his division,  
6 the best in the world, wheelchair tennis. All  
7 the rules are the same. They're not different  
8 from if you or I were on the court or any other  
9 tennis champion.

10 He is the champion. He's from  
11 the Albany area. He's from New York State. He  
12 moves around the court quite well and he's got a  
13 pretty strong backhand, and I wouldn't want to  
14 get in the way of his serve.

15 Ladies and gentlemen, I have had  
16 the pleasure of meeting a lot of people in the  
17 nine years that I've served in this chamber, but  
18 I can tell you that meeting Eric Emerick has  
19 been a very special moment in my life, and I  
20 would hope that you would join me this morning  
21 in honoring this very special person.

22 ACTING PRESIDENT KUHL: Thank  
23 you, Senator Libous.

24 This resolution was previously  
25 adopted by the Legislature, but on behalf of

1 Senator Bruno, certainly Senator Libous and all  
2 the members of the house, Eric, we welcome you  
3 to Albany. We certainly congratulate you on  
4 your accomplishment. It seems as though we are  
5 having a lot of sports heroes entering this  
6 chamber, one later today, Jim Kelly, the Buffalo  
7 Bills. Last week we had "Doc" Gooden and David  
8 Cone and you're certainly to be included with  
9 that group of outstanding individuals and to be  
10 complimented on your tremendous contribution.

11 Again, we welcome you to Albany.  
12 Have a wonderful life and we appreciate your  
13 spending just a couple minutes of that life with  
14 us today. Thank you and welcome. (Applause)

15 Senator Marcellino.

16 SENATOR MARCELLINO: Yes, Mr.  
17 President. I believe there's privileged  
18 Resolution 1631 at the desk sponsored by Senator  
19 Meier. May we please have the title read, move  
20 for its immediate adoption. I believe Senator  
21 Meier would like to open the resolution up for  
22 co-sponsorship.

23 ACTING PRESIDENT KUHL:  
24 Resolution 1631 by Senator Meier is at the  
25 desk.

1 I'll ask the Secretary to read  
2 the title of the privileged resolution.

3 THE SECRETARY: By Senator Meier,  
4 Legislative Resolution commemorating Thursday,  
5 June 12th, 1997 as Women's Veterans Day in the  
6 state of New York.

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

9 (There was no response.)

10 Hearing none, the question is on  
11 the resolution. All those in favor signify by  
12 saying aye.

13 (Response of "Aye".)

14 Opposed, nay.

15 (There was no response.)

16 The resolution is adopted.

17 Senator Marcellino.

18 SENATOR MARCELLINO: Yes, Mr.  
19 President. I believe we also have Resolution  
20 1618 at the desk by Senator Gentile. May we  
21 have the title read and move for its immediate  
22 adoption.

23 ACTING PRESIDENT KUHL: The  
24 Secretary will read the title to the privileged  
25 Resolution Number 1618 by Senator Gentile.

1 THE SECRETARY: By Senator  
2 Gentile, Legislative Resolution commending  
3 Maryanne Walsh upon the occasion of her  
4 designation as the 1997 Civic Award recipient by  
5 the Bayridge Community Council at its 46th  
6 Anniversary dinner dance to be held on  
7 Wednesday, June 4th, 1997.

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

11 (Response of "Aye".)

12 Opposed, nay.

13 (There was no response.)

14 The resolution is adopted.

15 Senator Marcellino.

16 SENATOR MARCELLINO: Thank you,  
17 Mr. President.

18 At this time, may we please have  
19 a reading of the non-controversial calendar.

20 ACTING PRESIDENT KUHL: Senator  
21 Marcellino, before we do that, could we return  
22 to the order of motions and resolutions and  
23 recognize Senator Seward for the purpose of a  
24 motion.

25 Senator Seward.

1                   SENATOR SEWARD:  Yes, Mr.  
2           President.  On behalf of Senator Levy, please  
3           remove the sponsor's star from Calendar Number  
4           788.

5                   ACTING PRESIDENT KUHL:  The star  
6           will be removed at the request of the sponsor on  
7           Calendar Number 788.

8                   The Secretary will read the  
9           non-controversial calendar, beginning with  
10          Calendar Number 237.

11                   THE SECRETARY:  Calendar Number  
12          237, by Senator Libous, Senate Print 1125, an  
13          act to amend the Public Health Law, in relation  
14          to requiring consent for visual observation.

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

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

19                   ACTING PRESIDENT KUHL:  Call the  
20          roll.

21                   (The Secretary called the roll.)

22                   THE SECRETARY:  Ayes 51.

23                   ACTING PRESIDENT KUHL:  The bill  
24          is passed.

25                   THE SECRETARY:  Calendar Number

1           264, by member of the Assembly Weisenberg,  
2           Assembly Print 4205, an act to amend the General  
3           Business Law, in relation to prohibiting  
4           taxicabs from imposing an additional charge for  
5           wheelchairs.

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

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

10                          ACTING PRESIDENT KUHL: Call the  
11           roll.

12                           (The Secretary called the roll.)

13                          THE SECRETARY: Ayes 52.

14                          ACTING PRESIDENT KUHL: The bill  
15           is passed.

16                          THE SECRETARY: Calendar Number  
17           676, by Senator Holland, Senate Print 228, an  
18           act to amend the Social Services Law, in  
19           relation to including portable X-ray services.

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

22                          THE SECRETARY: Section 7. This  
23           act shall take effect December 31st.

24                          ACTING PRESIDENT KUHL: Call the  
25           roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 52.

3 ACTING PRESIDENT KUHL: The bill  
4 is passed.

5 THE SECRETARY: Calendar Number  
6 680, by the Committee -- Assembly Committee on  
7 Rules, Assembly Print 7767, an act to amend the  
8 Social Services Law, in relation to submission  
9 of reports and to amend Chapter 627 of the Laws  
10 of 1983.

11 SENATOR DOLLINGER: Lay it aside.

12 ACTING PRESIDENT KUHL: Lay the  
13 bill aside.

14 THE SECRETARY: Calendar Number  
15 694, by Senator Libous, Senate Print 1122, an  
16 act to amend the Mental Hygiene Law and the  
17 Vehicle and Traffic Law, in relation to parking  
18 spaces for handicapped persons.

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

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

24 ACTING PRESIDENT KUHL: Call the  
25 roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 52.

3 ACTING PRESIDENT KUHL: The bill  
4 is passed.

5 THE SECRETARY: Calendar Number  
6 697, by Senator Libous, Senate Print 3831, an  
7 act to amend the Mental Hygiene Law and the  
8 Executive Law, in relation to authorizing  
9 providers of services to the mentally retarded  
10 and developmentally disabled to submit to  
11 fingerprints.

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

14 THE SECRETARY: Section 3. This  
15 act shall take effect in 90 days.

16 ACTING PRESIDENT KUHL: Call the  
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 52.

20 ACTING PRESIDENT KUHL: The bill  
21 is passed.

22 THE SECRETARY: Calendar Number  
23 851, by Senator Alesi, Senate Print 3210, an act  
24 to amend the Executive Law, in relation to  
25 certain payments to veterans' unremarried

1 spouses.

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

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

6 ACTING PRESIDENT KUHL: Call the  
7 roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 52.

10 ACTING PRESIDENT KUHL: The bill  
11 is passed.

12 THE SECRETARY: Calendar Number  
13 954, by Senator Levy, Senate Print 103, an act  
14 to amend the Vehicle and Traffic Law, in  
15 relation to requiring certain information on  
16 disabled children.

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

19 THE SECRETARY: Section 2. This  
20 act shall take effect on the 180th day.

21 ACTING PRESIDENT KUHL: Call the  
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes 52.

25 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number  
3 1113, by Senator Libous, Senate Print 3992, an  
4 act to amend the General Municipal Law, in  
5 relation to authorizing business improvement  
6 districts.

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

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

12 ACTING PRESIDENT KUHL: Call the  
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 53.

16 ACTING PRESIDENT KUHL: The bill  
17 is passed.

18 THE SECRETARY: Calendar Number  
19 1115, by Senator Libous, Senate Print 4372, an  
20 act to amend the Tax Law, in relation to  
21 authorizing a tax credit for employing  
22 individuals with disabilities.

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

25 THE SECRETARY: Section 9. This

1 act shall take effect immediately.

2 ACTING PRESIDENT KUHL: Call the  
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 53.

6 ACTING PRESIDENT KUHL: The bill  
7 is passed.

8 THE SECRETARY: Calendar Number  
9 1121, by Senator Libous, Senate Print 5052, an  
10 act to amend the Executive Law, in relation to  
11 provision of reasonable accommodations.

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

14 THE SECRETARY: Section 5. This  
15 act shall take effect January 1st, 1998.

16 ACTING PRESIDENT KUHL: Call the  
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 53.

20 ACTING PRESIDENT KUHL: The bill  
21 is passed.

22 THE SECRETARY: Calendar Number  
23 1122, by Senator Libous, Senate Print 5284, an  
24 act to amend the Education Law, in relation to  
25 establishing a service center for independent

1 living in Harlem.

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

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

6 ACTING PRESIDENT KUHL: Call the  
7 roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 53.

10 ACTING PRESIDENT KUHL: The bill  
11 is passed.

12 THE SECRETARY: Calendar Number  
13 846, by Senator Present, Senate Print 4112, an  
14 act to enact the Private Activity Bond  
15 Allegation Act of 1997.

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

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

20 ACTING PRESIDENT KUHL: Call the  
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 54.

24 ACTING PRESIDENT KUHL: The bill  
25 is passed.

1 THE SECRETARY: Calendar Number  
2 903, by Senator Trunzo, Senate Print 4904-A, an  
3 act authorizing the Commissioner of the Office  
4 of General Services to enter into contract.

5 SENATOR PATERSON: Lay it aside.

6 ACTING PRESIDENT KUHL: Lay the  
7 bill aside at the request of the Acting Minority  
8 Leader.

9 THE SECRETARY: Calendar Number  
10 1000, by Senator Levy, Senate Print 4534, an act  
11 to amend the Public Authorities Law, in relation  
12 to the power of the New York State Thruway  
13 Authority.

14 SENATOR DOLLINGER: Lay it aside.

15 ACTING PRESIDENT KUHL: Lay the  
16 bill aside.

17 THE SECRETARY: Calendar Number  
18 1050, by Senator Marchi, Senate Print 4085, an  
19 act to repeal Section 630 of the Business  
20 Corporation Law.

21 SENATOR MARCELLINO: Lay it aside  
22 for the day at the request of the sponsor.

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

1 THE SECRETARY: Calendar Number  
2 1106, by Senator Nozzolio, Senate Print 342, an  
3 act to amend the Alcoholic Beverage Control Law,  
4 in relation to the issuance of temporary  
5 permits.

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

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

11 ACTING PRESIDENT KUHL: Call the  
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 54.

15 ACTING PRESIDENT KUHL: The bill  
16 is passed.

17 THE SECRETARY: Calendar Number  
18 1107, by Senator Saland, Senate Print 726, an  
19 act to amend the Executive Law, in relation to  
20 fees and expenses for the Department of State.

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

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

25 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 54.

4 ACTING PRESIDENT KUHL: The bill  
5 is passed.

6 THE SECRETARY: Calendar Number  
7 1108, by Senator Stachowski, Senate Print 1273,  
8 an act to amend the General Municipal Law, in  
9 relation to general requirements of service  
10 award programs for volunteer firefighters.

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

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

15 ACTING PRESIDENT KUHL: Call the  
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 54.

19 ACTING PRESIDENT KUHL: The bill  
20 is passed.

21 THE SECRETARY: Calendar Number  
22 1109, by Senator Oppenheimer, Senate Print 2174,  
23 an act to authorize the town of Harrison,  
24 Westchester County to sell certain land to such  
25 town.

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

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

6                   ACTING PRESIDENT KUHL: Call the  
7 roll.

8                   (The Secretary called the roll.)

9                   THE SECRETARY: 54.

10                  ACTING PRESIDENT KUHL: The bill  
11 is passed.

12                  THE SECRETARY: Calendar Number  
13 1110, by Senator Tully, Senate Print 2844, an  
14 act authorizing the assessor of the county of  
15 Nassau to accept an application.

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

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

20                  ACTING PRESIDENT KUHL: Call the  
21 roll.

22                  (The Secretary called the roll.)

23                  ACTING PRESIDENT KUHL: Announce  
24 the results when tabulated.

25                  THE SECRETARY: Ayes 52, nays 2,

1 Senators Cook and Dollinger recorded in the  
2 negative.

3 ACTING PRESIDENT KUHL: The bill  
4 is passed.

5 THE SECRETARY: Calendar Number  
6 1114, by Senator Velella, Senate Print 4062, an  
7 act to amend the Insurance Law, in relation to  
8 deleting obsolete references to Lloyds  
9 Underwriters.

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

12 THE SECRETARY: Section 12. This  
13 act shall take effect immediately.

14 ACTING PRESIDENT KUHL: Call the  
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 54.

18 ACTING PRESIDENT KUHL: The bill  
19 is passed.

20 THE SECRETARY: Calendar Number  
21 1116, by Senator Libous, Senate Print 4472, an  
22 act to amend the Executive Law, in relation to  
23 utilization of out of state provider pharmacies.

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

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

3 ACTING PRESIDENT KUHL: Call the  
4 roll.

5 (The Secretary called the roll.)

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

8 THE SECRETARY: Those recorded in  
9 the negative on Calendar Number 1116 are Senator  
10 Cook, Dollinger and Onorato. Ayes 51, nays 3.

11 ACTING PRESIDENT KUHL: The bill  
12 is passed.

13 THE SECRETARY: Calendar Number  
14 1117, by Senator Velella, Senate Print 4487, an  
15 act to amend the Public Authorities Law, in  
16 relation to exempting -

17 SENATOR PATERSON: Lay it aside.

18 ACTING PRESIDENT KUHL: Lay the  
19 bill aside.

20 THE SECRETARY: Calendar Number  
21 1118, by Senator Tully, Senate Print 4501, an  
22 act authorizing the assessor of the county of  
23 Nassau to accept an application for exemption.

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

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

3 ACTING PRESIDENT KUHL: Call the  
4 roll.

5 (The Secretary called the roll.)

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

8 THE SECRETARY: Ayes 52, nays 2,  
9 Senators Cook and Dollinger recorded in the  
10 negative.

11 ACTING PRESIDENT KUHL: The bill  
12 is passed.

13 THE SECRETARY: Calendar Number  
14 1119, by Senator Tully, Senate Print 4681, an  
15 act authorizing the assessor of the county of  
16 Nassau to accept an application.

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

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

21 ACTING PRESIDENT KUHL: Call the  
22 roll.

23 (The Secretary called the roll.)

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

1 THE SECRETARY: Ayes 52, nays 2,  
2 Senators Cook and Dollinger recorded in the  
3 negative.

4 ACTING PRESIDENT KUHL: The bill  
5 is passed.

6 THE SECRETARY: Calendar Number  
7 1120, by Senator Holland, Senate Print 4977-A,  
8 an act to amend the Real Property Tax Law, in  
9 relation to increasing the alternative veterans  
10 exemption.

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

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

15 ACTING PRESIDENT KUHL: Call the  
16 roll.

17 (The Secretary called the roll.)

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

20 THE SECRETARY: Ayes 53, nays 1,  
21 Senator LaValle recorded in the negative.

22 ACTING PRESIDENT KUHL: The bill  
23 is passed.

24 THE SECRETARY: Calendar Number  
25 1123, substituted earlier today by member of the

1 Assembly Jacobs, Assembly Print 6588, an act to  
2 amend the Social Services Law, in relation to  
3 amounts for which the state and social services  
4 district are responsible.

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

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

9 ACTING PRESIDENT KUHL: Call the  
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 54.

13 ACTING PRESIDENT KUHL: The bill  
14 is passed.

15 THE SECRETARY: Calendar Number  
16 1124, by Senator Tully, Senate Print 5321, an  
17 act to amend the Civil Rights Law, in relation  
18 to confidentiality of victims and witnesses.

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

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

23 ACTING PRESIDENT KUHL: Call the  
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 54.

2 ACTING PRESIDENT KUHL: The bill  
3 is passed.

4 THE SECRETARY: Calendar Number  
5 1126, by Senator Nozzolio, Senate Print 5324, an  
6 act to amend the Executive Law, in relation to  
7 preliminary hearings.

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

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

12 ACTING PRESIDENT KUHL: Call the  
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 54.

16 ACTING PRESIDENT KUHL: The bill  
17 is passed.

18 THE SECRETARY: Calendar Number  
19 1127, by Senator Volker, Senate Print 5325, an  
20 act to amend the Criminal Procedure Law, in  
21 relation to waiver of pre-sentence  
22 investigations and reports.

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

25 THE SECRETARY: Section 2. This

1 act shall take effect on the 30th day.

2 ACTING PRESIDENT KUHL: Call the  
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 54.

6 ACTING PRESIDENT KUHL: The bill  
7 is passed.

8 THE SECRETARY: Calendar Number  
9 1128, by Senator Goodman, Senate Print 5367, an  
10 act to amend the Alcoholic Beverage Control Law,  
11 in relation to requiring notice to the State  
12 Liquor Authority.

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

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

17 ACTING PRESIDENT KUHL: Call the  
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 54.

21 ACTING PRESIDENT KUHL: The bill  
22 is passed.

23 THE SECRETARY: Calendar Number  
24 1129, by Senator Volker, Senate Print 5396, an  
25 act to amend the Penal Law.

1                   SENATOR PATERSON: Lay it aside,  
2                   please.

3                   ACTING PRESIDENT KUHL: Lay the  
4                   bill aside.

5                   THE SECRETARY: Calendar Number  
6                   1130, by the Senate Committee on Rules, Senate  
7                   Print 5404, an act to amend the General  
8                   Municipal Law, in relation to cooperative  
9                   investments.

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

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

14                  SENATOR PATERSON: Lay it aside.

15                  ACTING PRESIDENT KUHL: Lay the  
16                  bill aside.

17                  Senator Marcellino, that  
18                  completes the reading of the non-controversial  
19                  calendar.

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

22                  Can we now take up the  
23                  controversial calendar in regular order.

24                  ACTING PRESIDENT KUHL: The  
25                  Secretary will read the controversial calendar,

1 beginning with Calendar Number 680 on page 23.

2 The Secretary will read.

3 THE SECRETARY: Calendar Number  
4 680, by the Assembly Committee on Rules,  
5 Assembly Print 7767, an act to amend the Social  
6 Services Law, in relation to submission of  
7 reports and to amend Chapter 627 of the Laws of  
8 1983.

9 SENATOR DOLLINGER: Mr.  
10 President, could I have a brief explanation.

11 ACTING PRESIDENT KUHL: Senator  
12 Holland, an explanation of Calendar Number 680  
13 has been requested by Senator Dollinger, a brief  
14 explanation.

15 SENATOR HOLLAND: Senator, I  
16 can't understand why you would even question  
17 this, to tell you the truth. This Disability  
18 Advocacy Program (DAP) has saved millions of  
19 dollars for individuals in the state of New York  
20 and with the federal welfare reform and 29,000  
21 children being removed from SSI, it will save  
22 even more money for us. This makes it  
23 permanent. It's only \$2.87 million and it stops  
24 -- it changes the reporting from every year to  
25 every two years.

1                   SENATOR DOLLINGER:  Again through  
2                   you, Mr. President.  I think it's a great idea.  
3                   I just had never heard of the program and since  
4                   I've represented -- or had many people call my  
5                   office to ask what happens when their SSI is  
6                   denied, I wasn't aware -- and maybe my staff is,  
7                   but I certainly wasn't aware that the state of  
8                   New York put funds into an advocacy program to  
9                   go in and help those people get disability  
10                  benefits from the federal government, and I  
11                  think it's a good program.  I don't mind  
12                  delaying the reporting for two years.

13                  I just -- do you have any sense  
14                  of exactly how many people are served and  
15                  exactly how much money it saves?

16                  SENATOR HOLLAND:  I -- there is a  
17                  report out, Senator, I have some place here.

18                  SENATOR DOLLINGER:  If it's all  
19                  contained in the report, Mr. President, I have  
20                  no further questions.  I'll get a copy of the  
21                  report at a later time, but I rose more out of  
22                  my own personal inquisitive nature but it's a  
23                  good idea.  I only wish we could broadcast it  
24                  even louder because too often in the past, in  
25                  the last decade, the federal government has

1           either denied benefits or cut people off  
2           benefits prematurely creating great anxiety and  
3           greater costs to us from the state of New York.

4                         It's a good program. It moves in  
5           the right direction and I will be voting in  
6           favor.

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

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

11                        ACTING PRESIDENT KUHL: Call the  
12          roll.

13                        (The Secretary called the roll.)

14                        THE SECRETARY: Ayes 54.

15                        ACTING PRESIDENT KUHL: The bill  
16          is passed.

17                        THE SECRETARY: Calendar Number  
18          903, by Senator Trunzo, Senate Print 4904-A, an  
19          act authorizing the Commissioner of the Office  
20          of General Services to enter into a contract.

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

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

25                        ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 54.

4 ACTING PRESIDENT KUHL: The bill  
5 is passed.

6 THE SECRETARY: Calendar Number  
7 1000, by Senator Levy, Senate Print 4534, an act  
8 to amend the Public Authorities Law, in relation  
9 to the power of the New York State Thruway  
10 Authority.

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

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

15 ACTING PRESIDENT KUHL: Call the  
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 54.

19 ACTING PRESIDENT KUHL: The bill  
20 is passed.

21 THE SECRETARY: Calendar Number  
22 1117, by Senator Velella, Senate Print 4487, an  
23 act to amend the Public Authorities Law, in  
24 relation to exempting the New York City School  
25 Construction Authority from commissioning works

1 of art.

2 SENATOR MARCELLINO: Lay that  
3 aside temporarily.

4 ACTING PRESIDENT KUHL: Lay  
5 Calendar Number 1117 aside temporarily.

6 The Secretary will continue to  
7 read the controversial calendar.

8 THE SECRETARY: Calendar Number  
9 1129, by Senator Volker, Senate Print 5396, an  
10 act to amend the Penal Law, in relation to  
11 sentencing for violent offenses.

12 SENATOR VOLKER: Mr. President.

13 ACTING PRESIDENT KUHL: Senator  
14 Volker.

15 SENATOR VOLKER: Mr. President,  
16 this bill is a follow-up to the definite  
17 sentencing bill that we passed back in 1995.

18 The reason it is here today is  
19 that the federal government has changed its  
20 requirements as far as criminal justice funding  
21 and as far as the system involving violent  
22 felony offenders.

23 The bill that we passed back in  
24 '95 complied with the federal requirements and  
25 enabled us to access millions and millions of

1 dollars and what that bill said, among other  
2 things, but specifically to comply with the  
3 federal rules was that second or multiple  
4 violent felony offenders must serve 85 percent  
5 of their maximum sentence.

6 Now, under the new guidelines  
7 that have been passed by Congress and put out by  
8 the federal government, in order to qualify for  
9 a minimum of \$113 million -- I say a "minimum"  
10 because it probably could well be more, 25  
11 million of which I believe we're eligible for  
12 after July 1st of this year, assuming that we  
13 pass this bill, the Assembly passes it and the  
14 Governor signs it into law. What the bill would  
15 say is that a first violent -- violent felony  
16 offender must serve 85 percent of the maximum  
17 term for that sentence and, therefore, we would  
18 comply with the federal requirements. Keep in  
19 mind these are violent felony offenders and at  
20 that time then we would comply and we would have  
21 access to over \$100 million in federal capital  
22 funding, by the way. I would just like to make  
23 that clear because that is something that we  
24 discussed in conference yesterday, and I checked  
25 it and it is capital funding and that's why the

1 plan is to use it to help in the prison system.

2 SENATOR WALDON: Mr. President.

3 ACTING PRESIDENT KUHL: Senator  
4 Waldon.

5 SENATOR WALDON: Would Senator  
6 Volker yield -

7 SENATOR VOLKER: Yes.

8 SENATOR WALDON: -- to a question  
9 or two?

10 ACTING PRESIDENT KUHL: The  
11 Senator yields, Senator Waldon.

12 SENATOR WALDON: Thank you very  
13 much, Mr. President.

14 Senator, I understand that if we  
15 choose not to enact the provisions -- oh, my  
16 goodness. Jim Kelly is here -- of this bill we  
17 must forego the federal prison construction  
18 dollars but if we choose to enact this  
19 legislation, can you tell us, please, what the  
20 annual cost of constructing and operating the  
21 prisons needed to accommodate the increased  
22 prison population will be?

23 SENATOR VOLKER: As far as we can  
24 determine, Senator -- and after we had the  
25 discussion yesterday in the Rules Committee, I

1 did a little further checking. It will have  
2 essentially no immediate -- virtually no  
3 immediate impact because keep in mind that  
4 presently a person convicted of a violent felony  
5 offense must serve 50 percent of the -

6 ACTING PRESIDENT KUHL: Senator  
7 Volker, excuse the interruption.

8 SENATOR VOLKER: Certainly.

9 ACTING PRESIDENT KUHL: Senator  
10 Marcellino, why do you rise?

11 SENATOR MARCELLINO: Mr.  
12 President, in light of the appearance of a  
13 special guest, perhaps we could lay this bill  
14 aside temporarily and go to motions and  
15 resolutions and do what we have to do there and  
16 then we'll go back -

17 ACTING PRESIDENT KUHL: Your wish  
18 is our command, Senator.

19 SENATOR MARCELLINO: -- to the -  
20 if Senator Stachowski is ready if the Senator  
21 doesn't mind.

22 ACTING PRESIDENT KUHL: We'll lay  
23 the bill aside temporarily. We'll return to the  
24 order of motions and resolutions.

25 SENATOR MARCELLINO: Can we call

1 Senator Stachowski's resolution, which I believe  
2 is at your desk.

3 ACTING PRESIDENT KUHL: Senator  
4 Stachowski does have a privileged resolution at  
5 the desk.

6 Senator Stachowski, would you  
7 like to speak on your resolution? We're going  
8 to call it up.

9 I'll ask the Secretary to read  
10 the privileged resolution in its entirety.

11 THE SECRETARY: By Senator  
12 Stachowski, Legislative Resolution honoring  
13 former Buffalo Bills quarterback Jim Kelly upon  
14 the occasion of his retirement from the National  
15 Football League;

16 WHEREAS, on January 31st, 1997,  
17 the Buffalo Bills professional football team  
18 lost their leader, quarterback Jim Kelly, when  
19 he announced his retirement from the National  
20 Football League.

21 No number of superlatives can  
22 describe the impact that Jim Kelly had upon the  
23 city of Buffalo and the residents of Western New  
24 York, both on the football field and in the  
25 community.

1 Jim Kelly's years as a Buffalo  
2 Bills quarterback will always be equated with  
3 mental and physical toughness, a hard-nosed,  
4 thorough work ethic, a competitive nature second  
5 to none in leadership skills which will be  
6 emulated by other players in the National  
7 Football League for years to come.

8 It is common knowledge that Jim  
9 Kelly was the cornerstone of the Buffalo Bills  
10 turnaround to national respect, turning a sub  
11 par team into one which would eventually reach  
12 four consecutive Super Bowls.

13 In his 11 seasons, this five-time  
14 Pro-Bowl selection has piled up numerous  
15 highlights, a career which has seen him  
16 quarterback his team to four consecutive Super  
17 Bowl appearances, become the fourth fastest  
18 quarterback to reach 30,000 yards passing,  
19 achieve a career passing rating of 84.4, the  
20 sixth highest in NFL history, become one of only  
21 five quarterbacks in NFL history to throw for at  
22 least 3,000 yards in eight seasons, named the  
23 AFC Offensive Player of the Week ten times, more  
24 than any other Buffalo player, ranked 8th in NFL  
25 history with 2,874 career passes completed,

1 ranked 10th in NFL history with 35,467 career  
2 passing yards and ranked 12th in NFL history  
3 with 237 career passing touchdowns.

4 Jim Kelly's legacy in the NFL  
5 will be one of respect, admiration, competition  
6 and determination, all qualities hoped to be  
7 attained by any player.

8 The community involvement  
9 undertaken by Jim Kelly should serve as a model  
10 for other players of "superstar" stature,  
11 considering that his Kelly for Kids Foundation  
12 has raised thousands of dollars for countless  
13 charities, including the Cradle Beach Camp which  
14 offers respite programs for children battling  
15 the effects of cancer.

16 Through Jim Kelly's football  
17 camp, thousands of children have been given the  
18 opportunity to cross the hashmarks with their  
19 hero, afforded with the chance to obtain the  
20 autograph of a Buffalo Bill great, caught passes  
21 from the person they imagined as their teammate  
22 in empty lots and paved streets.

23 Jim Kelly has always stressed his  
24 family ties in the vital role his parents and  
25 brothers played in his development as a player a

1 and a person.

2 That family bonding is now  
3 apparent close to home as Jim is married to the  
4 former Jill Waggoner, and together they have  
5 been blessed with two children, Erin and Hunter;  
6 now, therefore, be it

7 RESOLVED, that this legislative  
8 body pause in its deliberations to join the  
9 residents of New York State in honoring and  
10 recognizing former Buffalo Bills quarterback Jim  
11 Kelly upon the occasion of his retirement from  
12 the National Football League; and be it further

13 RESOLVED, that three copies of  
14 this resolution, suitably engrossed, be  
15 transmitted to Mr. Jim Kelly.

16 ACTING PRESIDENT KUHL: The Chair  
17 recognizes Senator Stachowski on the resolution.

18 SENATOR STACHOWSKI: Mr.  
19 President, on the resolution. Every so often in  
20 our lives, as far as the sporting community  
21 goes, there will come an individual that makes a  
22 marked difference on his team and for the  
23 Buffalo Bills, who are struggling and with a  
24 struggling franchise, that marked difference  
25 came when they signed Jim Kelly.

1 Jim brought the team leadership,  
2 a toughness and the one thing he brought that  
3 all the numbers that you heard in the resolution  
4 and all the statistics can never account for is  
5 the fact that when Jim was on the field, his  
6 teammates always believed they could win the  
7 game, no matter what the score was. If there  
8 was time left, Jim's teammates thought with Jim  
9 on the field, we could win this game and that's  
10 something that you just can't measure, and if  
11 you ever played a sport and know that feeling,  
12 you know exactly what I'm talking about and if  
13 you talk to any of Jim's teammates, that would  
14 probably be the one thing they would tell you  
15 first, that if Jim is on the field and he's  
16 playing, we can still win this game. We don't  
17 care what the score is.

18 One of the great nights that  
19 pointed that out was against Cincinnati on a  
20 Monday night game. Jim started out as bad as  
21 any quarterback ever started out and he ended up  
22 throwing five touchdown passes -- I think it was  
23 five and they had Cincinnati so crazy by the end  
24 that Sam White should run out on the field at  
25 one point and got flagged for a penalty. It was

1       just one of those nights that if you were there,  
2       you would never forget it and there were a lot  
3       of those nights and afternoons with Jim as a  
4       quarterback of the Bills.

5                       In the resolution, it also  
6       mentioned his sense of family and if you know  
7       the Kelly family, there's nobody closer. I  
8       mean, those people really take care of each  
9       other. The brothers are closer than any  
10      brothers I've ever seen. The respect and the  
11      love they had for their parents -- obviously  
12      their father is still with them and  
13      unfortunately Jim lost his mother way too early  
14      but his mother was quite an individual. I had  
15      the opportunity to meet them because I used to  
16      sit two rows in front of them when Jim could  
17      only afford to put them in regular seats.  
18      Subsequently as the contracts got better, Jim  
19      got a box for his parents, so he got them up in  
20      the box and it's a good thing he did because at  
21      that point his mother couldn't have sat outside  
22      anymore and his mother was really quite an  
23      individual and, as Jim would be the first to  
24      tell you, he got his toughness from his mom and  
25      so it's a pleasure to have known his family

1       also.

2                   We talked about in the resolution  
3       also the fact that a lot of people, when they  
4       play for a team, they play for their team. They  
5       contribute that way and that's the end of it.  
6       They go home and that's the end of it for that  
7       community but in Jim's case, he took Buffalo  
8       into his heart.

9                   He started the Kelly for Kids  
10       Foundation and he raised tons of money. They  
11       give him small grants to little charities that  
12       normally wouldn't get grants because they don't  
13       qualify but he always makes sure they get a  
14       little money and he's done big things at Cradle  
15       Beach, a camp for challenged individuals and  
16       less fortunate is a really beneficiary because  
17       they now have -- the Big House is now called the  
18       Kelly House and he's raised an inordinate amount  
19       of money just for that function.

20                   So Jim Kelly's impact on Buffalo  
21       and Western New York was a lot more than just  
22       sports and it continues to be a lot more than  
23       just sports because Kelly for Kids is still  
24       going strong and raising money and helping the  
25       community.

1                   And so it's my pleasure to stand  
2                   here -- and I could go on and on about his  
3                   football but I'm not going to do that, but I  
4                   would like to tell you that it's my pleasure to  
5                   thank Jim and have the opportunity to thank him  
6                   for all he's done for the Buffalo Bills, all  
7                   he's done for Western New York and on a personal  
8                   note, I don't consider Jim Kelly just a friend.  
9                   I consider him like a brother.

10                   Congratulatory, Jim.

11                   ACTING PRESIDENT KUHL: The Chair  
12                   recognizes Senator Maziarz on the resolution.

13                   SENATOR MAZIARZ: Thank you very  
14                   much, Mr. President.

15                   I too want to rise to  
16                   congratulate Jim Kelly upon his retirement from  
17                   the National Football League. It's a shame that  
18                   these young people that were here in the gallery  
19                   had to leave but, Mr. President, all too often  
20                   we see athletic stars today who will be signed  
21                   by a team and they will come in and only live in  
22                   that community on a temporary basis and move to  
23                   California or Florida where life may be a little  
24                   bit more warmer other parts of the year.

25                   Jim Kelly is just the exact

1 opposite of that, Mr. President. He moved to  
2 Buffalo. He made Buffalo his home, continues to  
3 make Buffalo his home, moved his entire family  
4 to Buffalo and became, as Senator Stachowski  
5 pointed out, an integral part of the entire  
6 Buffalo community, athletic and athletics  
7 aside.

8 I know that my chief of staff,  
9 Rick Winter, has done a lot of private work for  
10 Jim Kelly and for members of his family and has  
11 always spoken of him as being not just a great  
12 athlete but a true gentleman, and I want to rise  
13 in support of this resolution.

14 Thank you, Mr. President.

15 ACTING PRESIDENT KUHL: The Chair  
16 recognizes Senator Waldon, on the resolution.

17 SENATOR WALDON: Thank you very  
18 much, Mr. President.

19 A couple of things are very clear  
20 to me in regard to Jim Kelly. Let me personally  
21 congratulate you.

22 One, that there's a person who is  
23 amongst our body who is perhaps, if not the  
24 strongest fan in support of yours outside of  
25 your family, the strongest and most supportive

1 fan we know in Billy Stachowski and Billy has  
2 from time to time in his conversations with me  
3 kind of fantasized about what he had been able  
4 to do had you been running the ball at him. Of  
5 course, we know that that was pure fantasy and  
6 we dismiss it rather quickly.

7 I was talking to Senator Volker  
8 earlier, Jim, in regard to your accomplishments  
9 and they are legend from high school, through  
10 college at Miami, through all of your years in  
11 the pros. You have been one of the best and one  
12 of the most exciting players to step on the  
13 football field, to put the cleats on, but we  
14 were marveling at the one thing that we cannot  
15 quantify in terms of athletes. We can talk  
16 about how high they can jump or how fast they  
17 can run, how much weight they can lift, how much  
18 weight they can squat but we cannot quantify  
19 heart, and one of the things that is most  
20 memorable about your exploits on the football  
21 field when I've had occasion to be at Giant  
22 Stadium when you beat up on the Jets, or to be  
23 watching the television, is that you have a  
24 huge, huge heart. What Senator Stachowski said  
25 in terms of your team believed that they would

1 win if you were on the field is because you  
2 believed that you could win and you were  
3 motivated by not only skill and an understanding  
4 of the game plan but by a huge heart.

5 So you've brought a lot of joy to  
6 those of us who are the Sunday jock watchers  
7 around this country and we applaud you for  
8 that. We respect you for that and we wish you  
9 well in all of your endeavors in the future.

10 Thank you very much for a great  
11 career.

12 ACTING PRESIDENT KUHL: Senator  
13 Volker, on the resolution.

14 SENATOR VOLKER: Mr. President -  
15 and although the others have really, I think  
16 said it all, I don't think that sometimes people  
17 realize the impact that certain individuals can  
18 have on an area and in Western New York, I think  
19 that is particularly true, and I want to thank,  
20 by the way, the Minority Leader, Assemblyman  
21 Reynolds, for arranging to have Billy here along  
22 with -- have Jim Kelly here along with Senator  
23 Stachowski.

24 Jim, you have been not only a  
25 towering figure in the sports field but,

1           unfortunately, I think some of the people in  
2           Western New York sometimes forget that sports is  
3           a huge business that generates enormous amounts  
4           of revenue for the state of New York, for Erie  
5           County and for Western New York.

6                        I think there's some in the  
7           business community that really don't understand  
8           the nature of sports not only in Western New  
9           York but I think across the state.

10                      You have been a tower of strength  
11           on the football field. As has been said, when  
12           you were on the football field, clearly you were  
13           always in command and when you appear at  
14           virtually any place in Western New York, clearly  
15           you are a figure that is to be reckoned with and  
16           as Bill said, you have raised a tremendous  
17           amount of money for all sorts of worthy  
18           organizations and our delegation provided  
19           considerable money for the Cradle Beach facility  
20           but it was you who generated the money that  
21           allowed them to modernize their operation for  
22           disabled and poor children along Lake Erie and  
23           for that alone, I think you are to be enormously  
24           commended.

25                      We're happy to have you here.

1 We're sorry that you're retiring from our  
2 perspective but we know you're going on to great  
3 -- bigger and greater things and good luck to  
4 you, and we appreciate what you've done for our  
5 area.

6 ACTING PRESIDENT KUHL: Senator  
7 Rath, on the resolution.

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

10 Welcome, Jim. "Women  
11 Understanding Football", no, I didn't take the  
12 course, but I know a lot of people who did. 35  
13 years of season seats. Used to freeze out there  
14 on the rock pile. The first game I saw, I think  
15 Tommy O'Connell was the quarterback. So we go  
16 back a long ways with the Bills.

17 I say this because you have been  
18 very special to Buffalo. We all thought you  
19 were down here measuring for drapes and  
20 carpeting like one of your predecessors,  
21 although he went to Washington instead of Albany  
22 but that's okay. You guys carry the message  
23 very well, and there's -- I think that there's a  
24 lot of opportunity in the political world for  
25 our sports figures.

1                   You have been very special  
2           because you're from a community that we're  
3           somewhat familiar with. Buffalo, Cleveland,  
4           Pittsburgh, we're not very different one from  
5           each other. We understand each other. We  
6           understand hard work and that was one of the  
7           things that makes your time as our quarterback  
8           in Buffalo so very important because the guys  
9           who one of our DJ's calls "Those Working Squids"  
10          in Buffalo, they understood you when you talked  
11          to them and they knew how hard you worked and  
12          they understood the role model that you  
13          presented for the young people in your Kelly for  
14          Kids and Cradle Beach and all of what has been  
15          mentioned.

16                   But today was very special and  
17          Eric just wheeled himself out. I know you saw  
18          Eric here. It was a very special day because we  
19          had a disabled athlete who is a champion. You  
20          are certainly a very enabled champion. You've  
21          been a wonderful role model. We wish you great  
22          good luck and success and thanks for all the  
23          wonderful years. It was a heck of a ride.

24                   ACTING PRESIDENT KUHL: Is there  
25          any other Senator wishing to speak on the

1 resolution?

2 The Chair recognizes Senator  
3 Holland, on the resolution.

4 SENATOR HOLLAND: Mr. President,  
5 I have a question. Are there any members of  
6 this house who ever caught a pass from this  
7 young man? I did seven years ago. He was at  
8 the desk in the Assembly and there was a lady in  
9 a white dress behind me. I think he threw the  
10 pass to her, but I intercepted the pass. So it  
11 was a great thrill for me. I'm sorry you  
12 retired because I think we made a great team.

13 ACTING PRESIDENT KUHL: Senator  
14 Dollinger, on the resolution.

15 SENATOR DOLLINGER: Thank you,  
16 Mr. President.

17 I don't know the quarterback of  
18 the Buffalo Bills but I rise today, Jim, just to  
19 thank you as a parent because you went through  
20 some tough times in your career. You were close  
21 to the big ring four times, but one of the  
22 things that my children -- I have an 18-year-old  
23 son and a 15-year-old daughter, a 13-year-old  
24 son -- and one of the things they learned from  
25 you was that not every time in life are you

1       ordained to win. You can't win everything. No  
2       one has ever won everything they've ever tried  
3       but sometimes when we face defeat, when we face  
4       loss, when we face the disappointment, we have  
5       to do it with grace and style and dignity, and  
6       I'll just tell you that my sons watched you  
7       after times when you lost and you gave them that  
8       sense of class and dignity that I think is part  
9       of what we have in Western New York. I'm from  
10       Rochester. It's part of what you have been  
11       brought up with and part of what you in a little  
12       way allowed me to teach my children and, on  
13       behalf of it as a father, I thank you.

14                   ACTING PRESIDENT KUHL: Senator  
15       Paterson, on the resolution.

16                   SENATOR PATERSON: Thank you, Mr.  
17       President.

18                   On behalf of the Minority Leader,  
19       Senator Connor, and myself, we would like to  
20       thank Jim Kelly not only for his contributions  
21       to the sports community but something that  
22       Senator Maziarz referred to before, his concern  
23       for the community that was in the area that he  
24       worked and it is kind of a throwback to a  
25       previous generation, that relationship between

1 an athlete and the neighborhood around which he  
2 became famous because of his attributes on the  
3 field and it's something that we don't see as  
4 much and it's the type of role model that we're  
5 unable to put forth in the sport because of  
6 other business concerns and, because of all the  
7 things that he's done, we are particularly  
8 pleased and very honored to have him here today.

9 As one who stands up on this  
10 floor every day and loses all the time -- you  
11 may not be able to win all the time but you can  
12 lose all the time -- I would like Mr. Kelly to  
13 know that I have certainly learned from his  
14 graciousness through some of those tough  
15 periods, those interviews after the Super  
16 Bowls. As a fan of the Buffalo Bills, sometimes  
17 I might have been a little agitated, but I found  
18 that he put everything in perspective after  
19 those games and I'm trying very hard to put  
20 things into perspective around here, and I would  
21 also like to thank Senator Stachowski and  
22 Senator Waldon who talked about Senator  
23 Stachowski's attributes as an athlete himself.  
24 We've all seen him perform and while we always  
25 found Jim Kelly to be poetry in motion, we

1 always found Senator Stachowski to be poetry in  
2 place.

3 Thank you, Mr. President.

4 SENATOR STACHOWSKI: He's not  
5 faster than me.

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

9 (There was no response.)

10 Hearing none, the question is on  
11 the -- Senator Stachowski.

12 SENATOR STACHOWSKI: I would like  
13 to mention if everyone would like to be on the  
14 resolution, we're opening it up for everyone.

15 ACTING PRESIDENT KUHL: Would you  
16 like to change, Senator Paterson, that pattern  
17 of losing every time and be on this resolution?

18 SENATOR PATERSON: Rare  
19 opportunity.

20 ACTING PRESIDENT KUHL: Senator  
21 Marcellino, if tradition holds, should we put  
22 all the members on the resolution sponsorship  
23 except those who designate that they don't wish  
24 to be?

25 SENATOR MARCELLINO: Mr.

1 President, as a lifetime Giant fan, we would  
2 have absolutely no objection.

3 ACTING PRESIDENT KUHL: We'll put  
4 all the members -- the Secretary is directed to  
5 put all the members as co-sponsors. The  
6 question is on the resolution. All those in  
7 favor signify by saying aye.

8 (Response of "Aye".)

9 Opposed, nay.

10 (There was no response.)

11 The resolution is unanimously  
12 adopted.

13 Jim, on behalf of Senator Bruno  
14 and all the members here who have been very,  
15 very outspoken in their commendations for you  
16 and certainly your congratulations for your  
17 retirement and certainly your career, I would  
18 simply like to say thank you for all that you've  
19 done for New York. Certainly thank you for all  
20 that you've done for the Buffalo Bills and  
21 Western New York. Thank you for all that you  
22 have done for all of us, including the kids that  
23 you're helping out.

24 We welcome you to Albany and it's  
25 one of those rare treats where we would like to

1 have you say a few words to the members.

2 MR. JIM KELLY: First of all, I  
3 just want to -- I just want to, first of all,  
4 thank each and every individual that spoke -  
5 spoke today. It definitely hits a place in my  
6 heart.

7 There's so many great things and  
8 great memories that I've had as a Buffalo Bill  
9 player in the state of New York, you know, just  
10 the guys that I have come in contact with, a  
11 person like Senator Stachowski that has been a  
12 friend of mine for many, many years and I've  
13 never seen him treated so well as he is here. I  
14 don't know. It's a little different when he's  
15 standing in our locker room and he's almost like  
16 the football to us but he's definitely a class  
17 individual. He speaks very highly of each and  
18 every individual in here and, you know, it's  
19 definitely an honor to stand here in front of  
20 you today.

21 Yes, there's so many things that  
22 we do as professional athletes and we also do  
23 realize that we are all role models to a lot of  
24 your children and whoever says that they aren't  
25 a role model, they should look in the mirror

1           because whether you like it or not, you are.

2                           You spoke about the Kelly for  
3 Kids. I speak about the Cradle Beach Camp. I  
4 was very, I guess -- something had struck home.  
5 There's so many things that I do for different  
6 charities. I do one for Happy Days and Special  
7 Times in Charleston, South Carolina. I do one  
8 in my hometown of Pennsylvania for the Spinal  
9 Cord Society and also here in Western New York,  
10 I do one for all different types of Western New  
11 York charities and my particular favorite is  
12 Cradle Beach.

13                           It's something that, you know,  
14 hit me close to home and, you know, I wasn't  
15 going to speak about it but, you know, after  
16 seeing the gentleman in the wheelchair and  
17 talking to him, I was very unfortunate last  
18 week, my son Hunter, which is three and a half  
19 months old, was diagnosed with cerebral palsy  
20 and from that point on, you really know what  
21 type of challenges you take each and every day  
22 and they talk about challenges that I face as a  
23 professional athlete. Lose my mother two years  
24 ago. That was a challenge but nothing hits as  
25 it hits close to home like having your own son

1 or daughter diagnosed with a disease, but I'll  
2 tell you what, as tough as I am, my son will be  
3 tougher and I will make him that way and one of  
4 these days he's going to live that normal life  
5 and I'm going to give him every opportunity to  
6 do that. He's a Kelly. He's strong. He will  
7 be a champion.

8 (Applause)

9 I'll leave on this note. I have  
10 a golf tournament that benefits Western New York  
11 charities this coming weekend and Jerry Butler  
12 is one of the athletes who we wanted to attend  
13 my golf tournament but he's attending another  
14 one in Western New York in Buffalo. It's for  
15 cerebral palsy and you really realize how close  
16 to home it does hit and it definitely hit where  
17 it counts, right in the heart but more than  
18 that, you know, as a Buffalo Bill player and as  
19 a Kelly, I always said that we are the strongest  
20 and we know what it's like to accept a  
21 challenge. It's just another challenge in my  
22 life. It's a challenge that I'm going to meet  
23 and confront head on. It's one I'm looking  
24 forward to because, again, he's my son. He's  
25 blood. He's a Kelly. He'll be all right.

1                   Again, I want to thank you all  
2                   very much because this means a lot not only to  
3                   myself but on behalf of Scott Burtsore, our PR  
4                   man from Buffalo, Bud Carpenter, our head  
5                   athletic trainer and, of course, Scott -- Jerry  
6                   Butler, a wide receiver that, you know, many  
7                   years ago I would have loved to throw passes to  
8                   on the football field. Make sure they cut that  
9                   one right, Jerry, and, of course, Jerry Butkai,  
10                  a very good friend of mine that has piloted us  
11                  all around but more than that, to you all here,  
12                  to open this up to make this my day.

13                  Again, I thank you very much.  
14                  Senator Stachowski, I thank you from the bottom  
15                  of my heart for everything you've done for me  
16                  not only today but in the past and, again, thank  
17                  you.

18                                (Applause)

19                  ACTING PRESIDENT KUHL: For the  
20                  benefit of the members here, Jim Kelly will be  
21                  available for pictures with the members in Steve  
22                  Sloan's office immediately.

23                                Senator Marcellino.

24                  SENATOR MARCELLINO: Mr.  
25                  President -- Mr. President.

1                   ACTING PRESIDENT KUHL:  Senator  
2           Marcellino.

3                   SENATOR MARCELLINO:  Mr.  
4           President, can we have the last section read on  
5           1129.

6                   ACTING PRESIDENT KUHL:  We need  
7           to put it before the house first.

8                   The Secretary will read the title  
9           to Calendar Number 1129.

10                  THE SECRETARY:  Calendar Number  
11           1129, by Senator Volker, Senate Print 5396, an  
12           act to amend the Penal Law, in relation to  
13           sentencing.

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

16                  THE SECRETARY:  Section 9.  This  
17           act shall take effect immediately.

18                  ACTING PRESIDENT KUHL:  Call the  
19           roll.

20                  (The Secretary called the roll.)

21                  ACTING PRESIDENT KUHL:  Senator  
22           Skelos, how do you vote?

23                  SENATOR SKELOS:  Yes.

24                  ACTING PRESIDENT KUHL:  Senator  
25           Skelos will be recorded in the affirmative.

1 Withdraw the roll call. We're back on debate on  
2 Calendar Number 1129. If we could get a little  
3 order in the house, we would like to proceed  
4 with the debate.

5 SENATOR WALDON: Mr. President,  
6 would the gentleman continue to yield?

7 ACTING PRESIDENT KUHL: Senator  
8 Volker, do you continue to yield to Senator  
9 Waldon? He does. The Senator yields.

10 SENATOR WALDON: Before we had to  
11 suffer such a very pleasant interruption,  
12 Senator, to meet and greet Jim Kelly, a hero to  
13 us all, I asked how are we going to pay for what  
14 I anticipate to be a natural increase in prison  
15 construction as a result of passing this  
16 legislation? I believe you had just begun to  
17 answer that. May we revisit your answer?

18 SENATOR VOLKER: Yes, Senator. I  
19 think we ought to get some sort of an award for  
20 degree of difficulty in this bill but, anyways,  
21 the -- obviously we are -- as a result of this  
22 bill, we are going to get some capital money  
23 from Washington, as we know, because of this  
24 bill, but the actual impact of this legislation  
25 will not actually be felt for several years

1           because right at this point we already have a 50  
2           percent requirement as far as sentencing for  
3           first violent felony offenders.

4                       The assumption all along is, by  
5           the way, Senator -- and let's keep in mind  
6           what's been happening -- that, although there  
7           have been people that have said, Well, you're  
8           locking up all kinds of people but you're not  
9           seeing any impact in the criminal justice area,  
10          that is, in the crime rate, well, we know that  
11          is not true. What's been happening is there's  
12          been a dramatic decline in arrests and in  
13          convictions as far as criminal activity is  
14          concerned and we anticipate since we are  
15          continuing to lock up violent felony offenders  
16          and to keep them locked up for longer periods of  
17          time, that that crime rate will continue to fall  
18          into the next -- into the next -- in fact, into  
19          the next century and the reality is that we  
20          expect that you will begin to see the numbers in  
21          the prison system fall off even more than they  
22          already have.

23                       Frankly, the numbers in the  
24          prison system have actually fallen off over -  
25          that is, the rise has fallen off. Obviously we

1 are slowly escalating in the prison system but  
2 the projections that we made years ago on where  
3 we would be given the nature of the numbers that  
4 were coming into our system, actually is as much  
5 as 10,000 off the estimates that were made a  
6 decade ago as to where we would go if the crime  
7 rate continued at the level it was.

8 So we believe, number one, that  
9 there will be no immediate impact on the system  
10 by passing this bill and that the impact  
11 probably about three years down the line will  
12 not be extremely severe and in the meantime, we  
13 must build several new prisons anyways because  
14 the system right now is at 130 percent of  
15 capacity, as you are well aware, and we are  
16 convinced that one of the things we must do is  
17 build at least two, possibly three maximum  
18 security prisons.

19 So I guess the answer to your  
20 question is if we don't see any immediate impact  
21 -- we acknowledge that there would be some  
22 impact if the crime rate did not continue to  
23 decline as it is but we, frankly, expect the  
24 crime rate to continue to decline and then in  
25 reality, because we are locking up and keeping

1 violent felony offenders locked up for longer  
2 periods of time, we think we will actually see a  
3 savings over the long haul.

4 SENATOR WALDON: Would the  
5 gentleman continue to yield, Mr. President?

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

8 SENATOR VOLKER: Yes.

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

11 SENATOR WALDON: Thank you, Mr.  
12 President. Thank you, Senator Volker.

13 Senator, it is my understanding  
14 that the cost on this bill in regard to prison  
15 construction will be approximately \$521.4  
16 million which will be bonded out but what will  
17 really result is the state of New York will have  
18 to pay \$1.1 billion over a 30-year period to  
19 accommodate this.

20 It's interesting that this bill  
21 will institute determinate sentencing for the  
22 first time for first time violent felony  
23 offenders and it also denies discretionary  
24 parole for first time violent felony offenders  
25 which, in my opinion, ensures that even though

1           there may be a slight decline now in terms of  
2           the rate of increase of prisoners but will  
3           ensure that that will turn itself around and,  
4           therefore, we will have this cost factor.

5                         So I guess my question truly is  
6           -- and it's the next to the last question, I  
7           believe -- is do you see the institution of  
8           determinate sentencing and the denial of  
9           discretionary parole both for first time violent  
10          felony offenders as increasing the population  
11          faster than the current rate and, two, is there  
12          any truth to the fact -- not to the fact -- to  
13          my belief that the actual cost will be \$1.1  
14          billion to accommodate this proposal?

15                        SENATOR VOLKER: Well, first of  
16          all, I guess I would dispute the second figure.  
17          I don't -- we need to build two -- at least two  
18          and we really -- I suppose you could argue we  
19          need to build three maximum security prisons and  
20          I could get into the entire reasoning for that.

21                        One of the things I don't think  
22          some people realize is we have several old  
23          maximum security prisons as it is that  
24          ultimately probably will need either tremendous  
25          changes in them or phasing out. So that I

1       assume and I would hope that what will happen as  
2       we really clamp down on the criminal justice  
3       system and do a number of things in education  
4       and other places, I believe we will continue to  
5       see the crime rate decline into the next century  
6       and hopefully we will see some relief in the  
7       area of the criminal justice system.

8                       However, you know, I think it is  
9       extremely difficult to put any kind of  
10      quantitative amount on this bill because I think  
11      there's arguments both ways as to whether it  
12      will cost more or, in fact, cost less, but I can  
13      say this, that the initial cost, that is, in the  
14      immediate next few years is virtually nothing  
15      because of the fact that already we have in  
16      place a 50 percent requirement of -- on  
17      sentencing, so essentially what we're doing here  
18      is moving it from 50 to 85 percent of the -- of  
19      the maximum term on first felony offenders.  
20      Keep in mind that these are first violent felony  
21      offenders and you are, I know, very aware of the  
22      kinds of individuals that we're talking about  
23      here and I know you're also aware -- and this is  
24      particularly true, I think in New York City -  
25      that a person who is convicted of a first

1 violent felony offense probably has been  
2 arrested 15 to 20, maybe 30 times before he or  
3 she is finally convicted.

4 We know that drug offenders are  
5 sometimes -- that finally go to jail have rap  
6 sheets that are maybe 100 arrests long and it's  
7 something that a lot of the people who argue  
8 against incarcerating drug offenders don't seem  
9 to understand because they never see their rap  
10 sheet, but I think the answer to your question,  
11 Senator, is I think the 1.1 billion, or whatever  
12 it is, figure, I would quarrel with that. I  
13 don't think that's correct. I think we are  
14 going to have a cost for building several new  
15 prisons but not because of this bill.

16 SENATOR WALDON: Mr. President,  
17 if the gentleman would yield for -

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

20 SENATOR VOLKER: Certainly.

21 ACTING PRESIDENT KUHL: The  
22 Senator yields.

23 SENATOR WALDON: Senator Volker,  
24 for as long as we've known each other, I have  
25 proposed that we look at alternatives to

1       incarceration where it works. I've never said  
2       that those who are violent felony offenders  
3       should be allowed to run amok here in society,  
4       but I believe that we need alternatives to the  
5       policies not only that are being forwarded by  
6       our current Governor, George Pataki, but the  
7       same policies which were afforded by Mario  
8       Cuomo. I didn't agree with him. I don't agree  
9       with our current Governor in that regard. That  
10      doesn't mean I'm opposed to prisons altogether.  
11      It just means that I think we ought to be more  
12      judicious in our utilization of available  
13      revenue to ensure that people have an  
14      alternative to the incarceration modality.

15                   In this bill, is there anything  
16      which speaks to alternatives to incarceration,  
17      drug treatment, for example, for non-violent  
18      drug offenders? Is there anything in this which  
19      says that we are going to ensure that the best  
20      supportive services are available to you so we  
21      don't have to see you anymore? You will be able  
22      to clean up, get out and get on with your life.

23                   SENATOR VOLKER: Senator, this  
24      bill is actually, as I say, a compliance bill.  
25      It's a definite sentencing bill. This bill does

1 not deal with the issue of alternatives to  
2 incarceration but, Senator, you are well aware,  
3 I know, that we have passed a lot of legislation  
4 dealing with alternatives to incarceration over  
5 the years. In fact, we have innumerable  
6 programs in this state dealing with alternatives  
7 and, in fact, we just set up Willard -- the old  
8 Willard psych' center. We have a place there  
9 designed to deal with some of the people that  
10 are coming out of the system to try to move the  
11 system along without long prison terms. As you  
12 also know, we have experimented, I think very  
13 successfully with Shock incarceration.

14 One of the problems with the  
15 system, though, there doesn't seem to be an  
16 understanding by some people the fact we have  
17 very, very few non-violent people. We say there  
18 are less violent people in our system because  
19 the truth is that the amount of drug convictions  
20 for fairly minor offenses is virtually nil.  
21 There are very, very few and the difficulty is  
22 that -- and although you and I, I think could  
23 certainly argue that there are many things that  
24 are necessary and many of them are expensive  
25 like drug -- increased drug treatment, increased

1 sex offender treatment, things of that nature -  
2 that's something I think we must look at and I  
3 think we must consider very carefully because I  
4 think it is important, but what this bill deals  
5 with, specifically deals with the fact that the  
6 federal government has set standards for us in  
7 the violent felony offender field and we are  
8 dealing strictly with that side of the issue.

9 SENATOR WALDON: Last question,  
10 Mr. President, if I may.

11 ACTING PRESIDENT KUHL: Senator  
12 Volker, do you yield to one more question?

13 SENATOR VOLKER: Sure.

14 ACTING PRESIDENT KUHL: The  
15 Senator yields.

16 SENATOR WALDON: Senator Volker,  
17 the federal government in its wisdom has often  
18 times done some very goods things which benefit  
19 the states of this great country. Is there any  
20 proviso in this federal mandate which would  
21 allow us to increase the number of police  
22 officers on the streets of the cities of this  
23 state?

24 SENATOR VOLKER: Senator, not  
25 that I'm aware of, not in the bill. As you

1 know, there was a couple years ago a bill passed  
2 that took great fanfare that provided some  
3 additional police officers. Of course, the  
4 problem was it provided additional police  
5 officers for one -- in effect for one and maybe  
6 two years, that is, their pay and after that,  
7 the area that got the police officers in had to  
8 pay for them.

9 One of the difficulties with the  
10 federal government providing things such as  
11 continuing police officer strength is that the  
12 localities have to pick up the cost because the  
13 bulk of the cost came later on down the line  
14 within just a couple of years. In fact, some of  
15 the cities that got those police officers now  
16 found a considerable increased cost because they  
17 have those people on the force, and I think  
18 what's happened in some cities is that because  
19 of fiscal problems, they've actually not  
20 appointed additional police officers so that the  
21 net effect of some of those police officers was  
22 zero because they -- they're not appointing new  
23 people because they don't have the money to do  
24 it because they already have police officers who  
25 are on the payroll from what came from the

1 federal government.

2 So the answer is not that I'm  
3 aware of. I think the federal bill related  
4 primarily to sentencing and, of course, Senator,  
5 as you know, one of the things about this -  
6 another reason why we don't think it will have  
7 as much impact is the Parole Board has been very  
8 reluctant to parole violent offenders anyways  
9 and the Parole Board has been given directives  
10 to be much more careful and one of our problems  
11 with the prison system is that we are locking up  
12 more parole violators now than we have, I  
13 believe -- I'm not aware we ever locked up as  
14 many parole violators because we are trying to  
15 make sure that people who have bad records as  
16 far as violent felonies are concerned stay in  
17 prison and not create more havoc in the streets.

18 SENATOR WALDON: Thank you very  
19 much, Mr. President.

20 If I may, Mr. President.

21 ACTING PRESIDENT KUHL: Senator  
22 Waldon, on the bill.

23 SENATOR WALDON: Thank you very  
24 much, Mr. President. Thank you, Senator Volker.

25 Senator, I believe the same

1 argument you made which says that sometimes it  
2 is not wise to accept federal monies for police  
3 officers is the basic argument I'm trying to  
4 make in regard to accepting the \$113 million  
5 from the fed's on this because the cost to New  
6 York State will be 1.3 or \$1.1 dollars.

7 Let me just make sure -- yes.

8 The guesstimates of my staff, who are pretty  
9 good at math -- they know how to crunch the  
10 numbers -- will be that over a 30-year period,  
11 this will cost us \$1.1 billion. I think that is  
12 not a wise thing for to us do regarding our  
13 grandchildren. They're strapped enough with  
14 debt service, debt service on matters that we've  
15 engaged in to date. It does not have any  
16 proviso for operational costs. So this is just  
17 merely to build.

18 I think it is something that we  
19 should think about, defer, find a different way  
20 to do it, find a more judicious way, both from  
21 the financial perspective and from the moral  
22 burden to our grandchildren.

23 I would encourage us not to do  
24 this. I would encourage us to recognize that if  
25 we want to really be penny-wise and not pound

1 foolish, that we would look to alternatives.  
2 They are just a small portion in a comparative  
3 sense of the cost of building the prisons and  
4 incarcerating people and despite your premise,  
5 Senator -- and you know I respect you and this  
6 is not just to juice you up or placate you -  
7 your premise that there are not a great number  
8 of drug violators in the mix that's causing the  
9 prison population to increase is not my  
10 perception.

11 I believe that the figures I have  
12 would show that all of the people who are in our  
13 prisons, 80 percent of them are there because  
14 what they first did was to get high off of drugs  
15 or get high off of alcohol and then commit an  
16 act which brought them into confrontation with  
17 the criminal justice system and eventuated into  
18 their being a part of our prison population.

19 So I think that if we were smart,  
20 we would create therapies and out-patient  
21 centers and halfway homes and a lot of support  
22 systems in the communities where these people  
23 eventually go back to which would deal with  
24 their real problem, which is their sense of  
25 despair, their absence of hope, their absence of

1 a job, their absence of a solid family  
2 structure, their absence of a community which  
3 has a community center or a night center, their  
4 absence in the 11 community school boards and  
5 the 17 Assembly Districts where 80 percent of  
6 the prison population originates, from having  
7 good and sound education.

8 I think that if we were to create  
9 a Marshall Plan at a minuscule proportion of the  
10 cost of building these prison cells to address  
11 the needs of those 17 Assembly Districts, to  
12 address the needs of those 11 community school  
13 boards, we would find that the need for  
14 construction of prisons would not vanish.  
15 That's never going to happen but would diminish  
16 to such a degree that there would be money for  
17 the other needs of the people of the state of  
18 New York.

19 I'm afraid that one day we're  
20 going to wake up and say, Oops, we blew it.  
21 We're in the same bag as California, no money  
22 for anything else because we put all the money  
23 into prisons. Oops, we blew it. We're in the  
24 same bag as the state of Texas where the economy  
25 of the state has been driven into its fiscal

1           responsibilities, Senator, in terms of its  
2           budget by the prison system and there's no money  
3           for anything else, but the most tragic component  
4           of all of this is we will say as we sit, you and  
5           I and others in this chamber, in our nursing  
6           homes many years down the road and say, Oops, we  
7           blew it. My grandchildren cannot have a good  
8           quality of life because they're paying all of  
9           the debt service that I foolishly created as a  
10          Senator during the '90s.

11                        I don't think we should do that,  
12          Senator Volker. I have great respect for you  
13          and for what you stand for and the manner in  
14          which you debate these bills but today I most  
15          respectfully disagree with your contention and  
16          your positions, and I would encourage my  
17          colleagues to see it my way this day and let's  
18          vote no on this particular proposal.

19                        Thank you very much, Mr.  
20          President. Thank you, Senator Volker.

21                        ACTING PRESIDENT KUHL: Senator  
22          Montgomery.

23                        SENATOR MONTGOMERY: Thank you,  
24          Mr. President.

25                        I wonder if the sponsor, Senator

1 Volker, would yield for a question.

2 ACTING PRESIDENT KUHL: Senator  
3 Volker, do you yield to a question from Senator  
4 Montgomery?

5 SENATOR VOLKER: Sure.

6 ACTING PRESIDENT KUHL: The  
7 Senator yields.

8 SENATOR MONTGOMERY: Senator  
9 Volker, I note in your legislation in this bill  
10 that it now covers first time violent  
11 offenders.

12 SENATOR VOLKER: Right.

13 SENATOR MONTGOMERY: And you also  
14 have added Class D and Class E felonies. Are  
15 those also specifically non-violent or  
16 specifically violent felons?

17 SENATOR VOLKER: No, actually we  
18 don't. The only people that we're adding here  
19 is in relation to violent felony offenders.  
20 There are no non-violent people involved in  
21 this. So any offense that would be covered by  
22 this bill would also be people, as I say, who  
23 would fall under the violent felony offender  
24 category. So this would not involve any  
25 non-violent -- would not impact on their

1 sentences or any of that in any way.

2 SENATOR MONTGOMERY: Senator, do  
3 we -- do you know the number of inmates who are  
4 currently incarcerated who have -- who are there  
5 based on drug-related non-violent convictions?  
6 Do we have that information available?

7 SENATOR VOLKER: The trouble is  
8 that we -- if you look at the numbers -- I was  
9 looking at some of the numbers the other day -  
10 you can say anywhere from zero to -- I've seen  
11 some numbers that say, well, there's 20- or  
12 30,000. Of course, the problem with that is  
13 that the -- as I often said, that we've had a  
14 number of people, the reason that they're  
15 non-violent is because they were bad shots. You  
16 have a lot of drug offenders in jail -- most  
17 drug offenders in jail were arrested dozens of  
18 times. In New York City you have to really work  
19 at going to jail on drug charges, in many ways.  
20 I mean I'm exaggerating in a way but it's a fact  
21 of life.

22 The federal government did a  
23 study on what is considered non-violent drug  
24 offenders and they found out that most of the  
25 serious drug offenders end up in jail, that is,

1 the ones that get the long sentences were  
2 arrested as many as 100 times before they  
3 finally went to jail.

4 So the difficulty is when we  
5 don't term them as "non-violent", we say less  
6 violent and in keeping with that, Senator, let  
7 me just tell you we're having difficulty  
8 maintaining our Shock incarceration system and  
9 the reason is, is that we have shipped the  
10 people that are reasonably non-violent into that  
11 system and we can't find enough of them in the  
12 prison system to keep Shock incarceration camps  
13 operating. So what we had to do is make -  
14 several of those camps have become minimum  
15 security prisons because they don't qualify  
16 under the Shock program.

17 So the answer is that, yes, there  
18 are a number of people who are convicted for  
19 drug offenses who are in our system. Most of  
20 them have some arrests for violent felonies some  
21 place along the line but generally speaking were  
22 never convicted of such violent felonies.

23 I've often said to somebody, what  
24 do you think would make a person plead to a 15  
25 to 25-year term under the Rockefeller Drug Law

1 and the answer is some sort of a crime that  
2 would mean that they would be sentenced  
3 potentially to an even longer sentence if they  
4 were subjected to a trial and usually those are  
5 robbery or something of a much more serious  
6 nature.

7 So the answer is we can't -- it's  
8 very difficult to calculate exactly how many  
9 people would be considered to be possibly  
10 somewhat non-violent or at least less violent.

11 ACTING PRESIDENT KUHL: Senator  
12 Montgomery.

13 SENATOR MONTGOMERY: So Senator  
14 Volker seems to imply, Mr. President, that there  
15 may be 40 percent, 50 percent, some people say  
16 61 percent -- or over 60 percent that are  
17 actually there based on non-violent  
18 convictions.

19 If Senator Volker would yield,  
20 the -

21 ACTING PRESIDENT KUHL: Senator  
22 Volker, do you yield to a question from Senator  
23 Volker?

24 SENATOR VOLKER: Yes.

25 ACTING PRESIDENT KUHL: The

1 Senator yields.

2 SENATOR MONTGOMERY: Commissioner  
3 Goord sent to me, in response to a question that  
4 I asked him at the budget hearings, the  
5 statistics that he has where the home districts  
6 of the inmates are in the state. He indicated  
7 that there are 68 percent who originate from New  
8 York City. If that is the case -- and, Senator  
9 Volker, you said in response to Senator Waldon  
10 that most of the inmates, by the time they get  
11 to prison, they've already been arrested some 15  
12 times and I know you've made that statement  
13 before.

14 SENATOR VOLKER: Minimum.

15 SENATOR MONTGOMERY: We've held  
16 hearings several different times on this issue  
17 and variations of this issue and every single  
18 expert in the field of treatment and crime and  
19 crime prevention, judges and D.A.s and everybody  
20 says -- have said to us that the key to  
21 preventing people from going further into a life  
22 of crime is early intervention. It seems that  
23 when there's a first -- a first instance when a  
24 person, especially a young person comes in  
25 contact with the law, that it is at that point

1           that we should begin a process of turning that  
2           young person around so that they don't do the  
3           second, third and fourth and get to number  
4           fifteen, and I'm just wondering -- they've also  
5           talked about prevention. You yourself have  
6           talked about alternatives to incarceration. I  
7           know that our D.A. has a very active alternative  
8           to incarceration program there in Brooklyn.  
9           We've heard in many instances where community  
10          courts are a specific and particular early  
11          intervention mechanism as well as a prevention  
12          mechanism. Can you identify for me where in the  
13          Governor's budget we have the funding for these  
14          programs specifically and what amount -- what  
15          amount and does it reflect the 68 to 70 percent  
16          that are going to -- that we anticipate will be  
17          coming from New York City? Do we have that  
18          percentage of funding for these programs in New  
19          York City in the budget right now?

20                    SENATOR VOLKER: Senator, that's  
21                    a lot of questions into one.

22                    SENATOR MONTGOMERY: I know. I  
23                    want the money. Show me the money.

24                    SENATOR VOLKER: Show me the  
25                    money. Let me show you the programs, Senator.

1 This Legislature a few years ago, I think it was  
2 1989, passed a law, signed by then Governor  
3 Cuomo establishing a first felony offender  
4 diversion program. It turned out to be a flop  
5 -- a "flop" meaning it didn't attract much and  
6 the reason it didn't is every D.A. in New York  
7 City, virtually every D.A. in upstate is already  
8 doing a first felony offender diversion program  
9 and there are funds in the state budget; there  
10 are funds in local budgets; there are funds in  
11 New York City. We seem to think we're not doing  
12 alternatives to incarceration. We have  
13 innumerable alternatives to incarceration  
14 programs. Are there enough? Probably not. I  
15 think I would be the first to say to you, I  
16 don't think there are. Is there enough money in  
17 the Governor's budget? Probably not. We're  
18 going to put more in, as you know. You know how  
19 the system works. We both know it.

20 We always used to complain about  
21 Cuomo not having enough money for certain things  
22 and you did too. I mean -- and your side did  
23 too. It's the way the system works. Before  
24 this year is out, when we finally do a budget, I  
25 assume there's going to be a considerable amount

1 of more money on the prosecution side, as well  
2 as on the defense side and on treatment side.  
3 There's no doubt about it that there's going to  
4 be, and I'll be the first to say to you that on  
5 this issue, maybe I'm a little more -- what is  
6 the word -- liberal, but that's a good word. I  
7 believe and I hope we need to do more but all  
8 that aside, keep in mind, Senator, that about  
9 the system, we need to deal with the person who  
10 is a violent felon because whether we were  
11 unsuccessful in the early days or whatever we  
12 did, these people are creating problems on the  
13 streets and they -- these individuals cause us a  
14 huge cost to society and if we could make sure  
15 that these people -- who do most of the crimes,  
16 by the way, because we -- studies have clearly  
17 shown -- one thing that studies have clearly  
18 shown is that a few people, a comparatively few  
19 people -- I mean it's a lot of people in the  
20 numbers but a comparatively few people, they do  
21 most of the violent crimes and the theory that  
22 is, of course, being criticized by certain  
23 psychologists, and so forth, because they said  
24 this is never going to work, they don't want to  
25 admit that something is going on out there in

1       this country and what's going on is the crime  
2       rate is beginning to drop and we are locking up  
3       more violent felony offenders for longer periods  
4       than we ever have. We believe, and I think many  
5       people now believe -- and even some of the  
6       people who didn't agree for a long time, they're  
7       still saying that we ought to have more  
8       treatment and all of that. They're not denying  
9       that but they're admitting that what's happening  
10      here in this country appears to say that we are  
11      at least being more successful by locking up  
12      people who are violent felony offenders and  
13      that's what this bill seeks to do.

14                   The issue of treatment and  
15      alternatives, and so forth, is something we're  
16      going to debate when the budget passes and we  
17      should, but that's for later. This is for now.  
18      This gets us money to help us build a new  
19      prison, by the way, so we can get the backup out  
20      of the system in New York City and in other  
21      places upstate and make sure and give us the  
22      opportunity to, by the way, treat people because  
23      we've got too many people in the system right  
24      now that it's very difficult to do education and  
25      treatment, and so forth, and that's why we need

1           this bill.

2                           ACTING PRESIDENT KUHL:   Senator  
3           Montgomery.

4                           SENATOR MONTGOMERY:   Thank you,  
5           Senator Volker.

6                           I am certainly encouraged that  
7           Senator Volker is now on record in this house  
8           before his side of the aisle and ours with a  
9           firm commitment to fight along with us for an  
10          enhancement in our state budget in the area of  
11          prevention, crime prevention and alternatives to  
12          incarceration and those -- and supporting those  
13          areas that we know will work, and there are some  
14          things that absolutely do work and do make a  
15          difference.

16                          I would like to caution Senator  
17          Volker and my colleagues who are inclined to  
18          look at this as a need to just lock them up and  
19          throw the key away and that is how we will  
20          reduce crime, that we're looking at a state and  
21          a nation that has at this point -- we're moving  
22          toward having one of every two African-American  
23          males either incarcerated in some local, state  
24          or federal prison or they are on probation or  
25          parole or in something.   We're moving in that

1 direction. That to me is a shame and a disgrace  
2 and as a nation and as a state, I think that we  
3 must avoid -- we must stop this movement in that  
4 direction, and I hope that, Senator Volker, you  
5 are certainly going to work against that tide  
6 because we cannot afford it and we should not -  
7 we should not be -- we should not be a state  
8 that looks like that.

9 We know that community policing  
10 does work and we do know that early intervention  
11 does make a difference. People from Suffolk  
12 County to Buffalo, every part of the state have  
13 said it makes a difference. Let's do it.

14 We know some of the things that  
15 have to be done to not only enhance the lives of  
16 young people but keep them out of crime and also  
17 protect our neighborhoods. We should be doing  
18 those things and not simply standing up and  
19 saying in sound bites that here's Willy Horton  
20 and how we deal with Willy Horton is we're going  
21 to lock him up and the public believes that they  
22 are then safe by that statement.

23 That is not true. That is not  
24 what we want to reflect and represent in our  
25 state and hopefully this -- from this point on,

1 Senator Volker is also going to be helping to  
2 turn the tide on the direction in which we have  
3 been going in New York.

4 I am certainly going to vote  
5 against this. I don't believe that we should be  
6 looking to receive 25 million that we would  
7 apparently ostensibly receive from the federal  
8 in order to spend one point whatever billion but  
9 also, I think that it was wrong. I do not agree  
10 with what Congress did and I do not agree, and  
11 I'm not pleased that the President signed the  
12 legislation and I'm certainly not in agreement  
13 with what we're doing here today. So I'm going  
14 to vote no.

15 Thank you, Mr. President.

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

18 THE SECRETARY: Section 9. This  
19 act shall take effect immediately.

20 ACTING PRESIDENT KUHL: Call the  
21 roll.

22 (The Secretary called the roll.)

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

25 THE SECRETARY: Those recorded in

1 the negative on Calendar Number 1129, Senator  
2 Connor, Leichter, Montgomery, Paterson, Sampson  
3 and Waldon. Ayes 50, nays 6.

4 ACTING PRESIDENT KUHL: The bill  
5 is passed.

6 THE SECRETARY: Calendar Number  
7 1130, by the Committee on Rules, Senate Print  
8 5404, an act to amend the General Municipal Law,  
9 in relation to cooperative investments.

10 SENATOR LEICHTER: Mr. President,  
11 would -

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

14 SENATOR LEICHTER: Would the  
15 sponsor yield, please? I understand Senator  
16 Larkin is ready to respond to questions.

17 ACTING PRESIDENT KUHL: Are you  
18 asking Senator -- excuse me, Senator Leichter.  
19 What's your request?

20 SENATOR LEICHTER: I wanted the  
21 sponsor to yield but he said he would like to  
22 make an explanation of the bill and that's  
23 fine.

24 ACTING PRESIDENT KUHL: Senator  
25 Larkin for an explanation.

1                   SENATOR LARKIN: This bill  
2           represents three years of hard work on the part  
3           of a lot of people, this body, the Comptroller,  
4           the private sector, and it all had to do with  
5           how do we adequately ensure that we're  
6           protecting the investments, the investments at  
7           local governments, the investment of monies that  
8           have come from the federal government and the  
9           state government. The auditors from the  
10          Comptroller's office have played a great role in  
11          here. I -- during my tenure as Chairman of the  
12          Local Governments Committee, we had an extended  
13          hearing to ensure that we received everybody's  
14          input, the pros and the cons, what should or  
15          shouldn't be done.

16                   One of the things that I think  
17          the practice of pooling investments of local  
18          government has to date rested on a broad opinion  
19          of the Comptroller of 1988 -- actually it was  
20          8846 -- "the Legislature must now take this  
21          opportunity to codify in the General Municipal  
22          Law the practices which the municipal  
23          corporations must follow."

24                   Now, when we look at all of this,  
25          Senator Leichter, we look at the opinion of 1988

1 and we look at the audit of 1996 by sitting  
2 Comptroller and we found that there were many  
3 things they were concerned about. The lead  
4 agency as we know it of Northern Westchester,  
5 Putnam and BOCES, we have an individual who was  
6 sitting there as the superintendent of BOCES and  
7 also sitting -- wearing another hat as the prime  
8 and sole investor over 350 communities. We have  
9 this individual sitting there and responding to  
10 an investment private sector and yet no  
11 reimbursement to the Putnam BOCES.

12 There was questions which  
13 concerned the pool authorization, the  
14 investments. The Comptroller raised questions  
15 on this of how far they should go and how much  
16 the investments -- what we noticed that the  
17 investments by MBIA, commonly referred to its  
18 class, was the fact that they could take all the  
19 money from all of the 350 participants and  
20 invest it solely without individual  
21 responsibility. The local governments wouldn't  
22 know where their monies were. There was no  
23 monthly accountability.

24 This new law that we're proposing  
25 now takes into consideration all of the requests

1 and the recommendations contained in Comptroller  
2 McCall's audit of 1996. "We require  
3 participants to establish an investment  
4 agreement. Limit investment maturity periods to  
5 two years. Limit weight average maturity days  
6 to 60."

7 This is done specifically at his  
8 request to protect access of municipality  
9 corporations to their capital, in plain English,  
10 the immediate need that a municipality may have  
11 to withdraw out its money. "Require  
12 participants to make sure that market value  
13 determinations are made at least once a month.  
14 Require participants to review their portfolio  
15 for sensitivity to interest rates."

16 Currently they have no access to  
17 it. They call up, invest and that's the end of  
18 the action. "Require participants to obtain an  
19 irrevocable letter of credit to cover possible  
20 losses."

21 As we stand today, there is no  
22 protection for the local monies that are being  
23 invested. "We require participants to hire an  
24 administrator investment advisor, independent  
25 auditor and custodial bank", and that was one of

1 the key things -- that was one of the key things  
2 that the audit -- "require that each year a CPA  
3 conduct a financial audit and an audit of the  
4 internal control structure and provide  
5 participants with a monthly statement."

6 In essence, Senator, what we're  
7 trying to do here is to make sure that there's a  
8 level playing field because under the rules  
9 right now, a municipality could lose all of its  
10 investments and have no recourse.

11 Thank you very much, Senator.

12 SENATOR LEICHTER: Mr. President.

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

15 SENATOR LEICHTER: I want to  
16 thank Senator Larkin for his explanation and ask  
17 if you would be so kind as to yield.

18 ACTING PRESIDENT KUHL: Senator  
19 Larkin, do you yield to a question?

20 SENATOR LARKIN: Yes, Senator.

21 ACTING PRESIDENT KUHL: The  
22 Senator yields.

23 SENATOR LEICHTER: Senator, you  
24 may have in part addressed the question that I  
25 had in mind and that is, has the Comptroller

1 support -- or is the Comptroller supporting this  
2 bill?

3 SENATOR LARKIN: It's the same  
4 answer as before. The Comptroller has not  
5 rendered an opinion pro or con of this. He had  
6 rendered his report in his audit of 1996. The  
7 Comptroller's local government staff  
8 participated in our hearings and comments that  
9 what we have in here in our bill is taken -  
10 extracted from the testimony that they gave us  
11 then but he has not rendered a specific opinion,  
12 except for the fact that his audit  
13 recommendations are the basis of this bill.

14 SENATOR LEICHTER: Mr. President,  
15 if Senator Larkin would continue to yield.

16 SENATOR LARKIN: Yes, Mr.  
17 President.

18 SENATOR LEICHTER: Senator, I  
19 certainly appreciate the work you've done, and I  
20 understand that you think that this meets the  
21 Comptroller's proposals and suggestions. The  
22 Comptroller might have a different view on it.  
23 It seems to me, frankly, unwise to put this bill  
24 forward without our knowing specifically if the  
25 Comptroller considers that this bill meets all

1 of these suggestions that he has made, all the  
2 objections that he had for the past system.

3 SENATOR LARKIN: Well, two  
4 things, Senator. In the early negotiations on  
5 this in writing it, we had asked the Comptroller  
6 to participate with us in the updating of this  
7 specific legislation and as of one hour ago,  
8 there was no response. We had asked them to sit  
9 down with us. They have declined not to and as  
10 you may or may not know, that this legislation  
11 is -- expires today.

12 SENATOR LEICHTER: Well, Mr.  
13 President, if Senator Larkin would continue to  
14 yield.

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

17 SENATOR LARKIN: Yes, Mr.  
18 President.

19 ACTING PRESIDENT KUHL: The  
20 Senator continues to yield.

21 SENATOR LEICHTER: You know, I  
22 don't know what the Comptroller's policy is  
23 about sitting down and working in the fashion  
24 that you asked him to with your committee, and  
25 so on. Apparently he did testify, and so on.

1           The one thing I do know about the  
2           Comptroller, he's not shy about giving his  
3           opinion. You call him and you say, Mr.  
4           Comptroller, this is what we propose. Do you  
5           support it or don't you support it? Do you  
6           oppose it? You have no comment on it but, I  
7           mean, to put this forward and not know what the  
8           Comptroller's position is, frankly, I think  
9           leaves us in something of a quandary.

10           SENATOR LARKIN: Senator, I would  
11           have thought that but the response from the  
12           Comptroller's office was that it was not their  
13           responsibility to draft this legislation.

14           SENATOR LEICHTER: I -- Mr.  
15           President, again, if you would continue to -

16           SENATOR LARKIN: Senator, I -  
17           you know, from the time we started working on  
18           this three years ago, there's been many  
19           opportunities for the Comptroller to interject  
20           his views on it. The general views that we were  
21           given in 1995 at our hearing and again in  
22           communications -- and, again, Senator, I don't  
23           chair the Local Governments Committee but having  
24           had a keen interest in this, I think we've given  
25           the Comptroller every opportunity to include

1 waiting until the completion and we were asked  
2 not to do any legislation until completion of  
3 the 1996 audit, Senator, and that's exactly what  
4 this side of the aisle did, wait for the  
5 Comptroller because we wanted to make sure that  
6 things that we heard about in '93 and '94 and  
7 '95 were being looked at by their auditors.  
8 Their auditors looked at it and gave a complete  
9 audit of what they found wrong and what they  
10 thought had to be corrected in order to make  
11 this a viable operation and, Senator, he was  
12 given the opportunity. He declined. His  
13 comments -- I'm not saying that Mr. McCall made  
14 the comment but his staff speaking on behalf of  
15 him said that it was our job to draft the  
16 legislation.

17 SENATOR LEICHTER: Mr. President.

18 ACTING PRESIDENT KUHL: Senator  
19 Leichter.

20 SENATOR LEICHTER: If Senator  
21 Larkin continues to yield.

22 SENATOR LARKIN: Yes.

23 SENATOR LEICHTER: Senator  
24 Larkin, I think you and I can certainly agree  
25 that it is our job to draft legislation, and I

1 see you've worked very hard on this, and I again  
2 thank you and I'm sure you used your best  
3 efforts on it, but when I take a look at the  
4 date of the bill, it's May 30th. So that was  
5 Friday, on the eve of a June weekend. Has  
6 anybody since then taken this bill and said, Mr.  
7 Comptroller, we've done what you've asked. We  
8 have drafted the bill. It's our  
9 responsibility. We're the Legislature. You  
10 remember. You were once a member of this body.  
11 We draft the Legislature as you suggest -- as  
12 you suggested. Now would you please tell us,  
13 does this legislation meet your proposals and  
14 recommendations? I mean, this is an area where  
15 the Comptroller has primary responsibility and  
16 primary knowledge, and I don't want to proceed  
17 without knowing what his position is.

18 So the simple question is,  
19 Senator Larkin, have you or any member of your  
20 staff or any member of the Majority asked the  
21 Comptroller in reference to Bill 5404 printed on  
22 May 30th, 1997, do you support this bill? Do  
23 you oppose this bill or do you have no position  
24 on this bill?

25 SENATOR LARKIN: Senator, all I

1 can tell you -- I can't speak for the  
2 Comptroller, but his counsel informed mine that  
3 they had no interest here in drafting the  
4 legislation. Wait a minute. May I finish,  
5 sir? They were kept up to date day to day while  
6 we were doing this. They were apprised of the  
7 changes that we proposed, how we were to do it.  
8 They knew all about it but, you know, there's an  
9 old saying that you and I at our age know that  
10 you can't get blood out of a stone and we gave  
11 the Comptroller every opportunity. His staff  
12 knew what we were working on. They talked. I'm  
13 confident -- she's not here now but the Chair of  
14 Local Governments, Senator Rath's office had  
15 been talking to them. Counsel's office had been  
16 talking to them.

17 This is a piece of legislation  
18 that has far-reaching effects to correct the  
19 improprieties that he, the Comptroller of the  
20 state of New York, said this is wrong. This is  
21 how we should do it. We complied with what he  
22 specifically asked us to do. He was made aware  
23 of the proposals that we were incorporating in  
24 this right up until the bill was printed on the  
25 30th. If he doesn't want to respond to us,

1 Senator, I don't know what else I can do.

2 SENATOR LEICHTER: Mr. President.

3 ACTING PRESIDENT KUHL: Senator  
4 Leichter, are you asking -- are you asking  
5 Senator Larkin to yield?

6 SENATOR LEICHTER: Yes.

7 SENATOR MARKOWITZ: Yes, Senator.

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

10 SENATOR LEICHTER: Senator, that  
11 was a well versed answer. The only problem was  
12 it wasn't responsive. I -- you said up to the  
13 date that we printed it, the Comptroller knew  
14 what we were -- things we were doing and this  
15 and that, but my question was very simple.  
16 Senator, let me just finish the question, if I  
17 may, sir.

18 SENATOR LARKIN: Go ahead.

19 SENATOR LEICHTER: In reference  
20 to this bill, once this bill was printed, did  
21 anybody call the Comptroller's office and say,  
22 "What is your position on this bill?" That's  
23 my question. I think that could be answered yes  
24 or no.

25 SENATOR LARKIN: I guess my

1 answer to that would be, Senator, why would I?  
2 I have been working on this for a year. "We  
3 followed your directions. We informed your  
4 counsel what we plan to put in the bill. Do you  
5 have any comment?" The comment that come back  
6 is "It's not our place". You've had -- Senator,  
7 personally -- and I don't mean to be  
8 disrespectful, Senator, I think it's irrelevant  
9 at this point. The Comptroller's staff, if  
10 anybody is to be blamed, it must be he or his  
11 staff because they knew what was in the bill.  
12 They knew what we were doing. They knew that we  
13 were complying strictly with what he recommended  
14 and if they come back and tell the staff that  
15 they have no interest, then I would have to  
16 assume that they will wait until we act on it  
17 and then maybe tell the Governor whether they  
18 like it or dislike it or tell the Assembly  
19 whether they like it or dislike it.

20 This has been an ongoing process  
21 of trying to maneuver both houses and  
22 participants in it. We didn't do anything  
23 behind the scenes. We have had meetings after  
24 meetings after meetings. His office that  
25 handles local governments has been constantly

1 kept aware of what we have been doing. I feel  
2 to say that do we have the Comptroller's  
3 blessing on this, I think it's the  
4 responsibility of the Comptroller knowing what  
5 we were doing, having been provided the details,  
6 information, having the expertise of our staff  
7 working with his. I think it behooves him to  
8 not stand back or his counsels and say, It's  
9 your responsibility to do the law. We did it.  
10 We provided his office with all of the  
11 information.

12 I think truthfully, Senator, it's  
13 incumbent upon him to look at it and say to us,  
14 I don't agree with you. I disagree with you. I  
15 agree with you. He was afforded that  
16 opportunity and the solemn answer that came back  
17 time and again, It's not our responsibility.

18 SENATOR LEICHTER: Mr. President,  
19 if Senator Larkin continues to yield, please.

20 Senator, I'm sorry. You've made  
21 it very, very clear that you didn't ask the  
22 Comptroller. You asked him up to the point when  
23 the cheese became binding, when it became  
24 meaningful. You asked him -- taking what you  
25 say as having occurred -- and I don't -- and I

1 believe 100 percent what you say, that you asked  
2 him to participate. You paid attention as you  
3 see it to what he proposed but once the bill was  
4 printed -- once the bill was printed you said,  
5 No, we didn't ask him.

6 So let me make this suggestion to  
7 you. Lay the bill aside. You and I will get on  
8 the phone. We'll call the Comptroller. We'll  
9 call his counsel and we'll ask, is this a bill  
10 -- as a matter of fact, Senator Paterson said  
11 that we could use his phone. He will charge us  
12 for it but -- but, Senator, it's an easy thing.  
13 I think we ought to know that answer. Why are  
14 we -- why are we proceeding in this way without  
15 knowing what the Comptroller's position is in  
16 regard to this bill -- in regard to this bill  
17 once it was printed on May 30th, and I think,  
18 frankly, that we have an obligation before we  
19 act on it to know the position of the chief  
20 financial officer of the state of New York.

21 I think we look foolish voting  
22 for this and not having the Comptroller say, I  
23 think it's a bad bill. I think it's a bad bill  
24 because of this reason or that reason. He may  
25 not go as far as to say it's a bad bill. He now

1 holds an important position so he's got to be  
2 diplomatic. He doesn't speak the way you and I  
3 do. He'll say this bill does not meet the needs  
4 of all the people of the state of New York.  
5 That's how comptrollers speak, but the point is  
6 we look foolish. We voted for this bill and  
7 here's the chief financial officer saying this  
8 bill doesn't do it, doesn't cut the mustard. So  
9 let's find out. We can do that -- maybe we can  
10 catch the Comptroller right now. We'll call him  
11 and maybe he'll say, Senator Larkin did a superb  
12 job. Maybe he'll say it needs this and that.

13 I seriously recommend that course  
14 of action to you and don't put the members here  
15 in the uncomfortable position of having to vote  
16 on something which is in the jurisdiction of the  
17 Comptroller without knowing what his position  
18 is.

19 SENATOR LARKIN: Senator, the  
20 last session of the Legislature, we had a bill  
21 called Senate 5339, the same bill we have in  
22 front of us, with the exception of the specific  
23 recommendations of the Comptroller to improve  
24 the system. They're in there. The Comptroller  
25 of the state of New York in 1995 and '96 never

1       came to us and said, I like it. I dislike it.  
2       His staff at that time were involved in it.

3                 One very important point on this  
4       piece of legislation, the government finance  
5       officers have said they do not oppose this.  
6       These are the individuals at our counties around  
7       this state that have to observe how our funds  
8       are handled.

9                 If you have a specific question  
10       of the bill, I would like to hear it. I'm not  
11       being disrespectful, but when we've had a bill  
12       that's been out there, it's had a public hearing  
13       of where the Comptroller's staff were the prime  
14       people participating in it who have worked with  
15       my staff, who have worked with program staff  
16       this year and have not come up with a  
17       recommendation from the bill of 1995-96, S.5339  
18       and have nothing to say pro or con about the  
19       bill now and having been asked on numerous  
20       occasions and knowing that the Government  
21       Finance Association officers do not oppose this  
22       action, I would presume that that's why the  
23       Comptroller has taken the position that it's not  
24       his because he works hand and hand, his  
25       department does, with the government finance

1 officers. If you have a specific question on  
2 it, I would be more than happy to answer it. If  
3 not, I request the bill be moved.

4 SENATOR LEICHTER: Mr. President.

5 ACTING PRESIDENT KUHL: Senator  
6 Leichter.

7 SENATOR LEICHTER: One more  
8 question, Senator Larkin.

9 ACTING PRESIDENT KUHL: Senator  
10 Larkin, do you yield? The Senator yields.

11 SENATOR LEICHTER: Senator, it's  
12 hardly really an endorsement of your bill if the  
13 county officers don't oppose it. They didn't  
14 saying anything negative about it. That's  
15 hardly a strong endorsement but, Senator, what  
16 you keep on seeming to overlook is that  
17 everything that went before really isn't  
18 relevant when you have a specific bill that's  
19 been printed just two days ago and nobody seems  
20 to have taken the responsibility of calling the  
21 Comptroller and saying, "Now that it's in print,  
22 now that we've done what you asked us to do,  
23 which is to draft the legislation, we think we  
24 have put what your concerns are. They have been  
25 expressed in this bill. Does this bill have

1 your approval?"

2 You told me, as I understood,  
3 Senator Larkin, that last year the Comptroller  
4 was critical of a measure that we passed. Is  
5 that correct, that he was critical of the  
6 measure that we passed last year?

7 SENATOR LARKIN: Who?

8 SENATOR LEICHTER: The  
9 Comptroller.

10 SENATOR LARKIN: No. He never  
11 said a word about it. He never said a word  
12 about S.5339. Last year the finance officers  
13 took objection to certain parts of it. This  
14 year they support this legislation.

15 Senator, we passed about 40 bills  
16 here today or more and I don't remember anyone  
17 standing up here and saying, Senator Rath, did  
18 you coordinate this with Mental Health? Senator  
19 Volker, did you coordinate this with Criminal  
20 Justice? I don't remember anybody saying  
21 anything. We were paying tribute to Disability  
22 Awareness Day and I never heard anybody question  
23 whether we took this bill to one of those other  
24 departments.

25 Senator, this bill is on the

1 calendar because it's needed. This bill is on  
2 the calendar because it meets the needs to  
3 protect the investments of our local  
4 governments.

5 Thank you, Mr. President.

6 ACTING PRESIDENT KUHL: Mr.  
7 President.

8 SENATOR LEICHTER: Briefly on the  
9 bill. I'm advised -

10 ACTING PRESIDENT KUHL: Senator  
11 Leichter, excuse me just a minute.

12 Senator Waldon, why do you rise?

13 SENATOR WALDON: Would Senator  
14 Leichter yield to a question or two?

15 SENATOR LEICHTER: Yes.

16 ACTING PRESIDENT KUHL: The  
17 Senator yields.

18 SENATOR WALDON: Senator  
19 Leichter, I just overheard the colloquy between  
20 you and Senator Larkin and I recall seeing  
21 something that might help us in understanding  
22 the process.

23 Under the rules of the Senate,  
24 have you ever heard the premise that when  
25 there's a fiscal impact of any form or nature

1           that bills should be dual referenced and not  
2           necessarily be in just one committee? Have you  
3           ever heard of anything like that?

4                         SENATOR LEICHTER: I'm not quite  
5           sure what you mean, frankly. Oh, you mean that  
6           it should -- whether the bill should go to  
7           finance -

8                         SENATOR WALDON: Yes.

9                         SENATOR LEICHTER: -- in addition  
10          to going through -

11                        SENATOR WALDON: To the committee  
12          of origin when there's a fiscal potential. Are  
13          you aware of that?

14                        SENATOR LEICHTER: Yes, I am  
15          aware of it.

16                        SENATOR WALDON: Okay. Are you  
17          also aware that in this -

18                        ACTING PRESIDENT KUHL: Senator  
19          Waldon, are you asking Senator Leichter to  
20          continue to yield?

21                        SENATOR WALDON: I'm sorry, Mr.  
22          President. I apologize.

23                        SENATOR LEICHTER: Yes. I'll  
24          continue.

25                        SENATOR WALDON: All right.

1                   ACTING PRESIDENT KUHL:

2           Gentlemen, are we talking in the abstract now,  
3           or are we talking about the bill before the  
4           house?

5                   SENATOR WALDON: Well, we're  
6           talking perhaps in the abstract but only for the  
7           purpose of my understanding -

8                   ACTING PRESIDENT KUHL: Then the  
9           discussion -- the questions would not be germane  
10          before the house, Senator Waldon. My suggestion  
11          to you as the Chair of this body would be to  
12          conform with the rules of the house which seems  
13          to be one of the issues you're attempting to  
14          talk about.

15                   So I would suggest very strongly  
16          that you ask questions of Senator Leichter about  
17          this bill.

18                   SENATOR WALDON: Okay. I thank  
19          you for that edification.

20                   ACTING PRESIDENT KUHL: I just  
21          remind you of the rules. That's my job as I see  
22          it, Senator Waldon.

23                   SENATOR WALDON: I really  
24          appreciate it. I really appreciate it.

25                   Senator, on this particular bill

1           that you were discussing before, would you -- if  
2           you were the author of it, would you have  
3           referred it to another committee in regard to  
4           its fiscal impact?

5                         SENATOR LEICHTER: Well, I don't  
6           know, Senator Waldon. I assume that people look  
7           at the bills and determine whether it needs to  
8           go to a committee. If you're saying that this  
9           bill probably should have been looked at by the  
10          Finance Committee, I think you make a valid  
11          point. I don't know whether under our rules it  
12          was required to go to the Finance Committee but  
13          it certainly would have made sense.

14                        The fact is, of course, Senator  
15          Waldon -- and I think that underlies some of the  
16          questions you have -- it's a bill in a very  
17          important area. It was printed on Friday. Very  
18          few people have had a chance really to digest  
19          this bill. Its significance is that we've had  
20          occasions in this state where localities have  
21          lost millions of dollars -

22                        SENATOR LARKIN: Mr. President.

23                        SENATOR LEICHTER: -- because  
24          of -

25                        ACTING PRESIDENT KUHL: Excuse

1 me, Senator Leichter.

2 Senator Larkin, why do you rise?

3 SENATOR LARKIN: Mr. President, a  
4 point of order. If the people looking at this  
5 piece of legislation would look at its  
6 background, there is no fiscal note required.  
7 There is no bounds on local governments on  
8 this.

9 ACTING PRESIDENT KUHL: Your  
10 point of order is not very well taken, Senator  
11 Larkin.

12 Senator Leichter, would you  
13 continue to answer the question, please.

14 SENATOR LEICHTER: Senator, you  
15 can always get another roommate.

16 ACTING PRESIDENT KUHL: Senator  
17 Leichter.

18 SENATOR LEICHTER: I think the  
19 point is that it's a very important area. The  
20 bill is being, I won't say rushed through but it  
21 might have been helpful to have had a broader  
22 consideration of this bill, and I assume that's  
23 your point.

24 SENATOR WALDON: I thank the  
25 gentleman very much, Mr. President.

1 I thank you, Mr. President.

2 ACTING PRESIDENT KUHL: Senator  
3 Leichter, you still have the floor.

4 SENATOR LEICHTER: Yeah. I did  
5 want to say I understand it's a one-house bill,  
6 and I differ with some of my colleagues. I  
7 don't think that necessarily means we shouldn't  
8 act on it because we're -- we're a separate  
9 chamber. We do what we think is right, but I do  
10 think that in this area, Senator Larkin -- and  
11 that's why it's different. You mentioned a lot  
12 of other bills that were considered today where  
13 we may not have had the direct input by a  
14 department -- although I'm sure that Senator  
15 Volker worked with people in the criminal  
16 justice field on his bill, but this is an area  
17 that is really the responsibility of the  
18 Comptroller and if the Comptroller says it's a  
19 good bill, I don't care if the Assembly doesn't  
20 like it. I'm going to vote for it, but if the  
21 Comptroller says it has a problem, then I think  
22 we should address it. It's a very technical  
23 area. It's an area where you obviously  
24 understand it. I don't claim to have any  
25 particular expertise on it, but I think we have

1 a responsibility in proceeding in a careful  
2 manner to find out what the Comptroller wants.  
3 We may not -- maybe we'll disagree with him, but  
4 I am frankly somewhat surprised that once the  
5 bill was printed, your staff didn't call the  
6 Comptroller's office and say, Now you have the  
7 bill. What is your position on it?

8 So I'm going to vote against it  
9 unless we know what the chief fiscal officer of  
10 the state of New York has to say about it.

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

13 SENATOR PATERSON: Mr. President,  
14 if Senator Leichter would yield.

15 ACTING PRESIDENT KUHL: Senator  
16 Leichter, do you yield to a question from  
17 Senator Paterson? The Senator yields.

18 SENATOR PATERSON: Senator  
19 Leichter, in order to try to bring finality and  
20 brevity to the process -- because I haven't  
21 eaten but I'm getting a little fed up -- I  
22 decided to call the Comptroller's counsel from  
23 the chamber and also at the suggestion of  
24 Senator Volker and the Comptroller's counsel was  
25 not familiar with Senate Bill 5404. She was

1 familiar with Senate Bill 5398, which is in some  
2 way related, I imagine. There is an attorney  
3 that works in this specific area that's  
4 interested in contacting Senator Larkin and  
5 yourself.

6 The position of the office -  
7 it's not the official position, it's just kind  
8 of an idle conversation -- was they did not seem  
9 -- they're very familiar with the issue.  
10 They're very interested in examining the issue.  
11 They don't have any real recollection of  
12 interaction with too many other officers about  
13 the actual -- about the actual bill and they had  
14 never seen this Senate 5404 bill. They're  
15 familiar with Senator Larkin's interest and  
16 apparently they have talked to him in the past,  
17 but they seem to indicate that this is a new  
18 legislative proposal from their perspective.

19 SENATOR LEICHTER: Thank you.

20 I think in answering your  
21 question I just repeat the importance of our  
22 knowing what the comptroller's position is  
23 because this really is a field that he is expert  
24 in. He's charged by law in supervising these  
25 investments. Wouldn't we want to know what his

1 position is?

2 And let me tell you, Senator  
3 Larkin, that when I laid this bill aside, I -  
4 nobody prompted me. Nobody primed me. I just  
5 had that question as I looked at the bill  
6 without even having read all the provisions of  
7 it because frankly much of it I don't have  
8 sufficient experience in it, but it seemed to  
9 me, Hey, this is an area where we had a  
10 problem. The Comptroller was involved. What  
11 does the Comptroller say on this bill, and I  
12 think we ought to get that answer.

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

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

17 ACTING PRESIDENT KUHL: Call the  
18 roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT KUHL: Record  
21 the negative. Announce the results.

22 THE SECRETARY: Ayes 56, nays 1,  
23 Senator Leichter recorded -- ayes 55, nays 2,  
24 Senator Leichter and Paterson recorded in the  
25 negative.

1                   ACTING PRESIDENT KUHL: The bill  
2                   is passed.

3                   Senator Smith, why do you rise?

4                   SENATOR SMITH: Mr. President, I  
5                   request unanimous consent to be recorded in the  
6                   negative on Calendar Number 1129.

7                   ACTING PRESIDENT KUHL: 11...

8                   SENATOR SMITH: ...29.

9                   SENATOR WALDON: Mr. President.

10                  ACTING PRESIDENT KUHL: Without  
11                  objection, hearing no objection, Senator Smith  
12                  will be recorded in the negative on Calendar  
13                  Number 1129.

14                  The Chair recognizes Senator  
15                  Waldon.

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

18                  Yesterday I was called out of the  
19                  chamber on Senate business and not here when we  
20                  acted upon Calendar 870, Bill Number 5180. I  
21                  would like the record to reflect had I been here  
22                  and had I been able to vote at that time, I  
23                  would have voted in the negative.

24                  ACTING PRESIDENT KUHL: Calendar  
25                  Number 870, Senator Waldon?

1                   SENATOR WALDON: That's correct.

2                   ACTING PRESIDENT KUHL: Okay.

3                   The record will reflect that had you been in the  
4                   chamber yesterday when a vote on Calendar Number  
5                   870 was taken that you would have voted in the  
6                   negative.

7                   SENATOR WALDON: I thank you very  
8                   much, Mr. President.

9                   ACTING PRESIDENT KUHL: Senator  
10                  Padavan, why do you rise?

11                  SENATOR PADAVAN: Mr. President,  
12                  I would like to be, by unanimous consent,  
13                  recorded in the negative on Calendar Number  
14                  1106, Senate Bill 342.

15                  ACTING PRESIDENT KUHL: Without  
16                  objection, hearing no objection, Senator Padavan  
17                  will be recorded in the negative on Calendar  
18                  Number 1106.

19                  Senator Present.

20                  SENATOR PRESENT: Mr. President,  
21                  could we take up Calendar 1117, Senator  
22                  Velella's bill.

23                  ACTING PRESIDENT KUHL: The  
24                  Secretary will read the title to Calendar Number  
25                  1117.

1 THE SECRETARY: Calendar Number  
2 1117, by Senator Velella, Senate Print 4487, an  
3 act to amend the Public Authorities Law, in  
4 relation to exempting the New York City School  
5 Construction Authority from commissioning works  
6 of art.

7 SENATOR PATERSON: Explanation.

8 ACTING PRESIDENT KUHL: Senator  
9 Velella, an explanation of Calendar Number 1117  
10 has been requested by Senator Paterson.

11 SENATOR VELELLA: Senator, this  
12 bill we passed last year. Basically what it  
13 will do will be to remove the statutory obli  
14 gation that the School Construction Authority in  
15 the city of New York has to appropriate up to  
16 one percent of any construction costs to the  
17 purchasing of art in the schools.

18 The example -- if you'll remember  
19 back to last year where the Governor came to one  
20 of the schools in the Bronx, \$187,000 was spent  
21 on one so-called piece of art which was nothing  
22 more than an archway and some hangers dangling  
23 from it. The artist or the person who created  
24 this great work of art is no where to be found  
25 now. I don't know what happened to him but he

1       took his 187,000 and he's gone and he left us  
2       with this archway with a couple of hangers on  
3       it.

4                       This would allow for the school  
5       Construction Authority to spend up to one  
6       percent of the budget, if they so desired, but  
7       not be required to spend money on artwork. That  
8       money would be better spent in the school that I  
9       cite you the example in. We visited that school  
10      with the Governor. The elevator wasn't  
11      working. Certain rooms had broken windows with  
12      boards in the window. The \$187,000 would have  
13      better been spent on correcting some of the  
14      construction problems in that building rather  
15      than creating this so-called work of art.

16                      This in no way intends to destroy  
17      the concept that we need to make our young  
18      people sensitive to the arts. Some of the best  
19      artwork that I have seen in schools has been  
20      done by the students themselves and I might add  
21      at a much lesser cost than \$187,000 in this one  
22      particular project.

23                      Requiring that we put this money  
24      up for mandated artwork in schools when, in  
25      fact, it may be the School Construction

1 Authority's decision that we need some of this  
2 money to do some repair work or do some  
3 infrastructure work or whatever the case may be,  
4 we ought to leave that up to the School  
5 Construction Authority and not take construction  
6 money and mandate artwork.

7 As I indicated last year in the  
8 debate, there are many, many foundations and  
9 museums that will lend artwork to our schools.  
10 Even here in the Senate, we have some artwork  
11 that's being lent to us to decorate in some of  
12 the other rooms around the Capitol. I think  
13 that that would be a much better way to go than  
14 to make this money -- force it to be spent on  
15 this artwork which, in some cases, the value of  
16 the art, I guess is in the eye of the beholder.

17 ACTING PRESIDENT KUHL: Senator  
18 Paterson.

19 SENATOR PATERSON: Thank you, Mr.  
20 President.

21 If Senator Velella would yield  
22 for a question.

23 ACTING PRESIDENT KUHL: Senator  
24 Velella, do you yield to a question from Senator  
25 Paterson?

1                   SENATOR VELELLA:  Yes.

2                   ACTING PRESIDENT KUHL:  The  
3   Senator yields.

4                   SENATOR PATERSON:  Thank you, Mr.  
5   President.

6                   Senator Velella, certainly it's  
7   hard to put a numerical or financial value on  
8   artwork or how much should be spent for artwork  
9   and the example you cited, the famous kind of  
10  golden arches situation in the Bronx was  
11  appalling and really was an outrage.  I have a  
12  concern about whether or not we should address  
13  it in legislation such as that which you have  
14  proposed.

15                   The issue often is because of the  
16  fact that we are in the midst of a crisis where  
17  we have schools -- where we have students often  
18  sitting in the halls, whereas you pointed out in  
19  that situation the elevator wasn't working, poor  
20  school construction, lack of books, diminished  
21  facilities and other regards and materials that  
22  aren't existing, the fact is that often the  
23  enrichment and the enlightenment areas suffer  
24  from that and there is certainly a perception,  
25  and I think an honest one, that education in

1       itself suffers when we take those commodities  
2       away.

3                       There is a feeling sometimes that  
4       art would be synonymous with entertainment, that  
5       it's something that we don't actually need, but  
6       I remember an exhibit up here in 1988 that was  
7       in the Concourse. It was dinosaurs that was  
8       sent by the American Museum of Natural History.  
9       They were plastic facsimiles of the dinosaurs  
10      they had in their museum and when I went down  
11      there, I met the president of the museum, who I  
12      believe has since passed away. His name was Tom  
13      Nicholson and he was saying that in every  
14      archeological study that they had ever  
15      endeavored, that they found that no matter how  
16      primitive the culture was, there was some  
17      representation of art. If they found an old  
18      knife, there was some little insignia or some  
19      symbol that was put on the knife to represent,  
20      in a sense, the sensibility of that time and of  
21      that people and since that's so much a part of  
22      our culture to the extent that even in the Iron  
23      Curtain countries they denied freedom but they  
24      always had ballet, they always had different  
25      incentives for art, that this is something

1       that's endemic to sort of the human  
2       consciousness, and what I think was the feeling  
3       of those who put forth the legislation -- they  
4       may not have done it in the correct way. They  
5       may have been fallible to the extent that they  
6       allowed a situation that you documented to occur  
7       -- is that we have this situation that we don't  
8       want to lose the precious value of art and my  
9       question to you is, is there another way to, in  
10      a sense, stop a school from allowing that  
11      situation which probably sounded like a form of  
12      patronage -- they had somebody make that arch  
13      and it probably wasn't worth much at all and  
14      someone made a lot of money on it -- is there a  
15      way to accomplish that without passing  
16      legislation which would, because of financial  
17      issues, allow for the School Construction  
18      Authority to perhaps spend 100 percent of the  
19      construction dollars on just construction and  
20      leaving out the sense of artwork that I  
21      described?

22                    SENATOR VELELLA:  Senator, the  
23      reason why we have to do it by legislation is  
24      because the city, in their wisdom or lack of  
25      wisdom, has required and we have required in the

1 School Construction Authority enabling  
2 legislation that one percent of their budget  
3 must be spent on art.

4 What this bill would do is say it  
5 can be spent on art if the School Construction  
6 Authority deems it appropriate and necessary.  
7 We're giving them the option. We're not saying  
8 you cannot spend money. We're saying the  
9 priority shall be to build schools, to correct  
10 construction defects, provide the environment  
11 for education that we all agree should be done,  
12 the amenities that are necessary and ancillary  
13 to educating children and if there is enough  
14 money left, you can put it into artworks but not  
15 that one percent of the budget, whatever the  
16 number is to build a school must go to artwork  
17 so we get in the situation where people say we  
18 can't use this money to build. We have to spend  
19 it for art. Let's create an arch with a couple  
20 of hangers and pay 187,000 for it.

21 SENATOR PATERSON: Right. If  
22 Senator Velella would continue to yield.

23 SENATOR VELELLA: Certainly.

24 ACTING PRESIDENT KUHL: Senator  
25 Velella, do you continue to yield? The Senator

1 continues to yield.

2 SENATOR PATERSON: Senator, it  
3 was precisely your answer that creates my  
4 concern; in other words, when you said "if  
5 there's any money left over." I think in the  
6 constraints of the way our public schools are  
7 formulated right now, there will never be any  
8 money left over in the prioritization of where  
9 money should be distributed. Art and other  
10 enrichment areas have always suffered because no  
11 one knows what their true value is, and I think  
12 that that's why they tried to prescribe a value  
13 to it and in many ways open a door to the type  
14 of misuse of funds that you've described,  
15 \$187,000 for something that, you know -

16 SENATOR VELELLA: Well, Senator,  
17 can I respond to that? I am a product of the  
18 public school system within the city of New  
19 York. I went to PS 77, Junior High School 123,  
20 James Monroe and Christopher Columbus High  
21 Schools, all public schools within the city of  
22 New York. There was not one work of art worth  
23 \$187,000 or \$100,000 or \$50,000 in any of those  
24 schools and certainly I would believe you think  
25 I'm a cultured individual. I don't think that

1           because I come from the Bronx, you think I'm not  
2           cultured.

3                           SENATOR PATERSON:  No.  The  
4           thought never crossed my mind.

5                           SENATOR VELELLA:  Thank you.  So  
6           there is the answer.  If we have to establish  
7           priorities, I think there are alternatives to  
8           spending this money on artwork.  If the issue is  
9           -- and I've asked parents -- a safe classroom,  
10          an additional classroom, heating in the school,  
11          walls that aren't crumbling, ceilings that  
12          aren't leaking or a nice piece of art in the  
13          corner, what would you prefer?  Everyone that  
14          I've ever asked has said, I want a safer  
15          environment, a decent classroom and if there's  
16          money left over, certainly the arts and the  
17          culture are necessary to a broadened education  
18          but it always wasn't that we needed expensive  
19          artwork.

20                           I would say that the schools you  
21          went to didn't have expensive artwork but I  
22          consider you a cultured, sensitive, warm  
23          individual who has a good sensitivity to the  
24          art.  You don't need to spend money to develop  
25          culture.  Some of the poorest people in our city

1 and in our state are great benefactors of the  
2 arts. They create art that is worth more than  
3 some of the artists that are paid big dollars.  
4 Certainly you've seen some of the examples of  
5 work in your own district that aren't paid big  
6 prices but good, quality artwork with a  
7 sensitivity to the needs of people with an  
8 ability to express the plight of any particular  
9 individual. All of that is done without  
10 spending big money.

11 Let's let some of the museums,  
12 some of the foundations provide some of those  
13 artworks that we need. Let's let the students  
14 create some art for themselves and, yes, if  
15 we've provided a good, safe school with decent  
16 classrooms, with good facilities and we have  
17 money to invest in art to develop this cultural  
18 aspect, let's do it but that's not the  
19 priority. We can't just keep spending wildly  
20 and say kids need to have some great artwork  
21 available to them. Let's spend the money on  
22 that and so what if the roof is leaking and  
23 ruins the artwork. We don't have to fix the  
24 roof. We bought artwork. It's silly.

25 Let's establish the priorities,

1 good, quality education and good, sound  
2 buildings and the ancillary things that we all  
3 would like to provide -- artwork isn't the only  
4 thing. There's a lot for educational  
5 enrichment, a lot of experiences that people  
6 should be exposed to but not at the expense of  
7 safe, decent classrooms, safe, quality schools,  
8 adequate space. All of those things come first.

9 ACTING PRESIDENT KUHL: Senator  
10 Paterson, do you want a second time or do you  
11 want to try for three?

12 SENATOR PATERSON: Why not, Mr.  
13 President. Especially with Kim Kelly's example  
14 for all of us to uphold, I should have four  
15 chances.

16 If the Senator would continue to  
17 yield.

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

20 SENATOR VELELLA: Yes.

21 ACTING PRESIDENT KUHL: The  
22 Senator continues to yield.

23 SENATOR PATERSON: Senator, if  
24 you talked to people who work in the industry  
25 and certainly people from the New York State

1 Council on the Arts and people who are involved  
2 in arts appreciation, what seems to be the  
3 complaint that you always hear is exactly that  
4 situation, that when weighed against issues of  
5 school construction or maintenance or providing  
6 for heat and hot water in the schools -- and  
7 that's how the argument is always termed -  
8 obviously the preference would be for the  
9 latter. The preference would be for an  
10 environment that is safe, an environment that  
11 provides for an educational opportunity, but  
12 what we're saying is when you get down to the  
13 last dollars that are being spent, that quite  
14 often there is, in a sense, a connection between  
15 issues of construction that may not be life  
16 saving or rendering to the environment as  
17 opposed to art appreciation and that the issue  
18 of art appreciation always loses because someone  
19 always gets up and says where they went to  
20 school, for instance, as you did and that they  
21 seem to be a cultured person but they didn't  
22 necessarily find that in the schools, that there  
23 are other things that the school offers, but  
24 what we're saying is that all of these things -  
25 that all of these things together provide for

1 the kind of environment that we would like for  
2 children to experience in the school and the  
3 artwork offered by children is a part of it and  
4 that is inexpensive but it shouldn't be confined  
5 in a way that we never spend any dollars to try  
6 to create an inherent appreciation of arts and  
7 culture and that's why we spend a lot of money  
8 seemingly to preserve the history and culture  
9 when we landmark a lot of these buildings  
10 because of the way they are built and the  
11 culture that they actually reflect.

12 So all I'm suggesting to you is  
13 that you take another look at how we might be  
14 able to preempt the misuse of the dollars and  
15 manage the money in a financially responsible  
16 way, that rather than just removing the money in  
17 total -- because a lot of times it does take  
18 some money to provide for an atmosphere,  
19 particularly when it comes to architecture, it's  
20 very expensive to create the kind of beauty that  
21 exists when one looks at a fine piece of art or  
22 magnificently organized building as it's  
23 constructed and what I'm just asking you is  
24 let's not talk about the initial dollars that  
25 are spent.

1                   What about the last dollars in  
2                   that budget? What are they going to that's more  
3                   important than perhaps to create an atmosphere  
4                   that will make it possible for children to learn  
5                   and let children particularly who do live in the  
6                   inner cities that we are willing to spend some  
7                   money not only to create a safe environment but,  
8                   yes, to create a beautiful environment,  
9                   something that they can take pride in, and my  
10                  question is, are the last dollars that are spent  
11                  prior to this one percent, the other 97th and  
12                  98th and 99th penny to each dollar, is it that  
13                  important that we have to now go back and change  
14                  the law because somebody found an exception, a  
15                  situation where we're now legislating against  
16                  one archway at the expense of a lot of other  
17                  buildings?

18                   SENATOR VELELLA: My response to  
19                   that, Senator, is if we were talking in a dream  
20                   world or in Utopia, I would agree with you 100  
21                   percent, but I know as well as I are going to  
22                   our colleagues, going to the Governor and saying  
23                   we need more building aid for our educational  
24                   system. We need more money to construct new  
25                   schools because our schools are overcrowded in

1 the city of New York and we're trying to impress  
2 on our colleagues from upstate and from out of  
3 the city of New York that we have a real need  
4 for extra dollars to build schools and make  
5 repairs in a system that is crumbling from age  
6 in many buildings, we additionally need new  
7 schools. The School Construction Authority is  
8 trying to do that.

9 How valid is our argument that we  
10 need more money to build those schools, more  
11 monies to do those repairs if we're taking one  
12 percent of the budget and spending it on  
13 artwork? That means we have enough money to  
14 provide the safe environment and the adequate  
15 space that you and I agree are needed in the  
16 city of New York. We can't eat with both  
17 hands. We can't talk out of two sides of our  
18 mouth, but if we want our upstate colleagues to  
19 sympathize with our need, to build new schools,,  
20 to create new classrooms, to repair crumbling  
21 buildings, we can't justify it by saying we're  
22 spending in one school 187,000 on art and one  
23 percent of all those millions and millions of  
24 dollars on artwork.

25 The priorities should be adequate

1 buildings, enough space for everyone so we don't  
2 have to double classes, so we don't have to  
3 cramp people like ants or anchovies in a can  
4 into a classroom and pack them in tight. We  
5 want to have them this class sizes that they can  
6 learn in. That is more of a priority than a  
7 piece of artwork or some creative work that's  
8 done by some local sculptor.

9 I think, yes, they're important.  
10 All those people that are in the arts, they're  
11 all very benevolent people. Let them contribute  
12 of themselves to the education of our young  
13 people.

14 The Council on the Arts spends  
15 fortunes. We appropriate tons of money for  
16 artistic needs, to Philharmonics, for artwork.  
17 Let them share some of that with our young  
18 people. Let us build the schools and let us go  
19 to our colleagues and hold our heads up high  
20 that every dollar they send to the city of New  
21 York is being put into adequate educational  
22 facilities for our children and not being wasted  
23 in a sense of a priority for artwork over  
24 construction and then we want more money.

25 ACTING PRESIDENT KUHL: Senator

1 Paterson.

2 SENATOR PATERSON: On the bill,  
3 Mr. President.

4 ACTING PRESIDENT KUHL: Senator  
5 Paterson, on the bill.

6 SENATOR PATERSON: There is an  
7 Asian philosopher whose wisdom is such that at  
8 times he, in history, has risen to the level of  
9 almost being considered a prophet, known as the  
10 bodhisattva and the bodhisattva is supposed to  
11 have done so many gracious things for people  
12 that it is said that there is ambrosia that  
13 stems from him that reaches down to the darkest  
14 depths of hell and in many of the environments  
15 that students learn, there is a real lost dream  
16 and a real lost concept of what Utopia even  
17 would be.

18 So when Senator Velella refers to  
19 what we could do if we lived in the perfect  
20 world, if this were Shangri-la, the whole idea  
21 is to try to instill in younger people the  
22 feeling of achievement, the feeling of having  
23 dreams and to create the loftiest sense of self  
24 importance and that is perhaps the only thing  
25 they might have and maybe the most inspiring

1 gesture that we as a society through our  
2 educational institutions could be making to try  
3 to tempt the young mind, to look beyond the  
4 labyrinth of drugs and crime and unemployment  
5 and poor, inadequate health care facilities and  
6 often a poor, inadequate educational environment  
7 and a failed educational system itself and many  
8 of the ways that that's achieved is not as  
9 intellectual, sometimes it's instant.

10 When you look at a beautiful  
11 painting, what is it that reaches out and  
12 touches you? How do you know that you like a  
13 beautiful song when you hear it? It's something  
14 that kind of goes beyond the notes and the  
15 music, beyond the pictures and the colors that  
16 actually touches you and it's the -- it's that  
17 way in which we're moved toward things that art  
18 touches us. It's misunderstood in this decade  
19 of budgets and crunching numbers and finding the  
20 resources to provide an educational environment  
21 but it's just as important as reading and  
22 writing or any kind of understanding of just the  
23 required curricula and it was in that sense that  
24 the drafters of the legislation reached out and  
25 decided that they weren't just going to say if

1 we spent all the money and we have any money  
2 left over -- we never have any money left over,  
3 if you look at the world from that prism, but if  
4 you recognize that it is much a part of the  
5 world as mathematics or English or the study of  
6 history, that is it is just as important to the  
7 development of the human mind and it cannot be  
8 left just for philanthropy or charity or for  
9 those who recognize that reaching back and  
10 imploring youth to understand it, that it has  
11 something to do not only with our culture but  
12 our consciousness, that is the reason that we  
13 feel that it should be written into the budget  
14 and the fact that unfortunately a couple of  
15 individuals who were not thinking in the best  
16 interest of children and were probably thinking  
17 in the interest of corruption abused the process  
18 as they did in the example that Senator Velella  
19 described, that's the reason that perhaps in  
20 that situation we should find ways to minimize  
21 the abuse of this opportunity, but I don't think  
22 we do it by sacrificing a great opportunity to  
23 show the younger people the importance of our  
24 culture and that is really as effective as  
25 stopping juvenile delinquency or violence

1       between young people and each other or the  
2       mistreatment and disrespect that young people  
3       have for their elders and their school.

4                    You'll always notice when you  
5       have a bunch of young people around that if you  
6       put them in an environment that has organization  
7       to it, that they respond to it and we think that  
8       it was at least worth one percent, one penny out  
9       of a dollar that we would spend on the school  
10      construction budget.

11                   ACTING PRESIDENT KUHL:   Senator  
12      Lachman.

13                   SENATOR LACHMAN:   Will the  
14      Senator yield to a couple more questions?

15                   ACTING PRESIDENT KUHL:   Senator  
16      Velella, do you yield to Senator Lachman?

17                   SENATOR VELELLA:   Yes, Senator.

18                   ACTING PRESIDENT KUHL:   The  
19      Senator yields.

20                   SENATOR LACHMAN:   The intent of  
21      the bill, I assume, is to not only save money  
22      but change what is mandatory into something  
23      which is optional.  This will not eliminate the  
24      expenditure of one percent of cost for the use  
25      of art.

1                   SENATOR VELELLA: Senator, the  
2 answer is yes and no. No, it is not to save  
3 money. The total appropriation remains the  
4 same, the monies that will be spent. All it  
5 does is relieve the School Construction  
6 Authority of the obligation of saying whatever  
7 we're spending on a building, one percent must  
8 be given to create artwork. If they choose to  
9 devote a half of one percent, if they choose to  
10 devote three-quarters of one percent or one  
11 percent, they can.

12                   SENATOR LACHMAN: So it becomes  
13 discretionary and optional.

14                   SENATOR VELELLA: Absolutely.

15                   SENATOR LACHMAN: Another  
16 question related to that. Does the local  
17 educational authority in New York City, not the  
18 local school board but the Central Board of  
19 Education have input in this discretionary  
20 optional decision, or is it left to the School  
21 Construction Authority?

22                   SENATOR VELELLA: I believe that  
23 it's left to the School Construction Authority  
24 with consultation with the Central Board as to  
25 what they're going to do in a particular school,

1 but I don't believe that the Central Board could  
2 veto or mandate that they spend anything. It  
3 would be up to the Authority.

4 SENATOR LACHMAN: In consultation  
5 with the Cultural Educational Authority.

6 SENATOR VELELLA: Certainly.

7 SENATOR LACHMAN: I also happen  
8 to believe in the importance of art and works of  
9 art and the works of masters of art, but I feel  
10 very strongly that the greatest art in education  
11 is the art of teaching, the art of learning and  
12 the art of good school administration, and if  
13 this does not impede that artwork, which is not  
14 yet a science, then I would support the  
15 legislation.

16 ACTING PRESIDENT KUHL: Senator  
17 Abate.

18 SENATOR ABATE: Yes, on the  
19 bill.

20 ACTING PRESIDENT KUHL: Senator  
21 Abate on the bill.

22 SENATOR ABATE: I want to thank  
23 Senator Velella for moving the debate away from  
24 whether Senator Paterson is cultured or whether  
25 he's a good human being. I mean, maybe if he

1 had been exposed to more art, he would even be a  
2 better human being, but I'm glad that debate is  
3 not going to take place.

4 SENATOR VELELLA: There can be no  
5 better human being.

6 SENATOR ABATE: I'm glad that  
7 debate is not going to take place today because  
8 otherwise we would be here probably into the wee  
9 hours of the morning.

10 I cannot support the bill for the  
11 very reasons that Senator Velella says that this  
12 bill is adequate because he says, well, if  
13 there's some money available at the end of the  
14 day, we'll invest in this art and that's our  
15 problem with the philosophy of whether we should  
16 invest in art.

17 We still consider investing in  
18 art a luxury and if you look at what is  
19 happening around the world, Germany invests \$27  
20 per capita in the arts. France invests \$32 per  
21 capita in the arts and we in the United States  
22 invest 68 cents per capita on the arts, and I do  
23 not believe that arts is a luxury. In fact, it  
24 is part of our educational process. It enriches  
25 our soul, our spirit, our mind. It develops our

1 ability, particularly in some young people who  
2 will follow their careers, who have talent in  
3 the arts. It inspires them and also exposes  
4 them to the arts so that they can follow those  
5 careers and they can express some of their  
6 feelings, in some instances some of their anger  
7 and challenge some of their frustrations in a  
8 very positive way, and what we miss is that we  
9 are dependent upon the arts for our economy.

10 One of the reasons New York City  
11 is one of the greatest cities in the world is  
12 because of the arts. The national -- the net  
13 industrial output of arts in the United States  
14 is over \$300 billion or six percent of our gross  
15 national product. 1.53 million artists are in  
16 the United States. That's close to three  
17 percent of our work force. So the arts drive  
18 our economy. The arts make us different from a  
19 civilized versus an uncivilized nation. So we  
20 should be doing more, not less in terms of  
21 investing in the arts.

22 If this were part of a counter  
23 proposal that said, yes, we'll take money away  
24 from this capital construction but we'll find  
25 money elsewhere to increase education in the

1 arts, to increase young people's exposure to the  
2 arts, maybe I could support this bill, but there  
3 is no companion bill that calls for a further  
4 investment in the arts and without it, I must  
5 oppose the bill today.

6 ACTING PRESIDENT KUHL: Senator  
7 Montgomery.

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

10 I am going to speak in opposition  
11 to this legislation. I won't ask the Senator to  
12 answer any questions because I think he's  
13 answered most of the questions.

14 I just want to remind my  
15 colleagues that what Senator Velella is talking  
16 about and how he explains what he is trying to  
17 do is that if we have a choice to spend "X"  
18 number of dollars, would we spend it on an  
19 additional classroom or fixing the ceilings or  
20 the roof or whatever, the example he uses, or  
21 put it into more learning or spend it on art,  
22 and I think that that is not -- not the  
23 appropriate question because all of those things  
24 are separate in terms of the funding.

25 The issue is whether or not we

1 set aside a very, very small minuscule  
2 percentage of the construction funds for a  
3 school that should go into putting some art in  
4 that school, and I think that certainly I  
5 believe that the beauty of this room is in the  
6 artwork that has gone into the construction of  
7 this room and this building, including the  
8 staircase and every other aspect of it.

9 So clearly artwork as part of  
10 construction is extremely important. It is not  
11 just an addition. It is part of the history and  
12 it expresses for a particular period in time for  
13 all eternity something very significant about  
14 that building and if there is no other place  
15 where we want to have something of that  
16 significance indicated and built into, it should  
17 be our schools.

18 I think that this is -- it's a  
19 statement in terms of how we value something  
20 that is not totally unique but certainly  
21 absolutely crucial and specific to the culture  
22 of New York State and that is our magnificent  
23 art and our tremendous community of artists.

24 So we want to lift them up. We  
25 want to enhance our buildings. We want to make

1 statements for all eternity that says this is a  
2 people when they lived, when they excavate our  
3 schools and our Capitol and whatever they're  
4 going to do two or three centuries hence,  
5 they're going to find what we valued in terms of  
6 how we built into our major institutions a  
7 statement on the arts.

8 So I think this is very  
9 important. I certainly urge my colleagues to  
10 vote against this. I think Senator Velella is  
11 angry and frustrated because of something that  
12 he thinks is absolutely ugly and it was too much  
13 money spent and he has come up with this  
14 legislation, but I don't really believe that in  
15 his heart he wants to strip our schools of this  
16 important thing, artwork, that should be part of  
17 the construction of every single school that we  
18 build from now on.

19 So I will vote no, Mr. President.

20 ACTING PRESIDENT KUHL: Senator  
21 Waldon.

22 SENATOR WALDON: Mr. President,  
23 on the bill.

24 ACTING PRESIDENT KUHL: Senator  
25 Waldon, on the bill.

1                   SENATOR WALDON: I recall at PS  
2                   70 in Brooklyn as a child Dr. John B. King, our  
3                   principal, Mrs. Gardner, one of my teachers,  
4                   Mrs. Oliver, Lucille Oliver, another of my  
5                   teachers, made sure that not only did I  
6                   understand what art was about but that I  
7                   understood what black art was about. At that  
8                   time we were called colored people. Later on we  
9                   became Negro. Later on we became black and now  
10                  is it fashionable to call ourselves African  
11                  American, but I have been comfortable with all  
12                  of those because at that stage of my infancy and  
13                  maturation, I was validated as not the me that  
14                  nobody knows but Alton R. Waldon, Jr., a very  
15                  proud young black boy at that time growing up in  
16                  Brooklyn.

17                         The reason that I was so  
18                         validated was that not only did we learn about  
19                         Paul Laurence Dunbar and the Negro National  
20                         Anthem, we learned about Sojourner Truth and  
21                         Harriet Tubman, Denmark Vesey and all of the  
22                         sheroes and heroes of our proud past but within  
23                         that spectrum of learning about who we were, we  
24                         also were given an appreciation of the art, the  
25                         arts and the music.

1 I can remember taking tests.  
2 "Morning is dawning and Peer Gynt is yawning  
3 and Grieg is washing his face" was the riddle  
4 that we used to recognize the songs that were  
5 played when we had a music appreciation test. I  
6 can remember being taken to the museums and  
7 shown the great artists not only of this country  
8 but other countries when they were brought for  
9 exhibitions, but I can recall feeling very proud  
10 when Mrs. Oliver would point out to me and say  
11 this is a great black artist and you ought to be  
12 proud of your heritage and who you are, and so  
13 the reason that I oppose this legislation is  
14 more parochial than my colleagues have spoken to  
15 this.

16 The reason I oppose it is that I  
17 believe the opportunity for young blacks and  
18 Latinos and Hispanics, Asians and white children  
19 will not be given a full opportunity to know all  
20 about themselves that they could know if the  
21 arts purchased for their schools would validate  
22 who they are.

23 I think it's a huge error. It is  
24 a huge error not to use these pennies in the  
25 construction budget to ensure that people will

1       feel very, very good about themselves, and I  
2       hope that others will see it not only the way my  
3       colleagues who have spoken against the bill have  
4       seen it but perhaps even as Al Waldon sees it,  
5       that we need to validate who our children are so  
6       that they each can be more proud of themselves  
7       and less a problem of us -- for us at a later  
8       date in their lives.

9                       Thank you very much, Mr.  
10       President.

11                      ACTING PRESIDENT KUHL:  Senator  
12       Marcellino.

13                      SENATOR MARCELLINO:  I apologize  
14       for extending the hour.  It's late in the day  
15       but some things have been said I just couldn't  
16       resist commenting on.

17                      I heard nothing in Senator  
18       Velella's comments and I read nothing in the  
19       bill that would prohibit everything that Senator  
20       Waldon would like to see, everything that  
21       Senator Montgomery would like to see, everything  
22       that Senator Abate and Senator Paterson would  
23       like to see go on in the schools.  He is not  
24       talking about in-classroom education on art.  
25       There is nothing in that bill that would limit

1 the teaching of art and art appreciation to  
2 students, taking students on trips, taking them  
3 to see master pieces, teaching them about  
4 masterpieces and all the rest of them.

5 What he is saying is in a city  
6 where schools couldn't open because they  
7 couldn't repair their walls or they couldn't  
8 repair leaking buildings or they didn't have  
9 money to get asbestos out, we're going to spend  
10 money on picture on the wall. That's what we're  
11 talking about.

12 Now, Senator Montgomery, if you  
13 have a choice -- and I'm speaking on the bill  
14 and I'm not trying to ask you a question, but if  
15 you have a choice between opening a school and  
16 reducing class sizes in already overcrowded  
17 buildings and buying a painting on the wall, I  
18 am sure you would put those students in a safe,  
19 dry, clean place to get an education where they  
20 could have a teacher to teach them art  
21 appreciation, instead of in a building where  
22 there's buckets in the corner or teaching them a  
23 stairwell, which I have done in my 20 years of  
24 teaching in the city of New York, teaching in  
25 stairwells, lavatories, gymnasiums, cafeterias

1 and other places not designed for education.

2 It's about time we put our money  
3 where our mouth is. You're either for education  
4 and quality schools or you're not. This is  
5 construction money and it's offering an option.  
6 It's not taking away anything. It's giving the  
7 city of New York, Board of Education an option  
8 to do something with their money that they don't  
9 currently have. It will not take anything away  
10 from art appreciation, art education in any way,  
11 shape or form. It's about time we got some  
12 common sense to this particular bill and this  
13 particular debate.

14 I would vote aye and urge  
15 everyone else to.

16 ACTING PRESIDENT KUHL: Read the  
17 last section.

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

20 ACTING PRESIDENT KUHL: Call the  
21 roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT KUHL: Senator  
24 Marchi to explain his vote.

25 SENATOR MARCHI: Yes. I believe

1 everybody, including the sponsor of the  
2 legislation, is not hostile to the arts.  
3 Actually he speaks of discretion in its  
4 application.

5 With no intent to defeat the  
6 bill, I cannot support it because I think that  
7 art is an enormous inestimable value to the  
8 education of a youngster. The earlier they're  
9 exposed to beautiful art -- I come from a father  
10 who went to Beaux-Arts school and his statues  
11 remain standing in Griffith Park in California.

12 There is something -- there is  
13 something edifying. There is something that  
14 enriches the spirit. Man does not -- and I say  
15 "man" in a politically correct fashion -- does  
16 not live by bread alone and unless -- unless  
17 there is something that appeals to the inner  
18 sentiments of humanity, there is a loss and I  
19 think it's a wise investment. It ought to -- I  
20 think it walks ahead of any mundane subject that  
21 we may be starting thereafter.

22 So I would hope that if this bill  
23 prevails and becomes law that some of the  
24 sentiments that have been reflected here that I  
25 thought were positive in nature will remain on

1 the side of exercising that discretion in favor  
2 of an integral part of the cultural development  
3 of a young man or woman.

4 SENATOR LEICHTER: Mr. President.

5 ACTING PRESIDENT KUHL: Senator  
6 Leichter, to explain his vote.

7 SENATOR LEICHTER: Explain my  
8 vote. There's no question that this bill down  
9 grades an artistic amenity which ought to be  
10 part of every school and it ought to be part of  
11 education and to create the sort of atmosphere  
12 at which people are going to learn.

13 Senator Marcellino is right. We  
14 shouldn't have teachers teaching in stairwells.  
15 We shouldn't have buckets catching water because  
16 the roofs aren't being fixed but the answer  
17 isn't to take the money from the arts, which is  
18 only a small one percent. You might just as  
19 well say that we ought to have schools built of  
20 cinder blocks, Quonset huts, which, in fact, we  
21 have. We ought to have the proper environment  
22 in which students are going to learn and part of  
23 that is certainly to have a pleasant, a  
24 conducive environment, and I could just tell you  
25 that if you take away the requirement that one

1       percent goes for art, you're never going to see  
2       art in the schools and the schools will be  
3       harmed. The schools will be hurt and, Senator  
4       Marcellino, for teachers like you, dedicated  
5       teachers who gave so much to the system, it's  
6       going to be that much harder to teach and to  
7       motivate the children.

8                       I vote no.

9                       ACTING PRESIDENT KUHL: Senator  
10       Leichter will be recorded in the negative.

11                      Senator Montgomery, to explain  
12       her vote.

13                      SENATOR MONTGOMERY: Yes, Mr.  
14       President. I am certainly voting no and, as I  
15       read this legislation, I see on line 7 that "The  
16       Authority shall not enter into an agreement with  
17       the City Board that requires compliance with any  
18       such provision or that requires the Authority to  
19       acquire or commission works of arts."

20                      I -- I understand that to mean  
21       that we are essentially instructing the  
22       authority not to enter into an agreement even if  
23       the City -- the City Board of Ed' or whatever  
24       entity at the local level wants to do it.

25                      Maybe I am not reading this

1           correctly, but I certainly reiterate that we at  
2           this time in our history should by no means be  
3           withdrawing from a commitment to support and  
4           enhance and expand the appreciation and the  
5           access to artwork especially by young people, by  
6           students and wherever they are in this state and  
7           most especially in New York City.

8                         So I am voting no on this bill.

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

11                        Senator Waldon, to explain his  
12           vote.

13                        SENATOR WALDON:  Thank you very  
14           much, Mr. President.

15                        I appreciate and respect the  
16           passion shown by my colleague from the other  
17           side of the aisle in regard to the education of  
18           our children and to where the priorities of this  
19           body should be.

20                        I have argued, as have others, on  
21           this side of the aisle, for time immemorial,  
22           that our priorities in regard to construction -  
23           construction of prisons is I ill-put, that if we  
24           were to take the resources of the state and  
25           address them to where they are most needed, we

1           wouldn't have one out of every four children  
2           entering schools in New York City failing to  
3           graduate from high school. We wouldn't have so  
4           many children from the 11 community school board  
5           districts ending up in the prisons of this  
6           state, from the 17 Assembly Districts becoming  
7           80 percent of the prison population of this  
8           state, if but our priorities were in the right  
9           place.

10                           And so I don't want to see even a  
11           slight erosion of the obligation, moral  
12           obligation of this legislative body in regard to  
13           ensuring children not only will have the right  
14           education but will be validated as to who they  
15           truly are.

16                           For those reasons, I must oppose  
17           this proposal.

18                           ACTING PRESIDENT KUHL: Senator  
19           Waldon will be recorded in the negative.

20                           Senator Velella, to explain his  
21           vote.

22                           SENATOR VELELLA: Mr. President,  
23           if we were arguing this case in a vacuum and  
24           this were the sole dollars to be given for the  
25           arts, all of my colleagues on the other side of

1 the aisle would be absolutely correct, but I  
2 would like to point out to you that the proposal  
3 in this year's budget and last year's budget  
4 which we passed is \$33 million to arts councils  
5 in your local communities. That does not count  
6 the fact that we are paying in our education aid  
7 formula for all of those art teachers in your  
8 schools, the art supplies and the educational  
9 enrichment programs and many of us in this room  
10 provide additional funding for those educational  
11 enrichments that can have children and students  
12 expressing themselves in the arts and, Senator  
13 Montgomery, I would just point out that the bill  
14 says exactly what I said. The Construction  
15 Authority shall not be required to spend the  
16 money. They have the option. That's what the  
17 meaning in the words that you read relates to.  
18 They shall not be forced to enter into a  
19 contract that mandates they must spend one  
20 percent of the budget on the arts. It says they  
21 can't be forced to but they may if they come to  
22 an agreement and that's how exactly I  
23 represented the bill.

24 I think that we ought to just put  
25 this in its proper place. This is school

1 construction money that is desperately needed in  
2 the city of New York to relieve overcrowding and  
3 to make conditions in our classrooms safe. We  
4 are not closing the door to art.

5 You and I both vote for a great  
6 deal of bills that put arts money in. \$33  
7 million, that's a lot of art money. That's just  
8 in the Council on the Arts and, Senator Abate, I  
9 would just like to point out to you that there  
10 is a proposal here that you can vote for that  
11 Senator Goodman has, and I believe you'll have  
12 an opportunity for additional arts works to be  
13 an infrastructure -- construction fund for  
14 creating art facilities, museums, bringing up  
15 the Hayden Planetarium, the Bronx Zoo, as well  
16 as some of the cultural institutions. We need  
17 to are build those. Senator Goodman has a bill  
18 that would do that through some authorities.

19 So we are not arguing, should we  
20 close the sensitivity of our students to the  
21 cultural aspects of society or to the  
22 availability of exposure to artwork. We're  
23 saying if we put money up to build decent  
24 classrooms, let's spend it on building decent  
25 classrooms. We have money up for arts works.

1 All of those art teachers, all of those art  
2 supplies and money you and I bring back to our  
3 districts support that. Let's build the  
4 classrooms.

5 Move the bill.

6 ACTING PRESIDENT KUHL: Senator  
7 Velella will be recorded in the affirmative.

8 Senator Paterson, to explain his  
9 vote.

10 SENATOR PATERSON: Mr. President,  
11 to explain my vote.

12 In the spirit of trying to become  
13 the best person I can possibly be, which will  
14 give comfort to Senator Abate and others, I  
15 refer you to a work of art from Picasso,  
16 Mineromity. It's a picture of a bull fight.  
17 The bull has just slain the bull fighter. You  
18 can see the pain and right behind the bull  
19 fighter standing between the bull and in his  
20 path is a little girl holding a flower, and  
21 that, in my opinion, is the classic collision of  
22 might versus sensitivity. We see it every day.  
23 The Cabbage Patch doll versus Power Rangers, the  
24 Majority versus the Minority, once again,  
25 insensitivity has raised itself in our

1 discussion because, in all of our remarks, we  
2 were referring not to the budget of the school  
3 but the construction itself.

4 The district I represent, the  
5 area north -- in northern Manhattan, 50 percent  
6 of the land-based area is north of 96th Street.  
7 Only ten percent of the landmark property is  
8 north of 96th Street because for some reason,  
9 somebody always thinks that those areas and  
10 those edifices don't reflect the same history  
11 and culture but they do, and that's why we  
12 wanted so much to make sure that it was  
13 concluded even in construction, not left to some  
14 other budget, not left to philanthropy.

15 Therefore, I vote no, Mr.  
16 President.

17 ACTING PRESIDENT KUHL: Senator  
18 Paterson will be recorded in the negative.  
19 Announce the results.

20 THE SECRETARY: Those recorded in  
21 the negative on Calendar Number 1117, Senators  
22 Abate, Connor, Leichter, Marchi, Markowitz,  
23 Montgomery, Paterson, Sampson, Smith and  
24 Waldon. Ayes 47, nays 10.

25 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 Senator Present.

3 SENATOR PRESENT: Mr. President,  
4 is there any housekeeping to be done?

5 ACTING PRESIDENT KUHL: There  
6 is. We'll return to the order of motions and  
7 resolutions.

8 The Chair recognizes Senator  
9 Marcellino.

10 SENATOR MARCELLINO: Yes, Mr.  
11 President. On page number 23, I offer the  
12 following amendments to Calendar Number 670,  
13 Senate Print Number 2467 and ask that said bill  
14 retain its place on the Third Reading Calendar.

15 ACTING PRESIDENT KUHL: The  
16 amendments to Calendar Number 670 are received  
17 and adopted and the bill will retain its place  
18 on the Third Reading Calendar.

19 SENATOR MARCELLINO: Thank you,  
20 sir.

21 ACTING PRESIDENT KUHL: Senator  
22 Present.

23 SENATOR PRESENT: Mr. President,  
24 there being no further business, I move we  
25 adjourn until Monday, June 9th at 3:00 p.m.

1                   ACTING PRESIDENT KUHL: Without  
2           objection, the Senate stands adjourned until  
3           Monday, June 9th, at 3:00 p.m., Monday, June  
4           9th, 3:00 p.m., intervening days to be  
5           legislative days.

6                   (Whereupon, at 2:14 p.m., the  
7           Senate adjourned.)

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