ALBANY, NEW YORK

June 4, 1997

11:05 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

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

(A moment of silence was observed.)

Reading of the Journal.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

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

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

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

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

ACTING PRESIDENT KUHL: The Secretary will read.

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

the Laws of 1994.

ACTING PRESIDENT KUHL: Senator Maziarz.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 38.

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

Senator Johnson.

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

Thank you.

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

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

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

ACTING PRESIDENT KUHL: The substitution is ordered.

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

Senator Skelos.

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

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Yes. If we

could read Resolution 1530 first in its entirety.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Libous, on the resolution.

SENATOR LIBOUS: Thank you, Mr. President.

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

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

SENATOR LIBOUS: Thank you, Mr. President.

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

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

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

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

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

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

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

Senator Marcellino.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

He then graduated from school,

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

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

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

Wheelchair Tennis Champion.

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

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

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

ACTING PRESIDENT KUHL: Thank you, Senator Libous.

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

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

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

Senator Marcellino.

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

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

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

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

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

(There was no response.)

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Marcellino.

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

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

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

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

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

Senator Seward.

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

spouses.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill

is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

THE SECRETARY: Section 9. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

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

living in Harlem.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay it aside.

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

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

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 52, nays 2,

Senators Cook and Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

THE SECRETARY: Section 2. This

act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR MARCELLINO: Thank you, Mr. President.

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

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

beginning with Calendar Number 680 on page 23.

The Secretary will read.

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

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

of art.

SENATOR MARCELLINO: Lay that aside temporarily.

ACTING PRESIDENT KUHL: Lay Calendar Number 1117 aside temporarily.

The Secretary will continue to read the controversial calendar.

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

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT KUHL: Senator Volker.

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

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

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

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

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

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

SENATOR WALDON: Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Would Senator Volker yield -

SENATOR VOLKER: Yes.

SENATOR WALDON: -- to a question or two?

ACTING PRESIDENT KUHL: The Senator yields, Senator Waldon.

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

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

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

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

ACTING PRESIDENT KUHL: Senator Volker, excuse the interruption.

SENATOR VOLKER: Certainly.

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

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

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

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

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

SENATOR MARCELLINO: Can we call

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and a person.

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

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

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

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

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

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

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

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

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

also.

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

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

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

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

Congratulations, Jim.

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

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

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

Jim Kelly is just the exact

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

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

Thank you, Mr. President.

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

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

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

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

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

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

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

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

Thank you very much for a great career.

ACTING PRESIDENT KUHL: Senator Volker, on the resolution.

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

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

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

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

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

We're happy to have you here.

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

ACTING PRESIDENT KUHL: Senator Rath, on the resolution.

SENATOR RATH: Thank you, Mr. President.

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

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

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

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

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

resolution?

The Chair recognizes Senator Holland, on the resolution.

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

ACTING PRESIDENT KUHL: Senator Dollinger, on the resolution.

SENATOR DOLLINGER: Thank you, Mr. President.

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

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

ACTING PRESIDENT KUHL: Senator Paterson, on the resolution.

SENATOR PATERSON: Thank you, Mr. President.

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

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

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

always found Senator Stachowski to be poetry in place.

Thank you, Mr. President.

SENATOR STACHOWSKI: He's not faster than me.

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

(There was no response.)

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

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

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

SENATOR PATERSON: Rare opportunity.

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

SENATOR MARCELLINO: Mr.

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

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

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

have you say a few words to the members.

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

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

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

because whether you like it or not, you are.

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

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

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

(Applause)

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

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

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

(Applause)

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

Senator Marcellino.

SENATOR MARCELLINO: Mr. President -- Mr. President.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

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

The Secretary will read the title to Calendar Number 1129.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR SKELOS: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

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

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

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

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

federal government.

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

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

If I may, Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

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

Senator, I believe the same

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I wonder if the sponsor, Senator

Volker, would yield for a question.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

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

SENATOR VOLKER: Right.

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

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

sentences or any of that in any way.

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Montgomery.

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

If Senator Volker would yield, the -

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The

Senator yields.

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

SENATOR VOLKER: Minimum.

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

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

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

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

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

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

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

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

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

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

this bill.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Senator Volker.

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

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

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

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

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

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

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

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

Thank you, Mr. President.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Those recorded in

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

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LEICHTER: Mr. President, would -

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

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

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

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

ACTING PRESIDENT KUHL: Senator Larkin for an explanation.

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

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

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

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

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

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

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

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

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

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

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

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

Thank you very much, Senator.

SENATOR LEICHTER: Mr. President.

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

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

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

SENATOR LARKIN: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

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

support -- or is the Comptroller supporting this bill?

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

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

SENATOR LARKIN: Yes, Mr. President.

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

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

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

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

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Larkin continues to yield.

SENATOR LARKIN: Yes.

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

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

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

SENATOR LARKIN: Senator, all I

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

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

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

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: Yes.

SENATOR MARKOWITZ: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

SENATOR LARKIN: Go ahead.

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

SENATOR LARKIN: I guess my

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: One more question, Senator Larkin.

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

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

your approval?"

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

SENATOR LARKIN: Who?

SENATOR LEICHTER: The Comptroller.

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

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

Senator, this bill is on the

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

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Mr. President.

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

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

Senator Waldon, why do you rise?

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

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

SENATOR WALDON: Yes.

SENATOR LEICHTER: -- in addition to going through -

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

SENATOR LEICHTER: Yes, I am aware of it.

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

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

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

SENATOR LEICHTER: Yes. I'll continue.

SENATOR WALDON: All right.

ACTING PRESIDENT KUHL:

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

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

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

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

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

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

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

Senator, on this particular bill

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

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

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

SENATOR LARKIN: Mr. President.

SENATOR LEICHTER: -- because of -

ACTING PRESIDENT KUHL: Excuse

me, Senator Leichter.

Senator Larkin, why do you rise?

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

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

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

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

I thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

SENATOR LEICHTER: Thank you.

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

position is?

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

ACTING PRESIDENT KUHL: The bill is passed.

Senator Smith, why do you rise?

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

ACTING PRESIDENT KUHL: 11...

SENATOR SMITH: ...29.

SENATOR WALDON: Mr. President.

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

The Chair recognizes Senator Waldon.

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

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

ACTING PRESIDENT KUHL: Calendar Number 870, Senator Waldon?

SENATOR WALDON: That's correct.

ACTING PRESIDENT KUHL: Okay. The record will reflect that had you been in the chamber yesterday when a vote on Calendar Number 870 was taken that you would have voted in the negative.

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

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

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

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

Senator Present.

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

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

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

SENATOR PATERSON: Explanation.

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Velella would yield for a question.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you, Mr. President.

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

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

itself suffers when we take those commodities away.

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

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

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

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

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

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

SENATOR VELELLA: Certainly.

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

continues to yield.

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

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

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

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

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

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

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

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

Let's establish the priorities,

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

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

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

If the Senator would continue to yield.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

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

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

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

The priorities should be adequate

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

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

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

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Lachman.

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

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

SENATOR VELELLA: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

SENATOR LACHMAN: So it becomes discretionary and optional.

SENATOR VELELLA: Absolutely.

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

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

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

SENATOR LACHMAN: In consultation with the Cultural Educational Authority.

SENATOR VELELLA: Certainly.

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

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes, on the bill.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

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

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

SENATOR VELELLA: There can be no better human being.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

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

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

The issue is whether or not we

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

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

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

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

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

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

So I will vote no, Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

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

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

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

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

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

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

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

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

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

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

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

and other places not designed for education.

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

I would vote aye and urge everyone else to.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Marchi to explain his vote.

SENATOR MARCHI: Yes. I believe

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

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

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

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

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

SENATOR LEICHTER: Mr. President.

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

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

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

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

I vote no.

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

Senator Montgomery, to explain her vote.

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

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

Maybe I am not reading this

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

So I am voting no on this bill.

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

Senator Waldon, to explain his vote.

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

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

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

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

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

For those reasons, I must oppose this proposal.

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

Senator Velella, to explain his vote.

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

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

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

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

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

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

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

Move the bill.

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

Senator Paterson, to explain his vote.

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

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

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

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

Therefore, I vote no, Mr. President.

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

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

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Present.

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

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

The Chair recognizes Senator Marcellino.

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

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

SENATOR MARCELLINO: Thank you, sir.

ACTING PRESIDENT KUHL: Senator Present.

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

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

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